

**JUDGMENT OF THE COURT****(Fifth Chamber)****of 15 December 2005****in Case C-253/04: Commission of the European Communities v Hellenic Republic <sup>(1)</sup>*****(Failure of a Member State to fulfil obligations — Directive 2002/21/EC — Electronic communications networks and services — Common regulatory framework — Failure to transpose within the prescribed period)***

(2006/C 36/23)

*(Language of the case: Greek)*

In Case C-253/04 Commission of the European Communities (Agents: G. Zavvos and M. Shotter) v Hellenic Republic (Agent: N. Dafniou) — action for failure to fulfil obligations under Article 226 EC, brought on 14 June 2004 — the Court (Fifth Chamber), composed of J. Makarczyk, President of the Chamber, R. Silva de Lapuerta and P. Kūris (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 15 December 2005, in which it:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), the Hellenic Republic has failed to fulfil its obligations under that directive.
2. Orders the Hellenic Republic to pay the costs.

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<sup>(1)</sup> OJ C 201, 07.08.2004

**JUDGMENT OF THE COURT****(Fifth Chamber)****of 15 December 2005****in Case C-254/04: Commission of the European Communities v Hellenic Republic <sup>(1)</sup>*****(Failure of a Member State to fulfil obligations — Directive 2002/20/EC — Electronic communications networks and services — Authorisation — Failure to transpose within the prescribed period)***

(2006/C 36/24)

*(Language of the case: Greek)*

In Case C-254/04 Commission of the European Communities (Agents: G. Zavvos and M. Shotter) v Hellenic Republic (Agent:

N. Dafniou) — action for failure to fulfil obligations under Article 226 EC, brought on 14 June 2004 — the Court (Fifth Chamber), composed of J. Makarczyk, President of the Chamber, R. Silva de Lapuerta and P. Kūris (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 15 December 2005, in which it:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), the Hellenic Republic has failed to fulfil its obligations under that directive.
2. Orders the Hellenic Republic to pay the costs.

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<sup>(1)</sup> OJ C 201, 07.08.2004

**JUDGMENT OF THE COURT****(Third Chamber)****of 8 December 2005****in Case C-280/04 Reference for a preliminary ruling from the Vestre Landsret (Denmark) Jyske Finans A/S v Skatteministeriet <sup>(1)</sup>*****(Sixth VAT Directive — Article 13B(c) — Exemptions — Exemption of supplies of goods excluded from the right to deduct — Resale of motor cars purchased second-hand by a leasing company — Article 26a — Special arrangements for sales of second-hand goods)***

(2006/C 36/25)

*(Language of the case: Danish)*

In Case C-280/04: reference for a preliminary ruling under Article 234 EC from the Vestre Landsret (Denmark), made by decision of 25 June 2004, received at the Court on 29 June 2004, in the proceedings pending before that court between Jyske Finans A/S v Skatteministeriet — the Court: (Third Chamber) composed of A. Rosas, President of the Chamber, J. Malenovský (Rapporteur), J.-P. Puissochet, S. von Bahr and U. Löhmus, Judges; L.A. Geelhoed, Advocate General, H. von Holstein, Deputy Registrar, gave a judgment on 8 December 2005, the operative part of which is as follows:

1. The provisions of Articles 13B(c) 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 94/5/EC of 14 February 1994 are to be construed as meaning that they do not preclude a national law which imposes value added tax on transactions by which a taxable person, after having used them for the purposes of its business, resells goods on the acquisition of which, by virtue of Article 17(6), value added tax did not become deductible, even where that acquisition, made from taxable persons who could not declare value added tax, did not, for that reason, give rise to a right to deduct.
2. Article 26aA(e) of Sixth Directive 77/388, as amended by Directive 94/5, is to be construed as meaning that an undertaking which, in the normal course of its business, resells cars which it had purchased second-hand with a view to using them for the purposes of its business of sale and leaseback and for which the resale is not, at the time of the purchase of the second-hand goods, the principal objective but only its secondary objective, ancillary to that of leasing, can be considered to be a 'taxable dealer' within the meaning of that provision.

(<sup>1</sup>) OJ C 228 of 11.9.2004.

## JUDGMENT OF THE COURT

(First Chamber)

of 24 November 2005

**in Case C-366/04: Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Salzburg in Georg Schwarz v Bürgermeister der Landeshauptstadt Salzburg (<sup>1</sup>)**

**(Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National legislative provision prohibiting the sale of non-packaged confectionery from vending machines — Hygiene of foodstuffs)**

(2006/C 36/26)

(Language of the case: German)

In Case C-366/04: reference for a preliminary ruling under Article 234 EC from the Unabhängiger Verwaltungssenat Salz-

burg (Independent Administrative Chamber of Salzburg) (Austria), made by decision of 16 August 2004, received at the Court on 23 August 2004, in the proceedings between **Georg Schwarz** and the **Bürgermeister der Landeshauptstadt Salzburg** — the Court (First Chamber), composed of P. Jann, President of the Chamber, J.N. Cunha Rodrigues, E. Juhász (Rapporteur), M. Ilešič and E. Levits, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 24 November 2005, the operative part of which is as follows:

It is not contrary to Articles 28 EC, 30 EC and Article 7 of Council Directive 93/43/EEC of 14 June 1993 on the hygiene of foodstuffs for a provision of national law, adopted before the entry into force of that directive, to prohibit the offer for sale from vending machines of sugar confectionery or products made using sugar substitutes, without wrapping.

(<sup>1</sup>) OJ C 262 of 23.10.2004.

## JUDGMENT OF THE COURT

(Sixth Chamber)

of 17 November 2005

**in Case C-378/04: Commission of the European Communities v Republic of Austria (<sup>1</sup>)**

**(Failure of a Member State to fulfil obligations — Risks related to exposure to carcinogens and mutagens — Failure to transpose within the prescribed period)**

(2006/C 36/27)

(Language of the case: German)

In Case C-378/04 Commission of the European Communities (Agents: D. Martin and V. Kreuzschitz) v Republic of Austria (Agent: C. Pesendorfer) — action under Article 226 EC for failure to comply with obligations, brought on 2 September 2004 — the Court, composed of A. Borg Barthet (Rapporteur) acting as President of the Sixth Chamber, U. Löhmus and A. Ó Caoimh, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 17 November 2005, in which it: