

2. On the basis of the abovementioned provisions, may a national legislature collect, in respect of slaughtering carried out outside normal slaughtering hours at the request of the owner, an additional fee on a percentage basis on top of the fee collected for slaughtering inspections in normal slaughtering hours when the latter reflects the additional actual costs, or must those costs be contained in the standard (increased) fee for all persons subject to a fee?

Action brought on 13 July 2007 — Commission of the European Communities v Italian Republic

(Case C-326/07)

(2007/C 247/05)

Language of the case: Italian

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 11 July 2007 — Hein Persche v Finanzamt Lüdenscheld

(Case C-318/07)

(2007/C 247/04)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Claimant: Hein Persche

Defendant: Finanzamt Lüdenscheld

Questions referred

1. Do donations of everyday goods by a national of a Member State to bodies which have their seat in a different Member State and, under the law of that Member State, are recognised as charitable, fall within the scope of application of free movement of capital (Article 56 EC)?

2. If question 1 is answered in the affirmative:

Having regard to the obligation of tax authorities to verify statements made by taxable persons and to the principle of proportionality (Article 5(3) EC), is it incompatible with free movement of capital (Article 56 EC) for the law of a Member State to confer a tax benefit on donations to charitable bodies only if the latter are resident in that Member State?

3. If question 2 is answered in the affirmative:

Does Directive 77/799/EEC impose an obligation on the tax authorities of Member States to obtain assistance from the administrative authorities of another Member State in order to verify facts which have occurred in that other Member State, or can the procedural rules of a taxable person's home Member State require him to bear the burden of proof (objective burden of proof) in relation to facts which have occurred abroad?

Parties

Applicant: Commission of the European Communities (represented by: L. Pignatoro-Nolin and H. Støvlbæk, Agents)

Defendant: Italian Republic

Form of order sought

— declare that, by including provisions such as those contained in Article 1(2) of the decree of the President of the Council of Ministers of 10 June 2004 on the definition of criteria for the exercise of the special powers referred to in Article 2 of Decree-Law No 332 of 31 May 1994, converted into law with amendments by Law No 474 of 30 July 1994, and amended by Article 4(227)(a), (b) and (c) of Finance Law No 350/2004, the Italian Republic has failed to fulfil its obligations under Articles 43 and 56 of the EC Treaty;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission takes the view that the criteria referred to by Article 1(2) of the Decree of 10 June 2004 for the exercise of special powers, laid down by Article 4(227)(a), (b) and (c) of Law No 350/2004, are not precise or specific enough to enable an investor in another Member State to know when the special powers under Article 4(227)(a), (b) and (c) of Law No 350/2004 will be used.

The special powers under Article 4(227)(a), (b) and (c) of Law No 350/2004 are: to prevent investors from acquiring significant shareholdings representing at least 5 % of voting rights or a lower percentage fixed by the Ministry of Finance, to prevent the conclusion of contracts and agreements between members representing 5 % of voting rights or a lower percentage fixed by the Ministry of Finance and the power to veto the adoption of resolutions for the dissolving of companies, the transferring of shareholdings, for merger, demerger, transferring abroad of the company headquarters, or altering of company objects, criteria applicable to all the sectors mentioned in the first subparagraph of Article 4(227) of the Law (defence, transport, telecommunications, energy sources and other public services).