

2. Where a consignment has not been presented at the office of destination and the place of the offence or irregularity cannot be established, it is for the office of departure alone to make the notification required within the 11-month and 3-month time-limits laid down by Article 379(1) and (2) of Regulation No 2454/93.

3. It is not contrary to the principle of proportionality to hold a customs clearance agent, in his capacity as principal, liable for a customs debt.

(¹) OJ C 190, 12.8.2006.

**Judgment of the Court (Third Chamber) of 10 April 2008
— Commission of the European Communities v
Portuguese Republic**

(Case C-265/06) (¹)

(Failure of a Member State to fulfil obligations — Free movement of goods — Articles 28 EC and 30 EC — Articles 11 and 13 of the EEA Agreement — Quantitative restrictions on imports — Measures having equivalent effect — Motor vehicles — Affixing of tinted film to windows)

(2008/C 128/08)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Caeiros, P. Guerra e Andrade and M. Patakia, Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes, Agent, and by A. Duarte de Almeida, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 28 EC and 30 EC — National legislation prohibiting the affixing of tinted film to the windows of passenger or goods vehicles

Operative part of the judgment

The Court:

1) Declares that, by prohibiting in Article 2(1) of Decree-Law No 40/2003 of 11 March 2003 the affixing of tinted film to the windows of motor vehicles, the Portuguese Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC and Articles 11 and 13 of the Agreement of 2 May 1992 on the European Economic Area;

2) Orders the Portuguese Republic to pay the costs.

(¹) OJ C 212, 2.9.2006.

**Judgment of the Court (Grand Chamber) of 1 April 2008
(Reference for a preliminary ruling from the Bayerisches
Verwaltungsgericht München (Germany)) — Tadao Maruko
v Versorgungsanstalt der deutschen Bühnen**

(Case C-267/06) (¹)

(Equal treatment in employment and occupation — Directive 2000/78/EC — Survivors' benefits under a compulsory occupational pensions scheme — Concept of 'pay' — Refusal because the persons concerned were not married — Same-sex partners — Discrimination based on sexual orientation)

(2008/C 128/09)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht München

Parties to the main proceedings

Applicant: Tadao Maruko

Defendant: Versorgungsanstalt der deutschen Bühnen

Re:

Reference for a preliminary ruling — Bayerisches Verwaltungsgericht München — Interpretation of Articles 1, 2(2)(a), 3(1)(c) and (3) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Meaning of pay — Registered partner excluded from receipt of a survivor's pension

Operative part of the judgment

1) A survivor's benefit granted under an occupational pension scheme such as that managed by the Versorgungsanstalt der deutschen Bühnen falls within the scope of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

2) The combined provisions of Articles 1 and 2 of Directive 2000/78 preclude legislation such as that at issue in the main proceedings under which, after the death of his life partner, the surviving partner does not receive a survivor's benefit equivalent to that granted to a surviving spouse, even though, under national law, life partnership places persons of the same sex in a situation comparable to that of spouses so far as concerns that survivor's benefit. It is for the referring court to determine whether a surviving life partner is in a situation comparable to that of a spouse who is entitled to the survivor's benefit provided for under the occupational pension scheme managed by the *Versorgungsanstalt der deutschen Bühnen*.

(¹) OJ C 224, 16.9.2006.

Judgment of the Court (First Chamber) of 3 April 2008 (reference for a preliminary ruling from the Oberlandesgericht Köln, Germany) — 01051 Telecom GmbH v Deutsche Telekom AG

(Case C-306/06) (¹)

(Directive 2000/35/EC — Combating of late payment in commercial transactions — Article 3(1)(c)(ii) — Late payment — Bank transfer — Date on which payment is to be regarded as having been made)

(2008/C 128/10)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: 01051 Telecom GmbH

Defendant: Deutsche Telekom AG

Re:

Reference for a preliminary ruling — Oberlandesgericht Köln — Interpretation of Article 3(1)(c)(ii) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35) — Whether a creditor may claim default interest — 'Receipt' by the creditor of the amount due — National rule under which the time of payment is considered to be the time when the debtor gives the transfer order to the bank and not the time when the creditor's account is credited

Operative part of the judgment

Article 3(1)(c)(ii) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions is to be interpreted as meaning that it requires, in order that a payment by bank transfer may avoid or put an end to the application of interest for late payment, that the sum due be credited to the account of the creditor within the period for payment.

(¹) OJ C 249, 14.10.2006.

Judgment of the Court (Third Chamber) of 10 April 2008 (reference for a preliminary ruling from the House of Lords — United Kingdom) — Marks & Spencer plc v Her Majesty's Commissioners of Customs and Excise

(Case C-309/06) (¹)

(Taxation — Sixth VAT Directive — Exemption with refund of tax paid at the preceding stage — Erroneous taxation at the standard rate — Right to zero rate — Entitlement to refund — Direct effect — General principles of Community law — Unjust enrichment)

(2008/C 128/11)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Marks & Spencer plc

Defendant: Her Majesty's Commissioners of Customs and Excise

Re:

Reference for a preliminary ruling — House of Lords — Interpretation of Article 28(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Existence of Community law capable of being relied on by a supplier of a product (teacakes) in respect of which national legislation maintains an exemption with refund of input tax — VAT incorrectly paid by reason of a