

1. *The theft of goods does not constitute a supply of goods for consideration within the meaning of Article 2 of the 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, and therefore cannot as such be subject to value added tax. The circumstance that goods are, like those at issue in the main proceedings, subject to excise duty does not affect that conclusion.*
2. *An authorisation to apply measures facilitating monitoring of the charging of value added tax, granted to a Member State on the basis of Article 27(5) of the Sixth Directive 77/388, does not empower that State to subject transactions to that tax other than those set out in Article 2 of the Directive. Such an authorisation thus cannot provide a legal basis for national legislation subjecting to value added tax the theft of goods from a tax warehouse.*

(¹) OJ C 304 of 13.12.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 16 June 2005

in Case C-456/03: Commission of the European Communities v Italian Republic (¹)

(Failure of a Member State to fulfil obligations — Directive 98/44/EC — Legal protection of biotechnological inventions — Admissibility — Failure to transpose — Articles 3(1), 5(2), 6(2) and 8 to 12)

(2005/C 217/26)

(Language of the case: Italian)

In Case C-456/03, Commission of the European Communities (Agent: K. Banks) v Italian Republic (Agent: I.M. Braguglia, assisted by P. Gentili, avvocato dello Stato) — action under Article 226 EC for failure to fulfil obligations, brought on 27 October 2003 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J.P. Puissochet, S. von Bahr, U. Lohmus and A. Ó Caoimh (Rapporteur), Judges; D. Ruiz-

Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 16 June 2005, in which it:

1. *Declares that, by having failed to adopt the laws, regulations and administrative provisions necessary to comply with Articles 3(1), 5(2), 6(2) and 8 to 12 of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, the Italian Republic has failed to fulfil its obligations under Article 15 of that directive;*
2. *Dismisses the action as to the remainder;*
3. *Orders the Italian Republic to bear all the costs.*

(¹) OJ C 7 of 10.1.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 26 May 2005

in Case C-465/03: Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Linz Kretztechnik AG v Finanzamt Linz (¹)

(Sixth VAT Directive — Supplies for consideration — Share issue — Admission of a company to a stock exchange — Deductibility of VAT)

(2005/C 217/27)

(Language of the case: German)

In Case C-465/03: reference for a preliminary ruling under Article 234 EC from the Unabhängiger Finanzsenat, Außenstelle Linz (Austria), made by decision of 20 October 2003, received at the Court on 5 November 2003, in the proceedings between Kretztechnik AG and Finanzamt Linz, the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Lenaerts (Rapporteur), J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 26 May 2005, the operative part of which is as follows:

1. A new share issue does not constitute a transaction falling within the scope of Article 2(1) 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, as amended by Council Directive 95/7/EC of 10 April 1995.
2. Article 17(1) and (2) of Sixth Directive 77/388, as amended by Directive 95/7, confer the right to deduct in its entirety the VAT charged on the expenses incurred by a taxable person for the various supplies acquired by him in connection with a share issue, provided that all the transactions undertaken by the taxable person in the context of his economic activity constitute taxed transactions.

(¹) OJ C 47 of 21.02.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 21 July 2005

in Case C-515/03: (Reference for a preliminary ruling, Finanzgericht Hamburg) in Eichsfelder Schlachtbetrieb GmbH v Hauptzollamt Hamburg-Jonas (¹)

(Agriculture — Common organisation of the markets — Export refunds — Conditions for granting them — Import of the product into the non-member country of destination — Meaning — Customs formalities for release for consumption in the non-member country — Substantial processing or working — Reimportation into the Community — Abuse of law)

(2005/C 217/28)

(Language of the case: German)

In Case C-515/03: reference for a preliminary ruling under Article 234 EC from the Finanzgericht Hamburg (Germany), made by decision of 12 November 2003, received at the Court on 9 December 2003, in the proceedings between Eichsfelder Schlachtbetrieb GmbH and Hauptzollamt Hamburg-Jonas — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J.-P. Puissechet (Rapporteur), S. von Bahr, J. Malenovský and U. Löhmus, Judges; D. Ruiz-Jarabo Colomer, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 21 July 2005, in which it ruled:

The condition for obtaining a differentiated export refund laid down in Article 17(3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 1384/95 of 19 June 1995, as regards in particular the adjustments necessary for the implementation of the Uruguay Round Agreement on Agriculture, namely clearance through customs for release of the product concerned for consumption in the non-member country of destination, is fulfilled where that product, on which import duties were paid in that country, undergoes substantial processing or working there within the meaning of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, even if the product deriving from such processing or working is then re-exported to the Community, with reimbursement of the duties levied in that country and payment of customs import duties in the Community.

In those circumstances, reimbursement of the export refund may nevertheless be required if the national court considers that evidence of an abusive practice on the part of the exporter has been produced, in accordance with the rules of national law.

(¹) OJ C 59 of 06.03.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 21 July 2005

in Case C-30/04: Reference for a preliminary ruling from the Tribunale di Bolzano in Ursel Koschitzki v Istituto nazionale della previdenza sociale (INPS) (¹)

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Old-age pension — Calculation of the theoretical amount of benefit — Inclusion of the amount necessary to reach the minimum pension under national legislation)

(2005/C 217/29)

(Language of the case: Italian)

In Case C-30/04: reference for a preliminary ruling under Article 234 EC from the Tribunale di Bolzano (Italy), made by decision of 9 January 2004, received at the Court on 28 January 2004, in the proceedings between Ursel Koschitzki and