

3. If Question 2 is answered affirmatively:

Does the Court of Justice have available to it on the basis of the reference for a preliminary ruling all the information needed in order to be able itself to assess whether the government body as mentioned in the facts as set out caused specific injury to the defendant or will it leave the reply to that question to the referring Austrian court?

Reference for a preliminary ruling from the Bundesvergabeamt (Austria) by order of that tribunal of 13 November 2001 in the case of (1) EVN AG and (2) Wienstrom GmbH v Republic of Austria

(Case C-448/01)

(2002/C 84/65)

Reference has been made to the Court of Justice of the European Communities by an order of the Bundesvergabeamt (Federal Procurement Office) of 13 November 2001, which was received at the Court Registry on 20 November 2001, for a preliminary ruling in the case of (1) EVN AG and (2) Wienstrom GmbH v Republic of Austria on the following questions:

1. Do the provisions of Community law relating to the award of public contracts, in particular Article 26 of Directive 93/36/EEC⁽¹⁾, prohibit a contracting authority from laying down an award criterion in relation to the supply of electricity which is given a 45 % weighting and which requires a tenderer to state, without being bound to a defined supply period, how much electricity he can supply from renewable sources to a group of consumers not more closely defined, where the maximum number of points is given to whichever tenderer states the highest amount and a supply volume is taken into account only to the extent that it exceeds the volume of consumption to be expected in the context of the contract to which the invitation to tender relates?
2. Do the provisions of Community law relating to the award of public contracts, in particular Article 2(1)(b) of Directive 89/665/EEC⁽²⁾, prohibit making the setting aside of an unlawful decision in review proceedings under Article 1 of Directive 89/665/EEC dependent on proof that the unlawful decision was material to the outcome of the procurement procedure?
3. Do the provisions of Community law relating to the award of public contracts, in particular Article 26 of Directive 93/36/EEC, prohibit making the setting aside of

an unlawful decision in review proceedings under Article 1 of Directive 89/665/EEC dependent on proof that the unlawful decision was material to the outcome of the procurement procedure, where that proof has to be achieved by the review body examining whether the ranking of the tenders actually submitted would have been different had they been re-evaluated disregarding the unlawful award criterion?

4. Do the provisions of Community law relating to the award of public contracts, in particular Article 26 of Directive 93/36/EEC, require the contracting authority to cancel the invitation to tender if it transpires in review proceedings under Article 1 of Directive 89/665/EEC that one of the award criteria it laid down is unlawful?

⁽¹⁾ OJ 1993 L 199, p. 1.

⁽²⁾ OJ 1989 L 395, p. 33.

Reference for a preliminary ruling by the Court of Appeal (England and Wales) (Civil Division) by order of that court dated 11 May 2001, in the case of Abbey Life Assurance Company Ltd against Kok Theam Yeap

(Case C-449/01)

(2002/C 84/66)

Reference has been made to the Court of Justice of the European Communities by an order of the Court of Appeal (England and Wales) (Civil Division) dated 11 May 2001, which was received at the Court Registry on 21 November 2001, for a preliminary ruling in the case of Abbey Life Assurance Company Ltd and Kok Theam Yeap on the following questions:

- 1) Can 'policies for life assurance, annuities, health and pension business, unit trusts, offshore funds business, personal equity plans and other contracts offered by Abbey' or any of them be described as 'goods' that fall within the provisions of 1993 Regulations and/or in the Directive?
- 2) Do 'policies for life assurance, annuities, health and pension business, unit trusts, offshore funds business, personal equity plans and other contracts offered by Abbey' or any of them have to be:
 - (i) marketable, and/or

(ii) assignable

before they can be described a 'goods' that fall within the provisions of 1993 Regulations and/or in the Directive?

Reference for a preliminary ruling by the Verwaltungsgerichtshof (Austria) by order of 19 October 2001 in the case of 1. Margarete Ospelt, 2. Schlössle Weissenberg Familienstiftung v Unabhängiger Verwaltungssenat des Landes Vorarlberg

(Case C-452/01)

(2002/C 84/67)

Reference has been made to the Court of Justice of the European Communities by order of 19 October 2001 by the Verwaltungsgerichtshof (Higher Administrative Court, Austria), which was received at the Court Registry on 22 November 2001, for a preliminary ruling in the case of 1. Margarete Ospelt, 2. Schlössle Weissenberg Familienstiftung v Unabhängiger Verwaltungssenat des Landes Vorarlberg on the following questions:

1. Are Article 12 EC (ex Article 6 of the EC Treaty) and Article 56 EC et seq. (ex Article 73b et seq. of the EC Treaty) to be interpreted as meaning that rules whereby transactions in agricultural and forestry plots are subject to restrictions imposed by the administrative authorities in the public interest of preserving, strengthening or creating a viable farming community are also permitted in relation to Member States of the EEA as 'third countries' under Article 56(1) EC (ex Article 73b of the EC Treaty) having regard to the fundamental freedoms guaranteed by an applicable law of the European Union, in particular the free movement of capital?
2. In the event that the first question is answered in the affirmative:

Are Article 12 EC (ex Article 6 of the EC Treaty) and Article 56 EC et seq. (ex Article 73b et seq. of the EC Treaty) to be interpreted as meaning that the fact that the appellant must, in the case of transfers of agricultural and forestry plots, undergo an 'authorisation procedure' even before the property right is entered in the land register, pursuant to the (Vorarlberg) Gesetz über den Verkehr mit Grundstücken (Land Transfer Law — VGVG 1993) published in Vorarlberg LGBl. No 61/1993, entails an infringement of Community law and of one of the appellant's fundamental freedoms guaranteed by the law of the European Union, which is also applicable to Member States of the EEA as 'third countries' under Article 56(1) EC (ex Article 73b of the EC Treaty)?

Action brought on 27 November 2001 by the Commission of the European Communities against the Italian Republic

(Case C-455/01)

(2002/C 84/68)

An action against the Italian Republic was brought before Court of Justice on 27 November 2001 by the Commission of the European Communities, represented by Richard B. Wainwright and Roberto Amorosi, acting as Agents.

The applicant claims that the Court of Justice should:

- Declare that, by keeping in force legislation under which products in respect of which there has not yet been full harmonisation, intended for use on merchant vessels flying the Italian flag, may be marketed only if a certificate of conformity has been issued by a national body — so that in some cases the right to market the products is enjoyed only by the grantee of the certificate — and by not recognising the validity of tests carried out in accordance with international standards by bodies officially recognised in the other Member States or States signatory to the EEA Agreement, even where the relevant information is made available to the competent authority and it is clear from the certificates that the equipment guarantees an equivalent degree of safety, the Italian Republic has failed to fulfil its obligations under Articles 28 and 30 of the Treaty;
- Order the Italian Republic to pay the costs.

Pleas and principal arguments

The slavish application — when not justified by overriding requirements — to goods lawfully produced and marketed in other Member States of rules laid down for domestically produced goods, and in particular the refusal to take account, for the purposes of issuing 'type approval declarations', of certificates accompanying such goods, even where they contain the information needed to assess how safe they are, undoubtedly constitutes a measure having an effect equivalent to a quantitative restriction on imports which is liable to hinder intra-Community trade.

The foregoing is common ground. At issue is the measure adopted by the Italian State in order to adjust its domestic legislation to the principles laid down in Community law once