Communities on 4 December 1997 by the Commission of the European Communities, represented by B. J. Drijber and H. Michard, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre.

The Commission claims that the Court should:

— declare that, by not charging value added tax on tolls for the use of highway infrastructures, contrary to Articles 2 and 4 of the Sixth VAT Directive (77/388/EEC) of 17 May 1977 [1] the Kingdom of the Netherlands has failed to fulfil its obligations under the EC Treaty, and

— order the Kingdom of Netherlands to pay the costs.

Pleas in law and main arguments adduced in support:

The Commission — like the Netherlands Government — takes the view that the tolls charged in the Netherlands constitute consideration for the supply of a service within the meaning of Article 2(1) of the Sixth Directive. However, the Netherlands Government wrongly considers that the bodies governed by public law charged with the operation of facilities for which a toll is levied are acting in that regard as public authorities within the meaning of the exception in Article 4(5) of the Sixth Directive. In the first place, a body governed by public law is taxable as a general rule and exemption is an exception to that rule. The first subparagraph of Article 4(5) constitutes an exception to Article 4(1) and (2). The fact that the second and third subparagraphs of Article 4(5) constitute exceptions, in turn, to the first subparagraph does not detract from the exceptional nature of that first subparagraph; on the contrary, it confirms that it provides for a systematic exception. In the Netherlands Government's argument, the rule and the exception appear to be reserved. The fact that exemption constitutes an exception is further confirmed by the fact that there would have been no need for the exemptions under, in particular, Articles 13 and 28 of the Sixth Directive if bodies governed by public law had not been subject to the VAT system. Any other interpretation would run counter to the general character of the Community VAT system. The charging of tolls is not inherent in the exercise of public authority, which includes the construction, making available and maintenance of certain infrastructures such as tunnels and bridges, but a separate activity forming part of the operation thereof. There is no reason why there should be no question of acting as a public authority in relation to supplies of gas etc. whilst such should be the case as regards the operation of bridges and tunnels.

[1] OJ L 145, 13.6.1977, p. 1.

Action brought on 5 December 1997 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-410/97)

(98/C 55/30)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 5 December 1997 by the Commission of the European Communities, represented by Marie Wolfcarius, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels [1], 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 adduced in support:

The pleas in law and main arguments are analogous with those relied upon in Case C-406/97 [2]; the time-limit for transposition expired on 31 December 1994.

[1] OJ L 113, 30.4.1992, p. 19.
[2] OJ C 41, 7.2.1998, p. 11.

Action brought on 5 December 1997 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-411/97)

(98/C 55/31)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 5 December 1997 by the Commission of the European Communities, represented by Marie Wolfcarius, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive,

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are analogous with those relied upon in Case C-406/97 [2]; the time-limit for transposition expired on 31 December 1994.

[1] OJ L 113, 30.4.1992, p. 19.
[2] OJ C 41, 7.2.1998, p. 11.

Reference for a preliminary ruling from the Netherlands Raad van State by order of that court of 25 November 1997 in the case of Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt, Vereniging Stedelijk Leefmilieu Nijmegen v. Director of the Environmental and Water Services Department, Gelderland

(Case C-419/97)

(98/C 55/32)

Reference has been made to the Court of Justice of the European Communities by order of the Netherlands Raad van State (Council of State) of 25 November 1997, received at the Court Registry on 11 December 1997, for a preliminary ruling in the case of Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt, Vereniging Stedelijk Leefmilieu Nijmegen v. Director of the Environmental and Water Services Department, Gelderland, on the following questions:

1. May it be inferred from the mere fact that wood chips undergo an operation listed in Annex II B to Directive 75/442/EEC [1] that that substance has been discarded so as to enable it to be regarded as waste for the purposes of Directive 75/442/EEC?

2. If Question 1 is to be answered in the negative, does the reply to the question whether the use of wood chips as a fuel is to be regarded as constituting discarding depend on whether:

   (a) In regard to the building and demolition waste from which the chips are produced, operations are carried out already at an earlier stage than burning which are to be regarded as a discarding of the waste, namely operations (recycling operations) to render the waste suitable for reuse (use as a fuel)?

   If so, is an operation to render waste suitable for reuse (recycling operation) to be regarded as an operation for recovery of waste only if that operation is expressly mentioned in Annex II B of Directive 75/442/EEC, or also if that operation is analogous to an operation mentioned in Annex II B?

   (b) Wood chips constitute waste under contemporary thinking whereby it is of particular relevance whether they may be recovered in an environmentally responsible manner for use as fuel without further processing?

   (c) The use of wood chips as a fuel is comparable with an accepted method of waste recovery?

[1] OJ L 194, 25.7.1975, p. 39.

Appeal brought on 12 December 1997 by Société anonyme des traverses en béton armé (SATEBA) against the order made on 29 September 1997 by the First Chamber of the Court of First Instance of the European Communities in Case T-83/97 between Société anonyme de traverses en béton armé (SATEBA) and the Commission of the European Communities

(Case C-422/97 P)

(98/C 55/33)

An appeal against the order made on 29 September 1997 by the First Chamber of the Court of First Instance of the European Communities in Case T-83/97 between Société anonyme de traverses en béton armé (SATEBA) and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 12 December 1997 by Société anonyme de traverses en béton armé (SATEBA), represented by Jacques Manseau, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 rue Mathias Hardt.

The appellant claims that the Court should set aside the order of the Court of First Instance of 29 September 1997 in Case T-83/97 [1] on the grounds of (i) erroneous interpretation of the provisions of the EC Treaty and, in particular, Articles 155, 169 and 86 thereof and of