

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 October 2000

**in Case C-339/98 (reference for a preliminary ruling from the Finanzgericht Düsseldorf): Peacock AG v Hauptzollamt Paderborn<sup>(1)</sup>**

**(Common customs tariff — Tariff headings — Tariff classification of network cards — Classification in the Combined Nomenclature)**

(2000/C 372/04)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-339/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf), Germany, for a preliminary ruling in the proceedings pending before that court between Peacock AG and Hauptzollamt Paderborn — on the interpretation of Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff, set out in 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), as amended by the annexes to Commission Regulation (EEC) No 2886/89 of 2 August 1989 (OJ 1989 L 282, p. 1), Commission Regulation (EEC) No 2472/90 of 31 July 1990 (OJ 1990 L 247, p. 1), Commission Regulation (EEC) No 2587/91 of 26 July 1991 (OJ 1991 L 259, p. 1), Commission Regulation (EEC) No 2505/92 of 14 July 1992 (OJ 1992 L 267, p. 1), Commission Regulation (EEC) No 2551/93 of 10 August 1993 (OJ 1993 L 241, p. 1) and Commission Regulation (EC) No 3115/94 of 20 December 1994 (OJ 1994 L 345, p. 1), — the Court (Fifth Chamber), composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur), J.-P. Puissochet, P. Jann and L. Sevón, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 19 October 2000, in which it has ruled:

*Note 5 (B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff, set out in 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, as amended by the annexes to Commission Regulation (EEC) No 2886/89 of 2 August 1989, Commission Regulation (EEC) No 2472/90 of 31 July 1990, Commission Regulation (EEC) No 2587/91 of 26 July 1991, Commission Regulation (EEC) No 2505/92 of 14 July 1992, Commission Regulation (EEC) No 2551/93 of 10 August 1993 and Commission Regulation (EC) No 3115/94 of 20 December 1994, does not preclude the classification of network cards designed to be installed in automatic data processing machines*

*under heading No 8471 of the Combined Nomenclature. Between July 1990 and May 1995 those cards were therefore to be classified under heading No 8471 as units of machines of that type.*

<sup>(1)</sup> OJ C 358 of 21.11.1998.

**Action brought on 29 September 2000 by the Commission of the European Communities against the Italian Republic**

(Case C-363/00)

(2000/C 372/05)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 29 September 2000 by the Commission of the European Communities, represented by Enrico Traversa, Legal adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- (a) Declare that by not making available to the Commission the sum of LIT 1 484 956 000 000 by way of own resources within the period laid down by Articles 9 and 10 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources<sup>(1)</sup>, and refusing to pay interest for delay on that amount owed pursuant to Article 11 of the same regulation, the Italian Republic is in breach of its obligations under Articles 9, 10 and 11 of that regulation;
- (b) Order the Italian Republic to pay the costs.

*Pleas in law and main arguments*

The Commission argues that, by crediting to the Commission's account only LIT 1 486 594 526 rather than LIT 1 486 442 594 526 on 30 May 1996, and not crediting the remainder due until 27 June 1996, the Italian Republic unduly delayed making available Community own resources, in breach of the regulation.

Commission staff therefore considered it necessary to apply Article 11 of Regulation No 1552/89,<sup>(2)</sup> providing for payment of interest where a Member State is late in crediting own resources to the account opened for that purpose in the name of the Commission with the body designated by each Member State.

The Commission cannot accept from Member States rectifications with retroactive value such as that made by the Italian Ministry of the Treasury on 27 June 1996, given that credits of sums with retroactive value make no sense in a system of non-interest bearing accounts such as the 'own resources' account in the name of the Commission, and to allow accounting rectifications with retroactive effect would deprive the obligation to pay interest for delay of any practical effectiveness whatsoever.

<sup>(1)</sup> OJ L 130, 31.5.2000, p. 1.

<sup>(2)</sup> OJ L 155, 7.6.1989, p. 1.

**Reference for a preliminary ruling by the Vergabekontrollsenat des Landes Wien (Austria) by order of 14 September 2000 in the case of Adolf Truley GmbH v Bestattung Wien GmbH**

**(Case C-373/00)**

(2000/C 372/06)

Reference has been made to the Court of Justice of the European Communities by order of 14 September 2000 by the Vergabekontrollsenat des Landes Wien, which was received at the Court Registry on 11 October 2000, for a preliminary ruling in the case of Adolf Truley GmbH v Bestattung Wien GmbH on the following questions:

1. Must the term 'needs in the general interest' in Article 1(b) of Council Directive 93/36/EEC<sup>(1)</sup> of 14 June 1993 coordinating procedures for the award of public supply contracts be interpreted as meaning that
  - (a) the definition of needs in the general interest must be derived from the national legal system of the Member State?
  - (b) the fact that a regional or local authority's obligation is subsidiary is in itself sufficient for the existence of a need in the general interest to be assumed?
2. In interpreting the requirement 'meeting needs ... not having an industrial or commercial character' laid down in Directive 93/36/EEC, is (a) the existence of significant competition an imperative condition or (b) are the factual or legal circumstances the determinant factors in that respect?

3. Is the requirement laid down in Article 1(b) of Directive 93/96/EEC that the management of the body governed by public law must be subject to supervision by the State or a regional or local authority also fulfilled by a mere review as provided for through the Kontrollamt (Monitoring Office) of the City of Vienna?

<sup>(1)</sup> OJ 1993 L 199, p. 1.

**Action brought on 11 October 2000 by the Commission of the European Communities against the Italian Republic**

**(Case C-375/00)**

(2000/C 372/07)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 11 October 2000 by the Commission of the European Communities, represented by Gregorio Valero Jordana, of its Legal Service, and Roberto Amorosi, judge on secondment to the Legal Service, acting as Agents, 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 draw up a systematic and complete plan of action at national level, including a timetable for the improvement of surface water, the territorial plan for Lombardy still being missing, so that the Commission has not been able to carry out a thorough examination of said national plans, the Italian Republic has failed to comply with Article 4(2) of Council Directive 75/440/EEC<sup>(1)</sup> of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States.
- Order the Italian Republic defendant to pay the costs.

*Pleas in law and main arguments*

The Commission claims that, although, so far as concerns certain types of water, there have been separate improvement plans at regional level, such plans do not cover all the water referred to in Directive 75/440/EEC, so that the Commission takes the view that the Italian Republic has not drawn up the systematic plan as required under Article 4(2) of the directive.