

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 1 and Article 5(3) and (4) of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), as amended by Council Directive 97/79/EC of 18 December 1997 (OJ 1997 L 24, p. 31), and of Article 27(2), (4) and (10) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1), as amended by Commission Regulation (EC) No 776/2006 of 23 May 2006 (OJ 2006 L 136, p. 3) — National rules on the health inspection of meat also allowing, over and above the the Community fee, the collection of an additional specific fee equivalent to the costs of bacteriological examinations of fresh meat

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the Commission of the European Communities to pay the costs.

⁽¹⁾ OJ C 199, 25.8.2007.

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

(Case C-275/07) ⁽¹⁾

(Failure of a Member State to fulfil obligations — External Community transit — TIR Carnets — Customs duties — Own resources of the Communities — Making available — Time-limits — Default interest — Accounting rules)

(2009/C 113/10)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: G. Wilms, M. Velardo and D. Recchia, acting as Agents)

Defendant: Italian Republic (represented by: I.M. Braguglia and G. Albenzio, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 8 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and Article 6(2)(a) thereof, replaced as from 30 May 2000 by Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own

resources (OJ 2000 L 130, p.1) — Accounting rules — Default interest due for late payment of own resources

Operative part of the judgment

The Court:

1. Dismisses the action.
2. Orders the Commission of the European Communities to pay the costs.

⁽¹⁾ OJ C 199, 25.8.2007.

**Judgment of the Court (First Chamber) of 19 March 2009
(reference for a preliminary ruling from the Hessischer Verwaltungsgerichtshof (Germany)) — Firma Baumann GmbH v Land Hessen**

(Case C-309/07) ⁽¹⁾

(Common agricultural policy — Fees concerning veterinary inspections and controls — Directive 85/73/EEC)

(2009/C 113/11)

Language of the case: German

Referring court

Hessischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Firma Baumann GmbH

Defendant: Land Hessen

Re:

Reference for a preliminary ruling — Hessischer Verwaltungsgerichtshof — Interpretation of Article 5(3) and points 1, 2(a), 4(a) and 4(b) of Chapter I of Annex A to Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), as amended by Council Directive 96/43/EC of 26 June 1996 (OJ 1996 L 162, p. 1) — Legislation making a distinction between slaughtering units in large establishments and other slaughtering activities, adjusting the rate of fees on a diminishing scale according to animal types and increasing fees for slaughtering carried out outside normal hours

Operative part of the judgment

1. Point 4(a) of chapter I of Annex A to Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC, as amended and consolidated by Council Directive 96/43/EC of 26 June 1996, must be interpreted as meaning that it does not permit Member States to deviate from the fee structure laid down in points 1 and 2(a) of Chapter I of Annex A and charge a fee the scale of which varies according to the size of establishments and diminishes according to the number of animals slaughtered per animal type;

Point 4(b) of chapter I of Annex A to Directive 85/73, as amended and consolidated by Directive 96/43, must be interpreted as meaning that a Member State is not required to comply with the fee structure laid down in points 1 and 2(a) of Chapter I of Annex A and may charge a fee the scale of which varies according to the size of an establishment and the number of animals slaughtered per animal type, where it is established that those factors have an actual effect on the actual costs incurred in carrying out the veterinary inspections and controls required by the relevant provisions of Community law.

2. Point 4(a) of chapter I of Annex A to Directive 85/73, as amended and consolidated by Directive 96/43, must be interpreted as meaning that a Member State may charge, in respect of inspections of animals which, at the request of the owner, are slaughtered outside normal slaughtering hours, an 'additional fee on a percentage basis' on top of the fee normally charged for inspections of animals when that increase represents a standard value which reflects the additional costs to be covered;

Point 4(b) of chapter I of Annex A to Directive 85/73, as amended and consolidated by Directive 96/43, must be interpreted as meaning that a Member State may charge, in respect of inspections of animals which, at the request of the owner, are slaughtered outside normal slaughtering hours, an 'additional fee on a percentage basis' on top of the fee normally charged for inspections of animals when that increase reflects the additional actual costs.

⁽¹⁾ OJ C 247, 20.10.2007.

Judgment of the Court (First Chamber) of 12 March 2009 — Antartica Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs), The Nasdaq Stock Market Inc.

(Case C-320/07 P) ⁽¹⁾

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(5) — Refusal to register — Earlier trade mark of repute NASDAQ — Figurative sign 'nasdaq' — Use of the earlier mark for goods and services allegedly offered free of charge — Taking unfair advantage of the distinctive character or the repute of the earlier mark — Relevant public)

(2009/C 113/12)

Language of the case: English

Parties

Appellant: Antartica Srl (represented by: E. Racca and A. Fusillo, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent), The Nasdaq Stock Market Inc. (represented by: J. van Manen and J. Hofhuis, advocaten)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 10 May 2007 in Case T-47/06 *Antartica v OHIM* by which that Court dismissed as unfounded an action brought by the applicant for registration of the figurative trade mark 'nasdaq' in respect of goods in Classes 9, 12, 14, 25 and 28 against Decision R752/2004-2 of the Second Board of Appeal of OHIM of 7 December 2005 setting aside the Oppo-

sition Division's decision which rejected the opposition brought by the proprietor of the Community and national word marks 'NASDAQ' in respect of goods in Classes 9, 16, 35, 36, 38 and 42 — Interpretation of Article 8(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders Antartica Srl to pay the costs.

⁽¹⁾ OJ C 211, 8.9.2007.

Judgment of the Court (Third Chamber) of 26 March 2009 — Commission of the European Communities v Italian Republic

(Case C-326/07) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Articles 43 EC and 56 EC — Articles of association of privatised undertakings — Criteria for the exercise of certain special powers held by the State)

(2009/C 113/13)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Pignataro-Nolin and H. Støvlbæk, acting as Agents)

Defendant: Italian Republic (represented by: I.M. Braguglia, acting as Agent, and P. Gentili, avvocato dello Stato)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 43 EC and 56 EC — Clause introduced into the statutes of certain privatised undertakings concerning the exercise of various special powers

Operative part of the judgment

The Court:

1. Declares that, by adopting the provisions contained in Article 1(2) of the Decree of the President of the Council of Ministers of 10 June 2004 defining the criteria for the exercise of the special powers referred to in Article 2 of Decree-Law No 332 of 31 May 1994, converted into law with amendments by Law No 474 of 30 July 1994 (decreto del Presidente del Consiglio dei Ministri, definizione dei criteri di esercizio dei poteri speciali, di cui all'art. 2 del decreto-legge 31 maggio 1994, n. 332, convertito, con modificazioni, dalla legge 30 luglio 1994, n. 474), the Italian Republic has failed to fulfil its obligations:
 - under Articles 43 EC and 56 EC, in so far as those provisions apply to the special powers provided by Article 2(1)(a) and (b) of the Decree-Law, as amended by Law No 350 of 24 December 2003 relating to the provisions for drawing up the annual and pluriannual budget of the State (Finance Law for 2004) (legge No 350, disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2004), and