By his third plea, the appellant submits that the Court of First Instance erred in law in that it found that the AECE did not misuse its powers. The stated aim of employment of temporary agents was to reduce the number of posts vacant within the Commission and, in particular, to make up for the shortage of candidates who had been successful in competitions.

The latter aim was in no way met by the refusal to extend the appellant's contract following application of the rule prohibiting aggregation of service, since his post was advertised before any competition lists were published. Moreover, another temporary agent was given a long-term contract in that post, while the contracts of all the other temporary agents employed on a short-term basis in the same directorate were automatically extended, without prior advertisement of their posts.

Finally, the principle of equal treatment has been breached since all the other temporary agents who were in a comparable situation apart from their length of service, had their contracts extended without their posts being advertised, unlike the procedure adopted in the case of the appellant. In that context, the burden of proof was wrongly reversed in the proceedings before the Court of First Instance, since it is for the defendant — and not for the applicant — to prove that rules which it laid down itself have been followed.

Reference for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 15 January 2009 — Wood Floor Solutions Andreas Domberger GmbH v Silva Trade, SA

(Case C-19/09)

(2009/C 82/22)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Wood Floor Solutions Andreas Domberger GmbH

Defendant: Silva Trade, SA

Questions referred

1. (a) Is the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) ('Regulation No 44/2001') applicable in the case of a contract for the provision of services also where the services are, by agreement, provided in several Member States?

   If the answer to that question is in the affirmative,

   Should the provision referred to be interpreted as meaning that

   (b) the place of performance of the obligation that is characteristic of the contract must be determined by reference to the place where the service provider's centre of business is located, which is to be determined by reference to the amount of time spent and the importance of the activity;

   (c) in the event that it is not possible to determine a centre of business, an action in respect of all claims founded on the contract may be brought, at the applicant's choice, in any place of performance of the service within the Community?

2. If the answer to the first question is in the negative: Is Article 5(1)(a) of Regulation No 44/2001 applicable in the case of a contract for the provision of services also where the services are, by agreement, provided in several Member States?

([1]) OJ 2001 L 12, p. 1.

Action brought on 15 January 2009 — Commission of the European Communities v Portuguese Republic

(Case C-20/09)

(2009/C 82/23)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and A. Caeiros, Agents)

Defendant: Portuguese Republic

Form of order sought

— A declaration that, by providing, in connection with adjustment in accordance with Law No 39-A/2005, preferential tax treatment for public debt securities issued by the Portuguese State alone, the Portuguese Republic has failed to fulfil its obligations under Article 56 of the EC Treaty and Article 40 of the Agreement on the European Economic Area (EEA);

— an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

In September 2005 the Commission received a complaint concerning the incompatibility of certain provisions of the 'Regime Excepcional de Regularização Tributária de elementos patrimoniais que não se encontrem no território português em 31 de Dezembro de 2004' (Extraordinary Scheme for the tax adjustment of financial assets not situated within Portuguese territory on 31 December 2004), approved by Law No 39-A/2005.

The effect of that Extraordinary Scheme is that persons liable to tax must, in the context of tax adjustment, pay the sum corresponding to the application of a rate of 5 % on the value of the financial assets appearing in the tax adjustment declaration and that if any or all of the financial assets listed in that declaration were Portuguese State securities, that rate would be reduced to half in respect of those securities and that reduction would be applied also to other financial assets if their respective value had been reinvested in Portuguese State securities before the date on which the tax adjustment declaration was submitted.

The Commission maintains that the Extraordinary Scheme confers an advantage, with regard to the repatriation of pecuniary items and to investment in Portuguese State securities, consisting of the application of a reduced rate to pecuniary items that are Portuguese State securities or to the value of financial assets reinvested in Portuguese State securities. As a matter of fact, persons using that scheme are discouraged from keeping their adjusted assets in forms other than Portuguese State securities.

The Court of Justice of the European Communities has already declared that a provision of domestic fiscal law capable of dissuading tax-payers from investing in other Member States amounts to a restriction of free movement of capital for the purpose of Article 56 EC.

In the present case, the Commission, while not denying that public debt securities may enjoy more favourable treatment, maintains that a lower tax rate applicable only to adjusted financial assets that are Portuguese State securities constitutes a discriminatory restriction of movements of capital prohibited by Article 56 EC and cannot be vindicated on the basis of Article 58 EC.

The rules of the EEA Agreement relating to movements of capital are, substantially, the same as those laid down in the EC Treaty. In consequence, the fact that the persons who could make use of the Extraordinary Scheme for the tax adjustment of financial assets have been dissuaded from keeping their adjusted financial assets in Norway, Lichtenstein or Iceland also constitutes a restriction of movements of capital, prohibited by Article 40 of the EEA Agreement.

Action brought on 15 January 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-22/09)

(2009/C 82/24)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and L. de Schietere de Lophem, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings ([1]), or, in any event, by failing to notify them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2002/91/EC expired on 4 January 2006. At the time the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the Directive or, in any event, had not notified those measures to the Commission.

([1]) OJ 2003 L 1, p. 65.

Reference for a preliminary ruling from the Fővarosi Bíróság (Hungary) lodged on 19 January 2009 — Sió-Eckes Kft. v Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

(Case C-25/09)

(2009/C 82/25)

Language of the case:Hungarian

Referring court

Fővarosi Bíróság