

2. Must Article 33(1) of Sixth Council Directive 77/388/EEC <sup>(2)</sup> ('the Sixth Directive') be interpreted as meaning that it prohibits the maintenance of a tax (the local tax on economic activities) on profit-making business activities which is fundamentally characterised by the fact that it is imposed in respect of net receipts, after deduction of the cost of acquisition of the goods sold and the services supplied by third parties and the cost of raw materials? That is to say, with reference to that article, may a tax with those characteristics be classified as a turnover tax?

<sup>(1)</sup> OJ 2003 L 236, p. 846.

<sup>(2)</sup> OJ 1977 L 145, p. 1.

**Action brought on 20 July 2006 — Commission of the European Communities v Kingdom of the Netherlands**

(Case C-322/06)

(2006/C 237/12)

*Language of the case: Dutch*

**Parties**

*Applicant:* Commission of the European Communities (represented by: N. Yerrell and W. Wils, Agents)

*Defendant:* Kingdom of the Netherlands

**Form of order sought**

- Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to give effect to Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, <sup>(1)</sup> or in any event by failing to inform the Commission of those laws, regulations and administrative provisions, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;
- Order the Kingdom of the Netherlands to pay the costs.

**Pleas in law and main arguments**

The period within which the directive had to be implemented in national law expired on 23 March 2005.

<sup>(1)</sup> OJ 2002 L 80, p. 35.

**Reference for a preliminary ruling from the Juzgado Mercantil 3, Barcelona, Spain lodged on 27 July 2006 — Alfredo Nieto Nuño v Leonci Monlleó Franquet**

(Case C-328/06)

(2006/C 237/13)

*Language of the case: Spanish*

**Referring court**

Juzgado Mercantil 3, Barcelona

**Parties to the main proceedings**

*Applicant:* Alfredo Nieto Nuño

*Defendant:* Leonci Monlleó Franquet

**Question referred**

Must the concept of trade marks which are 'well known' in a Member State, referred to in Article 4 of First Council Directive 89/104/EEC <sup>(1)</sup> of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), be taken to indicate solely and exclusively the degree of knowledge and establishment in a Member State or in a significant part of the territory of that State, or may the determination of whether a mark is well known be linked to a territorial scope which does not coincide with that of the territory of a State but rather with an autonomous community, region, district or city, depending on the goods or services which the mark covers and the persons to whom the mark is actually addressed, in short, depending on the market in which the mark is used?

<sup>(1)</sup> OJ L 40, 11.2.1989, p.1