

### Pleas in law and main arguments

The Commission submits two pleas in law in support of its action, alleging infringement of Article 43 of the EC Treaty.

By its first plea, the applicant maintains that, by limiting to a maximum of 25% of the authorised capital of *Sociétés d'Exercice Libéral à Responsabilité Limitée* operating medical laboratories the shares held by shareholders not carrying on a professional activity, the national legislation restricts unduly the freedom of establishment guaranteed by the Treaty. The objective of protection of public health, referred to by the defendant as a justification, could be achieved by measures less restrictive than those at issue in the present case. The Commission claims in that regard that, while it seems justified to require that medical analyses be carried out by competent staff with the appropriate professional qualifications, to require such qualifications for the mere holding of shares in or right to operate medical laboratories seems on the other hand disproportionate with regard to the objective pursued.

By its second plea in law, the Commission criticises the general prohibition on persons not carrying on a professional activity from holding capital in more than two companies established in order jointly to operate one or more medical laboratories. The objective put forward by the defendant of maintaining the decision-making power and the financial independence of the persons carrying out professional activities in the sector and the need to ensure a uniform distribution of the laboratories throughout the national territory do not justify the restrictive national measures.

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**Reference for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on 6 March 2009 — Hartmut Eifert v Land Hessen, interested party: Bundesanstalt für Landwirtschaft und Ernährung**

(Case C-93/09)

(2009/C 113/46)

Language of the case: German

### Referring court

Verwaltungsgericht Wiesbaden

### Parties to the main proceedings

*Applicant:* Hartmut Eifert

*Defendant:* Land Hessen

*Interested party:* Bundesanstalt für Landwirtschaft und Ernährung

### Questions referred

1. Are point 8b of Article 42(1) and Article 44a of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the

financing of the common agricultural policy (OJ 2005 L 209, p. 1), inserted by Council Regulation (EC) No 1437/2007 of 26 November 2007 amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2007 L 322, p. 1), invalid?

2. Is Commission Regulation (EC) No 259/2008 of 18 March 2008 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the publication of information on the beneficiaries of funds deriving from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) (OJ 2008 L 76, p. 28)

(a) invalid, or

(b) valid by reason only of the fact that Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54) is invalid?

If the provisions mentioned in the first and second questions are valid:

3. Must the second indent of Article 18(2) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) be interpreted as meaning that publication in accordance with Commission Regulation (EC) No 259/2008 of 18 March 2008 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the publication of information on the beneficiaries of funds deriving from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) may be effected only following implementation of the procedure — in lieu of notification to a supervisory authority — established by that article?

4. Must Article 20 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) be interpreted as meaning that publication in accordance with Commission Regulation (EC) No 259/2008 of 18 March 2008 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the publication of information on the beneficiaries of funds deriving from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) may be effected only following exercise of the prior check required by national law in that case?

5. If the fourth question is answered in the affirmative: Must Article 20 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) be interpreted as meaning that no effective prior check has been performed, if it was effected on the basis of a register established in accordance with the second indent of Article 18(2) of that directive which lacks an item of information prescribed?
6. Must Article 7 — and in this case, in particular, subparagraph (e) — of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) be interpreted as precluding a practice of storing the IP addresses of the users of a homepage without their express consent?

**Action brought on 6 March 2009 — Commission of the European Communities v French Republic**

(Case C-94/09)

(2009/C 113/47)

*Language of the case: French*

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Alfonso, Agent)

*Defendant:* French Republic

**Form of order sought**

- Declare that, by not applying a single rate of VAT to all services provided by funeral directors, or to related supplies of goods, the French Republic has failed to fulfil its obligations under Articles 96 to 99(1) of the VAT Directive <sup>(1)</sup>;
- Order the French Republic to pay the costs.

**Pleas in law and main arguments**

By its action, the Commission claims that French tax legislation distorts the functioning of the VAT system to the extent that it applies two VAT rates to services and goods supplied by funeral directors to the families of deceased persons whereas they constitute, in practice, a single complex transaction which should be subject to a single rate of tax.

The applicant complains in particular about the unjustified splitting off by the defendant of the service involving the transportation of the body by a vehicle designed especially for that purpose, for which a reduced VAT rate is applicable, from the other services carried out by funeral directors, such as the use of persons to move the body or the supply of a coffin, which, for their part, are subject to the normal rate of VAT. According to settled case-law, a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. In the

circumstances, the vast majority of families requesting the undertaking to organise funerals would moreover consider the activities in question as forming the same single supply.

The Commission also contests the defendant's choice to apply variable reduced rates to the services provided by funeral directors. Article 98(1) of the VAT Directive does not allow a reduced rate to be applied to certain transportation services and a normal rate to other services carried out by the undertakings in question, since that is bound to make the actual rate of tax lower than the normal rate applicable in France. In addition, the level of that reduced tax varies from transaction to transaction according to the relative extent, in each case, of the services provided at a reduced rate, which is also prohibited by the directive.

<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

**Action brought on 06 March 2009 — Commission of the European Communities v Ireland**

(Case C-95/09)

(2009/C 113/48)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: S. Pardo Quintillán, A.A. Gilly, Agents)

*Defendant:* Ireland

**The applicant claims that the Court should:**

declare that,

- by failing to fully and correctly identify sensitive areas for the purposes of Article 5(1) of Council Directive <sup>(1)</sup> 91/271/EEC of 21 May 1991 concerning urban waste water treatment;
- by failing to fully and correctly transpose the requirements of Articles 3(1), 3(2), 5(2), 5(3), 5(4) and 5(5) of that Directive in respect of certain sensitive areas;
- by failing by the required deadline of 31 December 1998 to provide the level of treatment referred to in Article 5(2) and (3) of that Directive in respect of all urban waste water from certain agglomerations exceeding 10,000 population equivalent discharged into or into the relevant catchment areas of sensitive areas;
- by failing for certain agglomerations to ensure that the collecting system required under Article 3(1) of that Directive complies with the requirements of Article 3(2) of that Directive; and
- by failing to correctly carry out the first mandatory review referred to in Article 5(6) of that Directive by the required deadline of 31 December 1997, Ireland has failed to comply with its obligations under these articles as well as those under Article 19 of the Directive and