— Annul Article 5(1) of Council Regulation 1954/2003 in so far as it does not maintain the exclusion of access of Spanish vessels to the waters of the Azores for fishing of tuna or tuna-like species;

— Refer the case back to the Court of First Instance if the Court of Justice does not consider that the state of the proceedings is such as to enable it to give final judgment; and

— Order the Council of the European Union to pay the costs incurred by the Autonomous Region of the Azores (Região Autónoma dos Açores) in respect of both the proceedings at first instance and the present appeal.

Pleas in law and main arguments

The appellant relies on seven grounds to support its appeal against the above mentioned Court of First Instance judgment.

First, that the Court of First Instance erred in law by finding that the protection afforded to the appellant under Article 299(2) EC is not sufficient to establish that the appellant is individually concerned by the contested provisions.

Second, that the Court of First Instance wrongly concluded that only Member States, and not regional authorities, have the right to defend the general interest of their territory.

Third, that the Court of First Instance erred in law by failing to distinguish environmental from economic considerations.

Fourth, that the Court of First Instance erred in law by finding that the contested provisions would not entail harmful effects for the fish stocks and for the marine environment in the Azores and, concequently, for the survival of the fishing sector in the region.

Fifth, that the Court of First Instance erred in law by finding that the effect of the contested provisions on the appellant's legislative and executive powers did not make the appellant individually concerned by the provisions.

Sixth, that the Court of First Instance erred in law by finding that the appellant's application was not admissible by virtue of the lack of other effective judicial remedies available to the appellant.

Seventh, that the Court of First Instance erred in law by failing to consider the factors relied upon by the appellant cumulatively as well as separately.

([1]) Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (OJ L 289, p. 1).

([2]) Council Regulation (EC) No 2347/2002 of 16 December 2002 establishing specific acess requirements and associated conditions applicable to fishing for deep-sea stocks (OJ L 351, p. 6).

([3]) Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources (OJ L 71, p. 5).

([4]) Council Regulation (EC) No 2027/95 of 15 June 1995 establishing a system for the management of fishing effort relating to certain Community fishing areas and resources (OJ L 199, p. 1).

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 9 October 2008 — Société Solgar Vitamin's France, Valorimer SARL, Christian Fenioux, L'Arbre de Vie SARL, Société Source Claire, Nord Plantes EURL, Société RCS Distribution, Société Ponroy Santé — Intervener: Syndicat de la Diététique et des Compléments Alimentaires v Ministre de l'Économie, des Finances et de l'Emploi, Ministre de la Santé, de la Jeunesse et des Sports, Ministre de l'Agriculture et de la Pêche

(Case C-446/08)

(2008/C 327/27)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Société Solgar Vitamin's France, Valorimer SARL, Christian Fenioux, L'Arbre de Vie SARL, Société Source Claire, Nord Plantes EURL, Société RCS Distribution, Société Ponroy Santé

Defendants: Ministre de l'Économie, des Finances et de l'Emploi, Ministre de la Santé, de la Jeunesse et des Sports, Ministre de l'Agriculture et de la Pêche

Questions referred

(1) Must Directive 2002/46/EC of 10 June 2002 [1], and in particular Articles 5(4) and 11(2) thereof, be interpreted as meaning that, although in principle it is for the Commission to determine the maximum amounts of vitamins and minerals present in food supplements, the Member States remain competent to adopt legislation in this field so long as the Commission has not adopted the necessary Community measure?

(2) If that question is answered in the affirmative:

(a) If the Member States are required, in order to set those maximum amounts, to comply with the provisions of Articles 28 EC and 30 EC, must they also be guided by the criteria laid down in Article 5 of Directive 2002/46/EC, including the requirement for a risk assessment based on generally accepted scientific data, in an area in which there is still relative uncertainty?

(b) May a Member State set maximum levels when it is impossible, as in the case of fluoride, to calculate precisely the intake of vitamins and minerals from other dietary sources, mains water in particular, for each consumer group and on a territory-by-territory basis? May it in that case set a zero level where risks are known to exist, without resorting to the safety procedure provided for in Article 12 of Directive 2002/46/EC?

(c) When setting maximum levels, if it is possible to take into account differences in the degrees of sensitivity of different consumer groups, as provided for in Article 5(1)(a) of Directive 2002/46/EC, can a Member State also take into account the fact that a measure addressed solely to sections of the population who are particularly exposed to risk, appropriate labelling for example, might dissuade that group from using a nutrient that would be beneficial to it in small amounts? Might taking into account that difference in sensitivity result in the application to the entire population of the maximum level appropriate for sensitive sections of the population, in particular children?

(d) To what extent may maximum levels be set in the case where no safe limits have been laid down because there is no established danger to health? More generally, to what extent and in what circumstances might the weighting of criteria to be taken into account lead to the setting of maximum levels that are significantly lower than the safe limits accepted for those nutrients?

[1] Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

Reference for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 13 October 2008 — Otto Sjöberg v Åklagaren

(Case C-447/08)

(2008/C 327/28)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties to the main proceedings

Applicant: Otto Sjöberg

Defendant: Åklagaren

Questions referred

1. May discrimination on grounds of nationality be accepted, under some circumstances, on national gaming and lottery markets on the basis of overriding reasons in the general interest?

2. If there are a number of objectives pursued by the restrictive policy adopted on a national gaming and lottery market and one of them is the financing of social activities, can the latter then be said to be an incidental beneficial consequence of the restrictive policy? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the objective of financing social activities cannot be said to be the principal objective of the restrictive policy?

3. Can the State rely on overriding reasons in the general interest as justification for a restrictive gaming policy if State-controlled companies market gaming and lotteries, the revenue from which accrues to the State, and one of several objectives of that marketing is the financing of social activities? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the financing of social activities is not found to be the principal objective of the marketing?

4. Can a total prohibition on the marketing of gaming and lotteries organised in another Member State by a gaming company established there and supervised by that Member State's authorities be proportionate to the objective of controlling and supervising gaming activity, when at the same time there are no restrictions on the marketing of gaming and lotteries organised by gaming companies established in the Member State which pursues the restrictive policy? What is the answer to the question if the objective of such an arrangement is to limit gaming?