

- (e) similarities and differences as between FOBTs and Part III gaming machines in the interaction which could occur between the player and the machine;
- (f) whether or not the matters referred to above were either known to the generality of players of the machines or regarded by them as relevant or important;
- (g) whether the difference in VAT treatment is justified by any of the above?

3. In a situation where a Member State, in the exercise of its discretion under Article 13B(f) of the Sixth VAT Directive, exempted gambling from VAT but subjected a defined class of machines used for gambling to VAT: -

- (a) is there in principle a defence of due diligence available to a Member State to a claim that the principle of fiscal neutrality has been infringed by that Member State; and
- (b) if the answer to (a) is 'yes', what factors are relevant in determining whether or not the Member State is entitled to rely on that defence?

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

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**Reference for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 28 May 2010 — Criminal proceedings against Gheorghe Kita**

(Case C-264/10)

(2010/C 209/41)

*Language of the case: Romanian*

**Referring court**

Înalta Curte de Casație și Justiție

**Parties to the main proceedings**

Gheorghe Kita

**Question referred**

Is Article 5(3) of Council Framework Decision 2002/584/JHA <sup>(1)</sup> of 13 June 2002 to be interpreted as meaning that the return (transfer) of the sentenced person, surrendered earlier in accordance with a European arrest warrant for the purposes of criminal proceedings, to the State of which he is a national takes place automatically, even without his consent, consent that is a condition imposed by the European Convention on the Transfer of Sentenced Persons?

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<sup>(1)</sup> Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

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**Action brought on 2 June 2010 — European Commission v Czech Republic**

(Case C-276/10)

(2010/C 209/42)

*Language of the case: Czech*

**Parties**

*Applicant:* European Commission (represented by: S. Pardo Quintillán and L. Jelínek, acting as Agents)

*Defendant:* Czech Republic

**Form of order sought**

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2006/118/EC <sup>(1)</sup> of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration or, in any event, by failing to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 12 of that directive;

— order Czech Republic to pay the costs.

**Pleas in law and main arguments**

The time-limit for transposition of the directive into national law expired on 16 January 2009.

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<sup>(1)</sup> OJ 2006 L 372, p. 19.