

### Pleas in law and main arguments

The obligation to carry out the classification of special protection areas for birds (SPAs) was imposed on the Republic of Poland at the time of its accession to the European Union.

In December 2004 an ornithological inventory was published which detailed the situation of birds of European significance in Poland (IBA 2004) and designated, on the basis of ornithological criteria, 140 areas of crucial importance for the conservation of birds.

Of the areas included on the IBA 2004 list, 15 were not classified by the Republic of Poland as SPAs, notwithstanding the fact that the Polish authorities failed to produce any scientific evidence to justify that failure to designate them.

Furthermore, the areas of 8 SPAs are much smaller than their equivalents on the IBA 2004 inventory, with the result that outside their limits there are areas which, according to IBA 2004, would appear to be most suitable for the conservation of bird species.

In addition, in September 2007 the Polish authorities, without notifying the Commission, reduced the areas of 5 designated SPAs in a manner impacting significantly on bird conservation.

<sup>(1)</sup> OJ 1979 L 103, p. 1.

### Action brought on 11 December 2007 — Commission of the European Communities v Ireland

(Case C-554/07)

(2008/C 51/59)

*Language of the case: English*

#### Parties

*Applicant:* Commission of the European Communities (represented by: R. Lyal and M. Afonso, Agents)

*Defendant:* Ireland

#### The applicant claims that the Court should:

- declare that by failing to transpose correctly into Irish legislation Article 13 of Directive 2006/112 (including Annex I to the directive) and consequently by excluding from the scope of the tax all economic activities in which the State, local authorities and other bodies governed by public law engage, with certain limited exceptions, Ireland has failed to

comply with its obligations under Articles 2, 9 and 13 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(1)</sup>;

- order Ireland to pay the costs.

### Pleas in law and main arguments

In Ireland, the State and local authorities are treated as taxable persons only in so far as a specific order to that effect has been made by the Minister for Finance. In the Commission's view that situation is contrary to the scheme laid down in Article 13 of the VAT directive in several respects. First, no provision is made for the taxation of public bodies where they act other than in their capacity as public authorities. Secondly, no general provision is made for the taxation of public bodies where they act in their capacity as public authorities but engage in an economic activity whose non-taxation would result in a significant distortion of competition. The taxation of public bodies is wholly at the discretion of the Minister for Finance; no criteria for his decision are contained in the relevant provisions. Thirdly, no provision is made for taxation of the activities listed in Annex I to the VAT directive.

<sup>(1)</sup> OJ L 347, p. 1.

### Reference for a preliminary ruling from the High Court of Justice (Queen's Bench Division) Administrative Court (United Kingdom) made on 17 December 2007 — The Queen on the application of S.P.C.M. SA, C.H. Erbslöh KG, Lake Chemicals and Minerals Limited, Hercules Incorporated v Secretary of State for Environment, Food and Rural Affairs

(Case C-558/07)

(2008/C 51/60)

*Language of the case: English*

#### Referring court

High Court of Justice (Queen's Bench Division) Administrative Court

#### Parties to the main proceedings

*Applicants:* S.P.C.M. SA, C.H. Erbslöh KG, Lake Chemicals and Minerals Limited, Hercules Incorporated

*Defendant:* Secretary of State for Environment, Food and Rural Affairs

**Questions referred**

1. In light of the fact that the registration requirements in Title II of the REACH Regulation <sup>(1)</sup> do not apply to polymers by virtue of Article 2(9) of the Regulation, does the reference to 'monomer substances' in Article 6(3) mean:
- (a) reacted monomers, that is monomers which have reacted together such that they are indissociable from the polymer of which they form part;
  - (b) unreacted monomers, that is monomers that are residual to the polymerisation process and which retain their own chemical identities and properties separate from the polymer after that process is complete; or
  - (c) both reacted and unreacted monomers?
2. If the answer to question 1 is either (a) or (c), is the application of Article 6(3) to manufacturers or importers of polymers unlawful by reason that the requirements are irrational, discriminatory or disproportionate?

<sup>(1)</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, p. 1)

**Action brought on 20 December 2007 — Commission of the European Communities v Republic of Malta**

(Case C-563/07)

(2008/C 51/61)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: U. Wölker and D. Lawunmi, Agents)

*Defendant:* Republic of Malta

**The applicant claims that the Court should:**

- declare that, by failing to provide the information necessary to comply with Decision No. 280/2004/EC ('the Decision') of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community Greenhouse gas emissions and for imple-

menting the Kyoto Protocol <sup>(1)</sup> in Malta in conjunction with Articles 2 to 7 of Commission Decision 166/2005/EC of 10 February 2005 laying down rules implementing Decision 280/2004/EC, the Republic of Malta has failed to fulfil its obligations under Article 3(1) of the Decision.

**Pleas in law and main arguments**

According to Article 3(1) of decision No 280/2004/EC the Member States shall, for the assessment of actual progress and to enable the preparation of annual reports by the Community, in accordance with obligations under the UNFCCC and the Kyoto protocol, provide the Commission with certain information regarding greenhouse gas emissions by 15 January each year.

In view of the fact that the Republic of Malta has not provided the Commission with the information due on 15 January 2006 the Commission is obliged to assume that the Maltese authorities have failed to meet their obligations under Article 3(1) of the decision.

<sup>(1)</sup> OJ L 49, p. 1.

**Action brought on 10 January 2008 — Commission of the European Communities v Republic of Malta**

(Case C-11/08)

(2008/C 51/62)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: K. Simonsson, Agent)

*Defendant:* Republic of Malta

**The applicant claims that the Court should:**

- declare that, by providing in its national law that inspectors who do not fulfil the criteria in Annex VII of Council Directive 95/21/EC of 19 June 1995 on port State control of shipping <sup>(1)</sup> are accepted if they are employed by the competent authority for port State control on 1 May 2004, the Republic of Malta has failed to fulfil its obligations under Article 12(1) and Annex VII of the Directive;
- order Republic of Malta to pay the costs.