

1. Declares that, by failing to adopt the measures necessary to comply with the requirements of Annex I to Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption, the Portuguese Republic has failed to fulfil its obligations under Articles 7(6) and 19 of that directive;

2. Orders the Portuguese Republic to pay the costs.

(¹) OJ C 184 of 02.08.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 6 October 2005

in Case C-276/03 P: Scott SA v Commission of the European Communities and French Republic (¹)

(Appeal — Unlawful State aid — Temporal application of Regulation (EC) No 659/1999 — Decision on incompatibility and recovery of aid — Limitation period — Interruption — Need to inform the beneficiary of the aid of an interrupting action)

(2005/C 296/05)

(Language of the case: English)

In Case C-276/03 P: appeal under Article 56 of the Statute of the Court of Justice, brought on 24 June 2003 by Scott SA, established in Saint-Cloud (France) (represented by J. Lever QC, G. Peretz, Barrister, A. Nourry, R. Griffith and M. Papadakis, Solicitors), the other parties to the proceedings being: Commission of the European Communities (Agent: J. Flett), and the French Republic — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, N. Colneric, K. Schiemann, E. Juhász and E. Levits, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 6 October 2005, in which it:

1. Dismisses the appeal;
2. Orders Scott SA and the Commission of the European Communities to bear their own costs.

(¹) OJ C 200 of 23. 08.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 6 October 2005

in Case C-291/03: Reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester, MyTravel plc v Commissioners of Customs & Excise (¹)

(Sixth VAT Directive — Scheme for travel agents — Package tours — Services bought in from third parties and in-house services — Method of calculating the tax)

(2005/C 296/06)

(Language of the case: English)

In Case C-291/03: reference for a preliminary ruling under Article 234 EC from the VAT and Duties Tribunal, Manchester (United Kingdom), made by decision of 30 June 2003, received at the Court on 4 July 2003, in the proceedings between MyTravel plc and Commissioners of Customs & Excise — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet (Rapporteur), J.-P. Puissechot, S. von Bahr and U. Lohmus, Judges; P. Léger, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 6 October 2005, the operative part of which is as follows:

1. A travel agent or a tour operator who has completed his value added tax return for a tax period using the method laid down by the national rules which transpose into domestic law 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 may recalculate his value added tax liability in accordance with the method held by the Court to comply with Community law, under the conditions laid down by national law, which have to observe the principles of equivalence and effectiveness.
2. Article 26 of Sixth Directive 77/388 must be interpreted as meaning that a travel agent or tour operator who, in return for a package price, supplies to a traveller services bought in from third parties and in-house services must, in principle, identify the part of the package corresponding to his in-house services on the basis of their market value where that value can be established. In such a case, a taxable person may use the criterion of actual costs only if he proves that this criterion accurately reflects the actual structure of the package. Application of the criterion of market value is not subject to the condition that it must be simpler than application of the actual cost method or to the condition that it must produce a value added tax liability identical or close to that which would result from using the actual cost method. Accordingly:

— a travel agent or tour operator may not use the market value method at his own discretion and

— that method is applicable to in-house services whose market value may be established even if, in the same tax period, the value of certain in-house components of the package cannot be established inasmuch as the taxable person does not sell similar services on a non-package basis.

3. It is for the national tribunal to establish, in the light of the circumstances of the main proceedings, the market value of the flights supplied in the main proceedings as part of package holidays. The national tribunal may establish this market value from average values. In this context, the market based on seats sold to other tour operators may constitute the most appropriate market.

(¹) OJ C 213 of 06.09.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 13 October 2005

in Case C-458/03: Reference for a preliminary ruling from the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen, Parking Brixen GmbH v Gemeinde Brixen, Stadtwerke Brixen AG (¹)

(Public procurement — Procedures for the award of public contracts — Service concession — Management of public pay car parks)

(2005/C 296/07)

(Language of the case: German)

In Case C-458/03: Reference for a preliminary ruling under Article 234 EC from the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen (Italy), made by decision of 23 July 2003, received at the Court on 30 October 2003, in the proceedings between Parking Brixen GmbH and Gemeinde Brixen and Stadtwerke Brixen AG — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Schiemann, K. Lenaerts, J.N. Cunha Rodrigues (Rapporteur) and E. Juhász, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 13 October 2005, the operative part of which is as follows:

1. The award, by a public authority to a service provider, of the management of a public pay car park, in consideration for which that provider is remunerated by sums paid by third parties for the use of that car park, is a public service concession to which Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts does not apply.

2. Articles 43 EC and 49 EC, and the principles of equal treatment, non-discrimination and transparency, are to be interpreted as precluding a public authority from awarding, without putting it out to tender, a public service concession to a company limited by shares which resulted from the conversion of a special undertaking of that public authority, whose objects have been extended to significant new areas, whose capital must obligatorily be opened in the short term to other capital, the geographical area of whose activities has been extended to the entire country and abroad, and whose Administrative Board possesses very broad management powers which it can exercise independently.

(¹) OJ C 7 of 10.01.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 October 2005

in Case C-502/03: Commission of the European Communities v Hellenic Republic (¹)

(Failure of a Member State to fulfil obligations — Environment — Management of waste — Directive 75/442/EEC, as amended by Directive 91/156/EEC — Articles 4, 8 and 9)

(2005/C 296/08)

(Language of the case: Greek)

In Case C-502/03 **Commission of the European Communities** (Agent: M. Konstantinidis) v **Hellenic Republic** (Agent: E. Skandalou) — action under Article 226 EC for failure to fulfil obligations, brought on 26 November 2003 — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, R. Schintgen and J. Klučka (Rapporteur), Judges; L. A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 6 October 2005, in which it:

1. Declares that, by failing to take all the measures necessary to ensure compliance with Articles 4, 8 and 9 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, the Hellenic Republic has failed to fulfil its obligations under that directive;

2. Orders the Hellenic Republic to pay the costs.

(¹) OJ C 47, 21.02.2004