

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Grand Chamber) of 10 March 2009  
(reference for a preliminary ruling from the Unabhängiger  
Verwaltungssenat im Land Niederösterreich — Austria) —  
Gottfried Heinrich**

(Case C-345/06) <sup>(1)</sup>

*(Article 254(2) EC — Regulation (EC) No 1049/2001 —  
Article 2(3) — Regulation (EC) No 622/2003 — Aviation  
security — Annex — List of articles prohibited on board  
aircraft — Not published — Binding force)*

(2009/C 113/02)

Language of the case: German

**Referring court**

Unabhängiger Verwaltungssenat im Land Niederösterreich

**Parties to the main proceedings**

Applicant: Gottfried Heinrich

**Re:**

Reference for a preliminary ruling — Unabhängiger Verwaltungssenat im Land Niederösterreich — Interpretation of Article 254(2) EC and Article 2(3) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) — Validity of Commission Regulation (EC) No 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation security (OJ 2003 L 89, p. 9) — Annex to the regulation, establishing detailed measures in respect of aviation security, and in particular a list of prohibited articles that cannot be brought on board an aircraft, not published

**Operative part of the judgment**

*The annex to Commission Regulation (EC) No 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation security, as amended by Commission Regulation (EC) No 68/2004 of 15 January 2004, which was not*

*published in the Official Journal of the European Union, has no binding force in so far as it seeks to impose obligations on individuals.*

<sup>(1)</sup> OJ C 281, 18.11.2006.

**Judgment of the Court (Grand Chamber) of 24 March 2009  
(reference for a preliminary ruling from the  
Bundesgerichtshof (Germany)) — Danske Slagterier v  
Bundesrepublik Deutschland**

(Case C-445/06) <sup>(1)</sup>

*(Measures having equivalent effect — Animal health —  
Intra-Community trade — Fresh meat — Veterinary checks  
— Non-contractual liability of a Member State — Limitation  
period — Determination of the loss or damage)*

(2009/C 113/03)

Language of the case: German

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

Applicant: Danske Slagterier

Defendant: Bundesrepublik Deutschland

**Re:**

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 28 EC and of Articles 5(1)(o) and 6(1)(b)(iii) of Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat (OJ, English Special Edition 1963-64, p. 185), as amended by Council Directive 91/497/EEC of 29 July 1991 (OJ 1991 L 268, p. 69), in conjunction with Articles 5(1), 7 and 8 of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13) — Interpretation of Community law concerning a Member State's non-contractual liability for breach of Community law — Limitation period — Determination of the loss or damage for which reparation may be granted and of the obligations on the injured party

**Operative part of the judgment**

1. Individuals who have been harmed by the incorrect transposition and application of Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat, as amended by Council Directive 91/497/EEC of 29 July 1991, and Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market may rely on the right to the free movement of goods in order to be able to render the State liable for the breach of Community law.
2. Where the Commission of the European Communities has brought infringement proceedings under Article 226 EC, Community law does not require the limitation period laid down by national legislation for a claim seeking reparation on account of State liability for breach of Community law to be interrupted or suspended during those proceedings.
3. Community law does not preclude the limitation period applicable to an action for damages against the State for incorrect transposition of a directive from beginning to run on the date on which the first injurious effects of the incorrect transposition have been produced and the further injurious effects thereof are foreseeable, even if that date is prior to the correct transposition of the directive.
4. Community law does not preclude the application of national legislation which lays down that an individual cannot obtain reparation for loss or damage which he has wilfully or negligently failed to avert by utilising a legal remedy, provided that utilisation of that remedy can reasonably be required of the injured party, a matter which is for the referring court to determine in light of all the circumstances of the main proceedings. The likelihood that a national court will make a reference for a preliminary ruling under Article 234 EC or the existence of infringement proceedings pending before the Court of Justice cannot, in itself, constitute a sufficient reason for concluding that it is not reasonable to have recourse to a legal remedy.

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(<sup>1</sup>) OJ C 326, 30.12.2006.

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**Judgment of the Court (Fourth Chamber) of 19 March 2009  
— Commission of the European Communities v Hellenic Republic**

(Case C-489/06) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Directives 93/36/EEC and 93/42/EEC — Public contracts — Procedures for the award of public supply contracts — Hospital supplies)*

(2009/C 113/04)

Language of the case: Greek

**Parties**

Applicant: Commission of the European Communities (represented by: M. Patakia and X. Lewis, acting as Agents)

Defendant: Hellenic Republic (represented by: D. Tsagkaraki and S. Chala, acting as Agents)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 8(2) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and of Articles 17 and 18 of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1) — Rejection of medical devices, in the context of calls for tenders for supplies to public hospitals in Greece, on grounds relating to the 'general sufficiency and safety of use' of the devices, notwithstanding their certification with the CE marking, and without, in any event, the procedure provided for in Directive 93/42/EEC being followed

**Operative part of the judgment**

The Court:

1. Declares that, by rejecting tenders in respect of medical devices bearing the CE certification marking, without the competent contracting authorities of Greek hospitals having complied with the procedure provided for in Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, the Hellenic Republic has failed to fulfil its obligations under Article 8(2) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, and Articles 17 and 18 of Directive 93/42, as amended by Regulation No 1882/2003;
2. Orders the Hellenic Republic to pay the costs.

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(<sup>1</sup>) OJ C 326, 30.12.2006.

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**Judgment of the Court (First Chamber) of 19 March 2009  
— Archer Daniels Midland Co. v Commission of the European Communities**

(Case C-510/06 P) (<sup>1</sup>)

*(Appeal — Competition — Agreements, decisions and concerted practices — Sodium gluconate market — Fines — Guidelines on the method of setting fines — Community competition policy — Equal treatment — Turnover to be taken into account — Attenuating circumstances)*

(2009/C 113/05)

Language of the case: English

**Parties**

Appellant: Archer Daniels Midland Co. (represented by: M. Garcia, Solicitor)