

**Re:**

Failure of a Member State to fulfil obligations — Breach of Articles 43 EC and 56 EC — National law making the acquisition of certain shareholdings in undertakings which carry on regulated activities in the energy sector subject to prior approval of a special commission

**Operative part of the judgment**

The Court:

1. Declares that, by adopting the first indent of the second paragraph of the single article of the fourteenth function of the National Energy Commission provided for in Supplementary Provision No 11, part 3, point 1 of Law 34/1998 of 7 October 1998 on the hydrocarbon sector (*Ley 34/1998, del sector de hidrocarburos*), as amended by Royal Decree-Law 4/2006 of 24 February 2006 (*Real Decreto-Ley 4/2006*), in order to make the acquisition of certain shareholdings in undertakings which carry on certain regulated activities in the energy sector and the acquisition of the assets necessary to carry on such activities subject to the prior approval of the National Energy Commission, the Kingdom of Spain has failed to fulfil its obligations under Articles 43 EC and 56 EC;
2. Orders the Kingdom of Spain to pay the costs.

(<sup>1</sup>) OJ C 140, 23.6.2007.

**Judgment of the Court (Third Chamber) of 17 July 2008**  
(reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Flughafen Köln/Bonn GmbH v Hauptzollamt Köln

(Case C-226/07) (<sup>1</sup>)

*(Directive 2003/96/EC — Community framework for the taxation of energy products and electricity — Article 14(1)(a) — Exemption for energy products used to produce electricity — Option to impose taxation for reasons of environmental policy — Direct effect of the exemption)*

(2008/C 223/23)

Language of the case: German

**Referring court**

Finanzgericht Düsseldorf

**Parties to the main proceedings**

Applicant: Flughafen Köln/Bonn GmbH

Defendant: Hauptzollamt Köln

**Re:**

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) — Direct effect — National legislation not exempting gas oil used to produce electricity from mineral oil tax

**Operative part of the judgment**

Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, in so far as it provides for the exemption from taxation under that directive of energy products used to produce electricity, has direct effect in the sense that it may be relied upon by an individual before national courts — in relation to a period of time during which the Member State concerned was in default of its obligation to transpose that directive into its national law within the prescribed period — in a dispute, such as that in the main proceedings, between that individual and the customs authorities of that State, for the purpose of having national legislation which is incompatible with that provision disapplied and, consequently, obtaining a refund of tax which infringed that provision.

(<sup>1</sup>) OJ C 155, 7.7.2007.

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

(Case C-307/07) (<sup>1</sup>)

*(Failure of a Member State to fulfil its obligations — Directive 89/48/EEC — Recognition of diplomas awarded on completion of professional education and training of at least three years' duration — Failure to recognise diplomas which give access to the profession of pharmacist specialising in medical biology — Failure to transpose)*

(2008/C 223/24)

Language of the case: Portuguese

**Parties**

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and P. Andrade, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes, Agent)

**Re:**

Failure of a Member State to fulfil its obligations — Failure to transpose 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) in relation to the profession of pharmacist specialising in medical biology

**Operative part of the judgment**

The Court:

1. declares that, by failing to adopt the measures necessary to transpose 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, as amended by Directive 2002/19/EC of the European Parliament and the Council of 14 May 2001, in relation to the profession of pharmacist specialising in medical biology, the Portuguese Republic has failed to fulfil its obligations under that directive;
2. orders the Portuguese Republic to pay the costs.

(<sup>1</sup>) OJ C 199, of 25.8.2007.

**Judgment of the Court (Eighth Chamber) of 17 July 2008  
— Commission of the European Communities v Republic of Austria**

(Case C-311/07) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Directive 89/105/EEC — Inclusion of medicinal products for human use in the national health insurance system — Article 6(1) — List of medicinal products covered by the national health insurance system establishing three different categories of reimbursement subject to conditions — Time-limit for adopting a decision on an application for inclusion of a medicinal product in the categories of that list offering the most favourable reimbursement conditions)*

(2008/C 223/25)

Language of the case: German

**Parties**

*Applicant:* Commission of the European Communities (represented by: B. Stromsky and B. Schima, acting as Agents)

*Defendant:* Republic of Austria (represented by: C. Pesendorfer, Agent)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 6(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8) — National legislation on social security establishing a list of medicinal products covered by the health insurance system comprising three categories of medicinal products differing according to their conditions of reimbursement — Failure to have set a time-limit as required by Article 6(1) of Directive 89/105/EEC for decisions relating to the inclusion of medicinal products in the most favourable categories

**Operative part of the judgment**

The Court:

1. Declares that, by failing to lay down a time-limit, in accordance with Article 6(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems, for the adoption of decisions relating to applications for inclusion of medicinal products in the yellow or green categories of the medicinal products reimbursement code provided for by the general Law on social insurance (*Allgemeines Sozialversicherungsgesetz*), as amended by the Law of 2003 amending social insurance (*Sozialversicherungs-Änderungsgesetz 2003*), the Republic of Austria has failed to fulfil its obligations under that provision.
2. Order the Republic of Austria to pay the costs.

(<sup>1</sup>) OJ C 211, 8.9.2007.

**Judgment of the Court (First Chamber) of 17 July 2008  
(reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Białymstoku — Republic of Poland) — Dariusz Krawczyński v Dyrektor Izby Celnej w Białymstoku**

(Case C-426/07) (<sup>1</sup>)

*(Internal taxation — Taxes on motor vehicles — Excise duty — Second-hand vehicles — Importation)*

(2008/C 223/26)

Language of the case: Polish

**Referring court**

Wojewódzki Sąd Administracyjny w Białymstoku