

1. Article 13B(f) 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 precludes national legislation which provides that the operation of all games of chance and gaming machines is exempt from VAT where it is carried out in licensed public casinos, while the operation of the same activity by traders other than those running casinos does not enjoy that exemption.
2. Article 13B(f) of the Sixth Directive has direct effect in the sense that it can be relied on by an operator of games of chance or gaming machines before national courts to prevent the application of rules of national law which are inconsistent with that provision.

(¹) OJ C 70 of 22.03.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 17 February 2005

in Case C-134/03: (reference for a preliminary ruling from the Giudice di pace di Genova-Voltri) Viacom Outdoor Srl v Giotto Immobilier SARL (¹)

(Freedom to provide services — Competition — Bill-posting services — Domestic legislation imposing a municipal tax on advertising — Supply by municipalities of a public bill-posting service — Power of the municipalities to regulate the supply of bill-posting services — Internal taxation not discriminatory)

(2005/C 93/03)

(Language of the case: Italian)

In Case C-134/03: reference for a preliminary ruling under Article 234 EC from the Giudice di pace di Genova-Voltri (Italy), by decision of 10 March 2003, received at the Court on 25 March 2003, in the proceedings between **Viacom Outdoor Srl v Giotto Immobilier SARL** – the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, J.-P. Puissochet, J. Malenovský and U. Lohmus, Judges; J. Kokott, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 17 February 2005, in which it rules that:

1. The questions concerning the interpretation of Articles 82 EC, 86 EC, 87 EC and 88 EC are inadmissible;
2. Article 49 EC does not preclude the levying of a tax such as the municipal tax on advertising imposed by the Decreto legislativo No 507 – Revisione ed armonizzazione dell'imposta comunale sulla pubblicità e del diritto sulle pubbliche affissioni (Legislative Decree No 507 revising and harmonising municipal advertising tax and bill-posting duty) of 15 November 1993.

(¹) OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 24 February 2005

in Case C-320/04 Commission of the European Communities v Grand Duchy of Luxembourg (¹)

(Failure of a Member State to fulfil obligations — Directive 2000/43/EC — Failure to transpose within the prescribed period)

(2005/C 93/04)

(Language of the case: French)

In Case C-320/04 **Commission of the European Communities** (Agent: D. Martin) v **Grand Duchy of Luxembourg** (Agent: S. Schreiner) – action for failure to fulfil obligations under Article 226 EC, brought on 27 July 2004 – the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, J. Makarczyk and J. Klučka (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 24 February 2005, in which it:

1. Declares that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

2. Orders the Grand Duchy of Luxembourg to pay the costs.

⁽¹⁾ OJ C 228 of 11. 9. 2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 24 February 2005

in Case C-327/04: Commission of the European Communities v Republic of Finland ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 2000/43/EC — Failure to transpose within the prescribed period)

(2005/C 93/05)

(Language of the case: Finnish)

In Case C-327/04, action for a declaration under Article 226 EC, brought on 27 July 2004, Commission of the European Communities (Agents: D. Martin and M. Huttunen) v Republic of Finland (Agent: T. Pynnä) — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, J. Makarczyk and J. Klučka (Rapporteur), Judges; P. Leger, Advocate General; R. Grass, Registrar, gave a judgment on 24 February 2005, in which it:

1. Declares that, by failing to adopt, as regards the province of Åland, the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the Republic of Finland has failed to fulfil its obligations under that directive;

2. Orders the Republic of Finland to pay the costs.

⁽¹⁾ OJ C 239 of 25.09.2004.

ORDER OF THE COURT

(Second Chamber)

of 1 December 2004

in Case C-498/01 P: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Zapf Creation AG ⁽¹⁾

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Absolute grounds for refusal of registration — Article 7(1)(b) and (c) — ‘New Born Baby’ — No need to give judgment)

(2005/C 93/06)

(Language of the case: German)

In Case C-498/01 P: appeal under Article 49 of the EC Statute of the Court of Justice, brought on 20 December 2001, Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, M. Schennen and C. Røhl Søberg), supported by United Kingdom of Great Britain and Northern Ireland (Agent: K. Manji, assisted by M. Tappin), the other party to the proceedings being: Zapf Creation AG, established in Rödental (Germany) (Lawyers: A. Kockläuner and S. Zech) — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet (Rapporteur) and R. Schintgen, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, made an order on 1 December 2004, the operative part of which is as follows

1. It is unnecessary to give judgment on the appeal brought by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

2. Zapf Creation AG shall pay the costs of the present proceedings.

3. The United Kingdom of Great Britain and Northern Ireland shall bear its own costs.

⁽¹⁾ OJ C 56 of 02.03.2002.