

Vehicle inspection is a purely technical task which, although it may have legal consequences, cannot be regarded as constituting a direct exercise of official authority.

So far as concerns Article 46 EC, which provides for the possibility of justification for unequal treatment on grounds of public policy, public security or public health, the case-law of the Court of Justice provides that, in order for reliance to be placed on this ground of justification, there must be a genuine and sufficiently serious threat affecting one of the aforementioned fundamental interests. As the German authorities have not provided evidence of any such threat, the conditions for invoking the derogating rule under Article 46 EC have not been met. The Commission is satisfied that the objective being pursued by the measures under challenge, namely the maintenance of road safety, could also be achieved by less restrictive measures, such as, for instance, an appropriate monitoring system for all inspection engineers and inspection organisations in Germany.

**Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 13 August 2008 — Data I/O GmbH v Bundesfinanzdirektion Südost**

(Case C-370/08)

(2008/C 285/38)

*Language of the case: German*

#### Referring court

Bundesfinanzhof

#### Parties to the main proceedings

*Appellant:* Data I/O GmbH

*Respondent:* Bundesfinanzdirektion Südost

#### Questions referred

1. Is Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff <sup>(1)</sup>, as amended by the Annex to Commission Regulation (EC) No 1810/2004 of 7 September 2004 <sup>(2)</sup>, to be so interpreted that it allows an electrical adapter, which is designed to provide the electrical connection between an automatic programming machine and electrical components

to be programmed, to be classified under heading 8471 of the Combined Nomenclature?

2. If this question is answered in the negative: is the aforementioned adapter then to be classified under heading 8471 of the Combined Nomenclature if it contains a so-called memory-chip, on which the programming process is stored and from which it can be retrieved?

<sup>(1)</sup> OJ 1987 L 256, p. 1.

<sup>(2)</sup> OJ 2004 L 327, p. 1.

**Reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 14 August 2008 — Nural Örnek v Land Baden-Württemberg**

(Case C-371/08)

(2008/C 285/39)

*Language of the case: German*

#### Referring court

Verwaltungsgerichtshof Baden-Württemberg

#### Parties to the main proceedings

*Appellant:* Nural Örnek

*Respondent:* Land Baden-Württemberg

#### Question referred

Is the protection against expulsion provided for in Article 14(1) of Decision No 1/80 of the EEC-Turkey Association Council and enjoyed by a Turkish national, whose legal status derives from the second indent of the first paragraph of Article 7 of Decision No 1/80 and who has resided for the previous ten years in the Member State in respect of which this legal status applies, to be determined in accordance with Article 28(3)(a) of Directive 2004/38/EC <sup>(1)</sup>, as implemented by the relevant Member State, with the result that expulsion is permitted only on imperative grounds of public security, as defined by Member States?

<sup>(1)</sup> OJ 2004 L 158, p. 77.