

and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it has ruled:

Articles 81, 82 and 85 EC and Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 96/99/EC of 30 December 1996, must be interpreted as meaning that they do not preclude a national rule providing for the levy of surcharges on the price of electricity such as those at issue in the main proceedings when the electricity is used in an electro-chemical process and that Council Recommendation 81/924/EEC of 27 October 1981 on electricity tariff structures in the Community is not capable of preventing a Member State from levying such surcharges.

(¹) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 September 2003

in Case C-211/01: Commission of the European Communities v Council of the European Union (¹)

(EC/Bulgaria and EC/Hungary Agreements — Carriage of goods by road and combined transport — Taxation — Legal basis — Articles 71 EC and 93 EC)

(2003/C 264/16)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-211/01, Commission of the European Communities (Agent: initially by M. Wolfcarius, subsequently by W. Wils) v Council of the European Union (Agents: A. Lopes Sabino and E. Karlsson) supported by Federal Republic of Germany (Agents: W.-D. Plessing and M. Lumma) and by Grand Duchy of Luxembourg (Agents: J. Falts and N. Mackel): Application for the annulment of Council Decisions 2001/265/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Bulgaria establishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 4), and 2001/266/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Hungary estab-

lishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 27), but only in so far as they are based on Article 93 EC and without altering their effects, which should be maintained, the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, A. La Pergola and S. von Bahr, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it:

1. Annuls Council Decision 2001/265/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Bulgaria establishing certain conditions for the carriage of goods by road and the promotion of combined transport and 2001/266/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of combined transport;
2. Declares that the effects of the decisions are to be maintained until the measures necessary to implement the present judgment have been adopted;
3. Orders the Council of the European Union to pay the costs;
4. Orders the Federal Republic of Germany and the Grand Duchy of Luxembourg to bear their own costs.

(¹) OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-236/01 (Reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio): Monsanto Agricoltura Italia SpA and Others v Presidenza del Consiglio dei Ministri and Others (¹)

(Regulation (EC) No 258/97 — Novel foods — Placing on the market — Safety assessment — Simplified procedure — Substantial equivalence to existing foods — Foods produced from genetically modified maize — Presence of residues of transgenic protein — Measure by a Member State temporarily restricting or suspending the trade in or use of a novel food in its territory)

(2003/C 264/17)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-236/01: Reference to the Court under Article 234 EC by the Tribunale amministrativo regionale del Lazio (Italy)

for a preliminary ruling in the proceedings pending before that court between Monsanto Agricoltura Italia SpA and Others and Presidenza del Consiglio dei Ministri and Others, on the interpretation and validity of the first subparagraph of Article 3(4) and the first paragraph of Article 5 of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ 1997 L 43, p. 1), and on the interpretation of Article 12 thereof, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissechet and C.W.A. Timmermans (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; S. Alber, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. The first subparagraph of Article 3(4) of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients must be interpreted as meaning that the mere presence in novel foods of residues of transgenic protein at certain levels does not preclude those foods from being considered substantially equivalent to existing foods and, consequently, use of the simplified procedure for placing those foods on the market. However, that is not the case where the existence of a risk of potentially dangerous effects on human health can be identified on the basis of the scientific knowledge available at the time of the initial assessment. It is for the national court to determine whether that condition is satisfied.
2. In principle, the issue of the validity of the use of the simplified procedure laid down in Article 5 of Regulation No 258/97 for the placing of novel foods on the market does not affect the power of the Member States to adopt measures falling under Article 12 of the Regulation, such as the Decree of 4 August 2000 at issue in the main proceedings. Since the simplified procedure does not imply any consent, even tacit, by the Commission, a Member State is not required to challenge the lawfulness of such a consent before adopting such measures. Nevertheless, those measures can be adopted only if the Member State has first carried out a risk assessment which is as complete as possible given the particular circumstances of the individual case, from which it is apparent that, in the light of the precautionary principle, the implementation of such measures is necessary in order to ensure that novel foods do not present a danger for the consumer, in accordance with the first indent of Article 3(1) of Regulation No 258/97.
3. Consideration of the fourth question has disclosed no factor such as to affect the validity of Article 5 of Regulation No 258/97 as regards, *inter alia*, the condition for application of that

provision relating to substantial equivalence within the meaning of the first subparagraph of Article 3(4) of the Regulation.

(¹) OJ C 259 of 15.9.2001.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-285/01 (Reference for a preliminary ruling from the Cour administrative d'appel de Douai): Isabel Burbaud v Ministère de l'Emploi et de la Solidarité (¹)

(Recognition of diplomas — Hospital managers in the public service — Directive 89/48/EEC — Definition of 'diploma' — Entrance examination — Article 48 of the EC Treaty (now, after amendment, Article 39 EC))

(2003/C 264/18)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-285/01: Reference to the Court under Article 234 EC by the Cour administrative d'appel de Douai (France) for a preliminary ruling in the proceedings pending before that court between Isabel Burbaud and Ministère de l'Emploi et de la Solidarité, on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissechet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, subsequently H. von Holstein, Deputy Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. Confirmation of passing the final examination of the *École nationale de la santé publique*, which leads to permanent appointment to the French hospital public service, must be regarded as a 'diploma' within the meaning of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. It is for the national court to determine, for the purposes of applying point (a) of the first paragraph of