

Operative part of the judgment

1. The expression 'prevents an on-the-spot check from being carried out' in Article 23(2) of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, corresponds to an autonomous concept of European Union law that must be given a uniform interpretation in all the Member States, to the effect that it includes, in addition to deliberate conduct, any act or omission ascribable to the negligence of the farmer or his representative which has the consequence of preventing an on-the-spot check from being carried out in full, where the farmer or his representative has not taken all measures which may reasonably be required of him in order to ensure that that check may be carried out in full.
2. The rejection of the aid applications concerned, under Article 23(2) of Regulation No 796/2004, does not depend on the farmer or his representative being adequately informed of the part of the on-the-spot check that requires his cooperation.
3. The concept of 'representative', referred to in Article 23(2) of Regulation No 796/2004, which is an autonomous concept of European Union law that must be given a uniform interpretation in all the Member States, must be interpreted as meaning that it includes, when on-the-spot checks are carried out, any adult having proper capacity, who lives on the holding and to whom the farmer entrusts at least part of the management of that agricultural holding, in so far as the farmer has clearly expressed his wish to give that person authority in order to represent him and, therefore, undertakes to assume responsibility for all that person's acts and omissions.
4. Article 23(2) of Regulation No 796/2004 must be interpreted as meaning that a farmer who does not live on the agricultural holding which he runs is not required to appoint a representative who may, as a rule, be found at any given moment on that holding.

(¹) OJ C 63, 13.3.2010.

**Judgment of the Court (Fourth Chamber) of 16 June 2011
— European Commission v Republic of Austria**

(Case C-10/10) (¹)

(Failure of a Member State to fulfil obligations — Free movement of capital — Deductibility of gifts to research and teaching institutions — Deductibility limited to gifts to institutions established in national territory)

(2011/C 232/12)

Language of the case: German

Parties

Applicant: European Commission (represented by: R. Lyal and W. Mölls, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Breach of Article 56 EC and of Article 40 of the Agreement of 2 May 1992 on the European Economic Area (OJ 1994 L 1, p. 3) — National rules which make the granting of the tax advantage provided for donations to research and public-education establishments subject to the condition that the beneficiary of the donation is established within the national territory

Operative part of the judgment

The Court:

1. Declares that, by authorising the deduction from tax of gifts to research and teaching institutions exclusively where those institutions are established in Austria, the Republic of Austria has failed to fulfil its obligations under Article 56 EC and Article 40 of the Agreement on the European Economic Area of 2 May 1992;
2. Orders the Republic of Austria to pay the costs.

(¹) OJ C 63, 13.3.2010.

**Judgment of the Court (Seventh Chamber) of 16 June 2011
(reference for a preliminary ruling from the Højesteret
(Denmark)) — Unomedical A/S v Skatteministeriet**

(Case C-152/10) (¹)

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Plastic dialysis drainage bags intended exclusively for use with dialysers (artificial kidneys) — Plastic urine drainage bags intended exclusively for use with catheters — Headings 9018 and 3926 — 'Parts' and 'accessories' — Other articles of plastics)

(2011/C 232/13)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Unomedical A/S

Defendant: Skatteministeriet

Re:

Reference for a preliminary ruling — Højesteret — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) Plastic drainage bags intended exclusively for use with a dialyser — Classification under subheading 9018 90 30 or subheading 3926 90 99 — Plastic drainage bags intended exclusively for use with a catheter — Classification under subheading 9018 39 00 or subheading 3926 90 99 — Definition of 'Part and/or accessory'