

turnover taxes and in Articles 2, 10(1) and (2) and 17(1) and (2) 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 2004/7/EC of 20 January 2004, does not preclude a Member State from imposing a temporary restriction on the extent of the right of taxable persons who have not complied with a formal requirement to keep accounting records of their sales to deduct input tax paid, on condition that the sanction thus provided for complies with the principle of proportionality.

2. Provisions such as those of Article 111(1) and (2) of the Law on the Tax on Goods and Services (*ustawa o podatku od towarów i usług*) of 11 March 2004 are not 'special measures for derogation' intended to prevent certain types of tax evasion or avoidance within the meaning of Article 27(1) of Sixth Directive 77/388, as amended by Directive 2004/7.
3. Article 33 of Sixth Directive 77/388, as amended by Directive 2004/7, does not preclude the maintenance of provisions such as those of Article 111(1) and (2) of the Law on the Tax on Goods and Services of 11 March 2004.

<sup>(1)</sup> OJ C 193, 15.8.2009.

### Judgment of the Court (Seventh Chamber) of 29 July 2010 — European Commission v Republic of Austria

(Case C-189/09) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Directive 2006/24/EC — Respect for private life — Retention of data generated or processed in connection with the provision of electronic communications services — Failure to transpose within the prescribed period)*

(2010/C 246/12)

Language of the case: German

#### Parties

Applicant: European Commission (represented by: L. Balta and B. Schöfer, Agents)

Defendant: Republic of Austria (represented by: E. Riedl, Agent)

Intervener in support of the applicant: Council of the European Union

#### Re:

Failure of a Member State to fulfil obligations – Failure to adopt or communicate, within the prescribed period, the provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54)

#### Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Republic of Austria has failed to fulfil its obligations under that directive;
2. Orders the Republic of Austria to pay the costs.

<sup>(1)</sup> OJ C 180, 01.08.2009.

### Judgment of the Court (Fourth Chamber) of 29 July 2010 — Anheuser-Busch Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Budějovický Budvar, národní podnik

(Case C-214/09 P) <sup>(1)</sup>

*(Appeals — Community trade mark — Regulation (EC) No 40/94 — Application for registration of the word mark BUDWEISER — Opposition — Article 8(1)(a) and (b) of Regulation No 40/94 — Earlier international word and figurative marks BUDWEISER and Budweiser Budvar — Genuine use of the earlier trade mark — Article 43(2) and (3) of Regulation No 40/94 — Submission of evidence 'in due time' — Certificate of renewal for the earlier mark — Article 74(2) of Regulation No 40/94)*

(2010/C 246/13)

Language of the case: English

#### Parties

Appellant: Anheuser-Busch Inc. (represented by: V. von Bomhard and B. Goebel, Rechtsanwälte)