

Action brought on 3 July 2001 by the Commission of the European Communities against the Council of the European Union

(Case C-257/01)

(2001/C 245/21)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 3 July 2001 by the Commission of the European Communities, represented by Ms Dominique Maidani and Ms Carmel O'Reilly, acting as agents, with an address for service in Luxembourg.

The Applicant requests that the Court should:

1. Annul Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications⁽¹⁾.
2. Annul Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining carrying out border checks and surveillance⁽²⁾.
3. Order the defendant to pay the costs.

Pleas in law and main arguments

The Commission submits that the Council has, contrary to Article 202 of the Treaty and to Article 1 of Decision 1999/468/CE⁽³⁾, improperly and irregularly reserved implementing powers to itself and that, in any event, the Council has neither adequately nor properly motivated the said reservation of implementing powers to itself. The Commission is, furthermore, of the view that the procedure set up respectively by Article 2 of Regulation (CE) 789/2001 and by Article 2 of Regulation (CE) 790/2001 whereby, in essence, the Member States themselves amend certain factual information respectively contained in the Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts, in Executive Committee decisions SCH/Com-ex (98) 56, SCH/Com-ex (99) 14 and SCH/Com-ex (94) 15, and in the Common Manual is irregular and contrary to Article 202 of the Treaty.

⁽¹⁾ OJ L 116, 26.4.2001, p. 2.

⁽²⁾ OJ L 116, 26.4.2001, p. 5.

⁽³⁾ Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

Action brought on 3 July 2001 by Commission of the European Communities against Portuguese Republic

(Case C-258/01)

(2001/C 245/22)

An action against the Portuguese Republic was brought before the Court of Justice on 3 July 2001 by the Commission of the European Communities, represented by Bernard Mongin and Francisco Miguel França, acting as Agents, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, also of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court of Justice should:

- Declare that, by failing to transpose Article 6(1) and (4) of Directive 94/57/EC⁽¹⁾ on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations and in particular by not establishing a working relationship regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements with the classification societies and by not providing the Commission with precise information on that working relationship, the Portuguese Republic has failed to fulfil its obligations under Article 6(1) and (4) of Directive 94/57/EC;
- Order the Portuguese Republic to pay the costs.

Contentions and principal arguments

Directive 94/57/EC was transposed into Portuguese law by Decree-Law No 115/96 of 6 August 1996.

According to the information received by the Commission through the committee established by Article 7 of Directive 94/57/EC, the Portuguese Republic delegates certain responsibilities to a number of classification societies (American Bureau of Shipping, Det Norske Veritas, Germanischer Lloyd, Lloyd's Register of Shipping, Nippon Kaijii Kyokai). The Commission considers that the formalised written and non-discriminatory agreements or equivalent legal arrangements (Article 6(2) of Directive 94/57/EC), which determine the tasks and specific functions to be undertaken by the organisations and which should have been concluded or adopted and forwarded to the Commission immediately after the said delegation of responsibilities, have not yet been entered into, a fact which, moreover, the Portuguese authorities admit. Furthermore, Article 6(4) of Directive 94/57/EC provides that each Member State is to provide the Commission with precise information on the working relationship established with the classification societies. However, the Portuguese authorities have not yet sent that information to the Commission, which is under an obligation then to pass it to the other Member States.

⁽¹⁾ OJ L 319 of 12.12.1994, p. 20.