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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
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EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Joined Cases C-453/02 and C-462/02

*Finanzamt Gladbeck v. Edith Linneweber*  
*Finanzamt Herne-West v. Savvas Akriditis*

**THE OPERATION OF GAMES OF CHANCE OR GAMING MACHINES IN  
PLACES OTHER THAN LICENSED PUBLIC CASINOS MAY NOT BE SUBJECT  
TO VAT WHERE THE SAME ACTIVITIES IN LICENSED PUBLIC CASINOS ARE  
EXEMPT FROM VAT**

*An operator can rely on that exemption directly before the national tax authorities*

Mr Linneweber operated gaming machines in restaurants and amusement arcades owned by him in Germany. Mr Akriditis ran an amusement arcade where he organised card games, also in Germany. The competent tax authorities took the view that the income from the operation of the gaming machines and the organisation of the card games was subject to VAT, since the German legislation provides for the exemption of such turnover only where it derives from the operation of a licensed public casino. The Bundesfinanzhof (Federal Finance Court) before which the litigation arising over these tax rules came on final appeal, referred several questions to the court in this connection.

The Court observes, first, that the Umsatzsteuergesetz (German law on turnover tax) exempts all games of chance and gaming machines from VAT where they are operated in a licensed public casino, regardless of their form or the detailed rules for their organisation and operation. Moreover, in Germany, licensed public casinos are not subject to any restriction on the forms of game and types of machine they may operate.

Next, the Court points out that, **under the Sixth Directive,<sup>1</sup> the operation of games of chance and gaming machines must, as a rule, be exempt from VAT**, while the Member States retain responsibility for determining the conditions and limitations to which the

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<sup>1</sup> Article 13B(f) 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 (OJ 1977 L 145, p. 1).

exemption is subject. However, it emphasises that, in exercising that responsibility, the Member States must respect the principle of fiscal neutrality.

The principle of fiscal neutrality requires, inter alia, that comparable services, (which are necessarily in competition with one another), must be treated equally for the purposes of VAT and must be subject to a uniform rate. In assessing whether services are comparable, the identity of the provider of those services and the legal form under which he exercises his activities are generally irrelevant. Consequently, **the Member States cannot validly make the benefit of the VAT exemption dependent on the identity of the operator of the games of chance or gaming machines.**

Thus, the Court holds that the Sixth Directive precludes national legislation which provides that the operation of all games of chance and gaming machines is exempt from VAT where it is carried out in licensed public casinos, while the operation of the same activity by traders other than those running casinos does not enjoy that exemption.

Moreover, the Court holds that the relevant provision of the Sixth Directive has **direct effect**, in the sense that it can be relied on by an operator of games of chance or gaming machines before national courts, in order to prevent the application of rules of national law which are inconsistent with that provision.

Finally, as regards the contention of the German Government that the temporal effect of this judgment should be limited, the Court points out that the interpretation which the Court gives to a rule of Community law clarifies and defines the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships which arose and were established before the judgment ruling on the request for interpretation, provided that the conditions for bringing a dispute relating to the application of that rule before the competent courts are satisfied. The Court finds that the financial consequences which might follow for a Member State from a preliminary ruling do not, of themselves, justify the limitation of the temporal effect of this judgment. Therefore, **the Court declines to limit the temporal effect of this judgment.**

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*Languages available: DE, EN, FR*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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