

3. *The Republic of Austria is ordered to pay the costs.*
4. *The Federal Republic of Germany, the Italian Republic and the Kingdom of the Netherlands are ordered to bear their own costs.*

(<sup>1</sup>) OJ C 226, 20. 9.2003.

*such registration is possible, on compliance with certain conditions, where the two companies participating in the merger are both established in the territory of the first Member State.*

(<sup>1</sup>) OJ C 289, 29.11.2003.

## JUDGMENT OF THE COURT

(Grand Chamber)

of 13 December 2005

**in Case C-411/03, Reference for a preliminary ruling from the Landgericht Koblenz in proceedings against SEVIC Systems AG (<sup>1</sup>)**

***(Freedom of establishment — Articles 43 EC and 48 EC — Cross-border mergers — Refusal of registration in the national commercial register — Compatibility)***

(2006/C 36/08)

(Language of the case: German)

In Case C-411/03: reference for a preliminary ruling under Article 234 EC from the Landgericht Koblenz (Germany), made by decision of 16 September 2003, received at the Court on 2 October 2003, in proceedings against SEVIC Systems AG — the Court (Grand Chamber) composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and K. Schiemann, Presidents of Chambers; C. Gulmann (Rapporteur), J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Lenaerts, P. Küris, E. Juhász, G. Arestis and A. Borg Barthet Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 13 December 2005, the operative part of which is as follows:

*Articles 43 EC and 48 EC preclude registration in the national commercial register of the merger by dissolution without liquidation of one company and transfer of the whole of its assets to another company from being refused in general in a Member State where one of the two companies is established in another Member State, whereas*

## JUDGMENT OF THE COURT

(Grand Chamber)

of 13 December 2005

**in Case C-446/03, Reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division Marks & Spencer plc v David Halsey (Her Majesty's Inspector of Taxes) (<sup>1</sup>)**

***(Articles 43 EC and 48 EC — Corporation tax — Groups of companies — Tax relief — Profits of parent companies — Deduction of losses incurred by a resident subsidiary — Allowed — Deduction of losses incurred in another Member State by a non-resident subsidiary — Not included)***

(2006/C 36/09)

(Language of the case: English)

In Case C-446/03: reference for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Chancery Division (United Kingdom), made by decision of 16 July 2003, received at the Court on 22 October 2003, in the proceedings between Marks & Spencer plc and David Halsey (Her Majesty's Inspector of Taxes) — the Court (Grand Chamber), composed of V. Skouris, President of the Chamber, P. Jann, C.W.A. Timmermans and A. Rosas, Presidents of Chambers, C. Gulmann (Rapporteur), A. La Pergola, J. P. Puissechet, R. Schintgen, N. Colneric, J. Klucka, U. Löhmus, E. Levits and A. Ó Caoimh, Judges; M. Poiares Maduro, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 13 December 2005, the operative part of which is as follows:

As Community law now stands, Articles 43 EC and 48 EC do not preclude provisions of a Member State which generally prevent a resident parent company from deducting from its taxable profits losses incurred in another Member State by a subsidiary established in that Member State although they allow it to deduct losses incurred by a resident subsidiary. However, it is contrary to Articles 43 EC and 48 EC to prevent the resident parent company from doing so where the non-resident subsidiary has exhausted the possibilities available in its State of residence of having the losses taken into account for the accounting period concerned by the claim for relief and also for previous accounting periods and where there are no possibilities for those losses to be taken into account in its State of residence for future periods either by the subsidiary itself or by a third party, in particular where the subsidiary has been sold to that third party.

<sup>(1)</sup> OJ C 304, 13.12.2003.

## JUDGMENT OF THE COURT

(Grand Chamber)

of 6 December 2005

**in Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04; reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court): *The Queen, on the application of: ABNA Ltd, Denis Brinicombe, BOCM Pauls Ltd, Devenish Nutrition Ltd, Nutrition Services (International) Ltd, Primary Diets Ltd v Secretary of State for Health, Food Standards Agency (C-453/03); references from the Consiglio di Stato: Fratelli Martini & C. SpA, Cargill Srl, v Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive (C-11/04) and Ferrari Mangimi Srl, Associazione nazionale tra i produttori di alimenti zootecnici (Assalzo) v Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive (C-12/04); reference for a preliminary ruling from the Rechtbank 's-Gravenhage: Nederlandse Vereniging Diervoederindustrie (Nevedi) v Productschap Diervoeder (C-194/04)* <sup>(1)</sup>**

***(Animal health and public health requirements — Composite feedingstuffs for animals — Indication of the exact percentage of the components of a product — Infringement of the principle of proportionality)***

(2006/C 36/10)

(Languages of the cases: English, Italian and Dutch)

In Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04: References for preliminary rulings under Article 234 EC,

brought by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom) (C-453/03), by the Consiglio di Stato (Italy) (C-11/04 and C-12/04) and by the Rechtbank 's-Gravenhage (Netherlands) (C-194/04), by decisions of 23 October 2003, 11 November 2003 and 22 April 2004, received by the Court on 27 October 2003, 15 January 2004 and 26 April 2004 respectively, in the proceedings **The Queen**, on the application of: **ABNA Ltd, Denis Brinicombe, BOCM Pauls Ltd, Devenish Nutrition Ltd, Nutrition Services (International) Ltd, Primary Diets Ltd v Secretary of State for Health, Food Standards Agency**, (C-453/03); **Fratelli Martini & C. SpA, Cargill Srl, v Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive (C-11/04); Ferrari Mangimi Srl, Associazione nazionale tra i produttori di alimenti zootecnici (Assalzo) v Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive (C-12/04); and Nederlandse Vereniging Diervoederindustrie (Nevedi), v Productschap Diervoeder (C-194/04) — the Court (Grand Chamber) composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas (Rapporteur), Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, R. Silva de Lapuerta, P. Kūris, E. Juhász, G. Arestis, A. Borg Barthet and M. Ilešič, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, and K. Sztranc, Administrator, for the Registrar, gave a judgment on 6 December 2005, the operative part of which is as follows:**

1. Examination of heading (a) of the question referred in Case C-453/03, of Question 1 in Cases C-11/04 and C-12/04, and of Question 1(a) in Case C-194/04 has not revealed any factor capable of supporting the conclusion that Article 1(1)(b) and 1(4) of Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC was not validly adopted on the basis of Article 152(4)(b) EC.
2. Examination of Question 4 in Case C-12/04 has not revealed any factor capable of affecting the validity of Article 1(1)(b) and 1(4) of Directive 2002/2 in the light of the principle of equal treatment and non-discrimination.
3. Article 1(1)(b) of Directive 2002/2, which requires manufacturers of compound animal feedingstuffs to indicate, at a customer's request, the exact composition of a feedingstuff, is invalid in the light of the principle of proportionality. By contrast, examination of heading (c) of the question referred in Case C-453/03, of Question 2 in Cases C-11/04 and C-12/04, and Question 1(c) in Case C-194/04 has not revealed any factor capable of affecting the validity of Article 1(4) of Directive 2002/2 in the light of that principle.
4. Directive 2002/2 must be interpreted as meaning that its application is not contingent on the adoption of the positive list of feed materials designated by their specific names referred to in recital (10) in the preamble to that directive.