project were sent to the applicant, in breach of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) — Infringement of the right of access to documents, of the fourth paragraph of Article 263 TFEU and of the Euratom Treaty

Operative part of the order

1. *The appeal is dismissed.*

2. *Land Wien is ordered to pay the costs.*

([1]) OJ C 25, 28.1.2012.

Action brought on 27 June 2012 — European Commission v Hungary

(Case C-310/12)

(2012/C 366/38)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: P. Hetsch, D. Düsterhaus and A. Sipos, acting as Agent(s))

Defendant(s): Hungary

Form of order sought

— Declare that Hungary has failed to fulfil its obligations under Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ([1]) since it has not adopted the laws, regulations and administrative provisions necessary to bring its national law into line with the Directive, or, in any event, has not communicated such provisions to the Commission, pursuant to Article 40 of the Directive.

— Order Hungary to pay a penalty payment pursuant to Article 260(3) TFEU of EUR 27 316,80 per day from the date of judgment, as it has not notified the Commission of the national measures adopted to implement Directive 2008/98/EC.

— Order Hungary to pay the costs.

Pleas in law and main arguments

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives is the principal legal instrument in this sector and establishes, inter alia, the essential concepts of waste management, such as what is to be understood by the terms waste, recycling and recovery.

The period prescribed for the implementation of the Directive expired on 12 December 2010. Hungary informed the Commission that the legislative work on the implementation of the Directive was not finished. As provisions implementing the Directive have not been adopted to date, the Commission takes the view that Hungary has not fulfilled its obligations as regards the full implementation of the Directive.

Pursuant to Article 260(3) TFEU, in actions for failure to fulfil obligations pursuant to Article 258, the Commission may ask the Court of Justice to order, in its judgment declaring that the Member State has failed to fulfil its obligations, the Member State concerned to notify the Commission of the measures transposing a directive adopted under a legislative procedure, or it may specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. In compliance with the Communication from the Commission on implementation of Article 260(3) of the TFEU, ([2]) the Commission calculated the proposed penalty payment according to the method for the implementation of Article 228 EC provided for in the Communication.

([1]) OJ 2008 L 312, p. 3.
([2]) OJ 2011 C 12, p. 1.

Reference for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 30 July 2012 — Dr. Michael Timmel v Aviso Zeta AG

(Case C-359/12)

(2012/C 366/39)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Dr. Michael Timmel

Intervener in support of the applicant: Lore Tinhofer

Defendant: Aviso Zeta AG

Questions referred

1. Is Article 22(2) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements ('Regulation (EC) No 809/2004') ([1]) to be interpreted as meaning that information that is in principle mandatory which was not yet known at the time of approval of the base prospectus but was already known at the time of publication of a supplement to the prospectus is to be included in the supplement to the prospectus?