Action brought on 24 July 2002 by the Commission of the European Communities against the Council of the European Union

(Case C-272/02)

(2002/C 219/15)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 24 July 2002 by the Commission of the European Communities, represented by Richard Lyal, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that Council Regulation (EC) No 792/2002 [1] of 7 May 2002 amending temporarily Regulation (EEC) No 218/92 [2] on administrative cooperation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce is void;

2) maintain the effects of the regulation until the entry into force of a regulation adopted on the correct legal basis;

3) order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Commission submits that Council Regulation (EC) No 792/2002 has been adopted on an incorrect legal basis, in disregard of the prerogatives of the European Parliament.

In the view of the Commission the expression 'fiscal provisions' as used in Article 95(2) EC is to be understood as including rules on taxable persons, taxable events, basis of taxation, rates and exemptions, along with the detailed rules on assessment and enforcement. That logic does not, the Commission submits, extend to mutual assistance in tax matters. Measures of cooperation, verification and information whose purpose is to facilitate the elimination of frontiers without affecting the substance of Member State's own tax rules do not impinge on the tax jurisdiction of the Member States. Such measures therefore do not fall within the justification advanced for the exclusion of 'fiscal provisions' from the Article 95(1) EC derogation, for there is no interference with the right and the ability of each Member State to organise its tax system as it wishes.

The Commission concludes that the object of the legislation in question is the completion of the internal market and that it does not constitute a set of measures harmonising tax provisions. The correct legal base is thus Article 95 EC and not Article 93.

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[1] OJ L 128, 15.5.2002, p. 1.
[2] of 27 January 1992 (OJ L 24, 1.2.1992, p. 1).

Action brought on 24 July 2002 by European Parliament against Council of the European Union

(Case C-273/02)

(2002/C 219/16)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 24 July 2002 by the European Parliament, represented by Ch. Pennera and A. Neergaard, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul Council Regulation (EC) No 792/2002 of 7 May 2002 amending temporarily Regulation (EEC) No 218/92 on administrative cooperation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce [1];

2. maintain the effects of the annulled regulation until the European Parliament and the Council adopt, on the proper legal basis, a new regulation;

3. order the defendant to pay the costs.

Pleas in law and main arguments

Breach of essential procedural requirements and infringement of the EC Treaty: the contested regulation should have been based on Article 95 EC. The language of Article 93 EC 'harmonisation of legislation concerning ... taxes' indicates that that provision refers to substantive tax law. Articles 93 and 95(2) EC must, as lex specialis, be interpreted restrictively. Administrative cooperation measures have no effect on substantive tax law, which is a matter which falls within the

purview of the Member States. However, the contested regulation concerns, as evidenced by its title, exclusively administrative cooperation in the field of indirect taxation (VAT) in the internal market and not the VAT system properly speaking.

(1) OJ 2002 L 128, p. 1.

Action brought on 29 July 2002 by the Kingdom of Spain against the Commission of the European Communities

(Case C-276/02)

(2002/C 219/17)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 29 July 2002 by the Kingdom of Spain, represented by Santiago Ortiz Vaamonde, Abogado del Estado, with an address for service in Luxembourg at the Spanish Embassy, 4-6 boulevard E. Servais.

The applicant claims that the Court should:

— declare the decision of the Commission of 14 May 2002 null and void in so far as the Commission therein declared that the continued failure of GEA (Grupo de Empresas Álvarez) to pay taxes and social security contributions amounts a grant of State aid incompatible with the common market, and

— order the defendant institution to pay the costs.

Pleas in law and main arguments

The only thing that has happened is the liquidation of an undertaking in crisis, preceded by a general procedure for the suspension of payments. That procedure, initiated and directed by the court, enables creditors to reach agreements with the debtor undertaking which, in comparison with an immediate liquidation, increase the likelihood of the undertaking's recovery and the payment of some of its debts. The same procedure for the suspension of payments may, of course, be sought and obtained by any competing undertakings which bring complaints, should they to find themselves in a situation of cessation of payments. The Commission has thus failed to demonstrate that there has been any State aid subject to Article 87 EC.

Action brought on 30 July 2002 by the Commission of the European Communities against the French Republic

(Case C-280/02)

(2002/C 219/18)

An action against the French Republic was brought before the Court of Justice of the European Communities on 30 July 2002 by the Commission of the European Communities, represented by M. Nolin, acting as Agent, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

— Declare that, by not identifying certain areas as sensitive areas with respect to eutrophication, in the catchment areas of Seine-Normandie, Loire-Bretagne, Artois-Picardie and Rhône-Méditerranée-Corse, and not subjecting to more stringent treatment discharges of urban waste water from agglomerations with a population equivalent (p.e.) of more than 10 000 into sensitive areas or areas which should have been identified as sensitive, the French Republic has failed to fulfil its obligations pursuant to Article 5(1) and (2) of and Annex II to Directive 91/271/EEC (1);

— Order the French Republic to pay the costs.

Pleas in law and main arguments

— Incomplete identification of sensitive areas: The French authorities wrongly limited themselves to identifying bodies of water where they consider eutrophication to be established; they thus did not take account of the obligation also to identify as sensitive, in accordance with Annex II to the Directive, bodies of water 'which in the near future may become eutrophic if protective action is not taken'. For that reason, or because eutrophication should already have been identified, the Commission considers that the French Republic has failed to identify, in breach of its obligations pursuant to Article 5(1) of and Annex II to the Directive:

  — in Seine-Normandie: the Seine bay, the Seine and its tributaries downstream from its confluence with the Andelle;

  — in Loire-Bretagne: Lorient harbour, the Elorn estuary, the bay of Douarnenez, Concarneau bay, the Gulf of Morbihan, the bay of Vilaine and the Sèvre-Niortaise;