4. Are the provisions of Article 28 and 30 EC on the free movement of goods, applicable to Norway on the basis of Articles 8 to 16 of the European Economic Area Agreement (EEA Agreement), to be interpreted, with reference to the provisions contained in Council Decision 2000/766/EC and Commission Decision 2001/9 cited in question (1) above, as meaning that a Member State may not impose a requirement of zero error in a situation such as that described in questions (1) and (2) above?

(1) OJ L 306 of 7.12.2000, p. 32.
(2) OJ L 2 of 5.1.2001, p. 32.
(3) OJ L 109 of 26.4.1983, p. 8.

Action brought on 9 August 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-288/02)

(2002/C 247/09)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 9 August 2002 by the Commission of the European Communities, represented by K. Simonsson and M. Patakia, Legal Advisers, with an address for service in Luxembourg. The applicant claims that the Court should declare that by:

— expressly conferring the right to carry passengers between Greek mainland ports solely upon Greek passenger ships and the right to carry out tours with passenger ships of a gross tonnage exceeding 650 gt by way of island cabotage solely upon Greek passenger ships,

— requiring in the case of Community ships entered in a second or international register a certificate from the competent authority of the flag State declaring that that ship is allowed to provide cabotage services,

— considering that the Peloponnese constitues an island, and

— applying to Community tankers, freighters, passenger ships and tourist ships, and to cruise ships which carry out sea tours by way of island cabotage its rules as host State relating to manning conditions, and requiring the shipowners to submit an application to the competent authorities for measurement of the gross tonnage of the ship, in order for the Greek authorities to calculate the basic composition of the crew,

the Hellenic Republic has failed to fulfil its obligations under Articles 1, 3 and 6 of Council Regulation (EEC) No 3577/92 of 7 December 1992 (1) applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

Pleas in law and main arguments

According to the Commission, current Greek legislation is not consistent with Regulation (EEC) No 3577/92. The fact that the regulation is of direct application and its provisions prevail over national law does not release Member States from the obligation to repeal national provisions incompatible with Community law.

As regards the classification of the ports of the Peloponnese as island ports, the Commission points out that the Peloponnese is separated from the rest of Greece by a man-made canal and is linked by road and rail with the rest of the country. It therefore accords with common sense, and also with the case-law of the Court of Justice (see Joined Cases C-15/98 and C-105/99 Italy and Sardegna Lines v Commission [2000] ECR I-8855, paragraph 55), for the Peloponnese to be considered part of mainland Greece.

Finally, as regards island cabotage, the Commission submits that, while host State rules apply for regulating manning-related issues, those rules must not, however, in any event be contrary to Article 49 of the EC Treaty.

(1) OJ L 364, 12.12.1992, p. 7.

Reference for a preliminary ruling by the Royal Court of Jersey, Samedi Division, by order of that court dated 5 August 2002, in the case of Jersey Produce Marketing Organisation Ltd against 1) The States of Jersey and 2) Jersey Potato Export Marketing Board, Interveners: 1) Top Produce Limited and 2) Fairview Farm Ltd

(Case C-293/02)

(2002/C 247/10)

Reference has been made to the Court of Justice of the European Communities by an order of the Royal Court of Jersey, Samedi Division, dated 5 August 2002, which was received at the Court Registry on 13 August 2002, for a preliminary ruling in the case of Jersey Produce Marketing Organisation Ltd against 1) The States of Jersey and 2) Jersey Potato Export Marketing Board, Interveners: 1) Top Produce Limited and 2) Fairview Farm Ltd, on the following questions:

1. Is a statutory Scheme such as that which regulates the export of potatoes from Jersey to the United Kingdom to be considered as a measure having an effect equivalent to quantitative restrictions on exports, contrary to Article 29 EC, by reason of the fact that potatoes sent directly from Jersey to the United Kingdom may travel via another Member State but without leaving the carrying vessel?

2. Is a statutory Scheme such as that regulating the export of potatoes from Jersey to the United Kingdom to be considered incompatible with Articles 23, 25 and 28-29 EC in so far as it may affect trade between that island and the United Kingdom (together with Guernsey and the Isle of Man) or may entail the imposition of charges arising in connection with such trade?

Action brought on 21 August 2002 by the Italian Republic against the Commission of the European Communities

(Case C-297/02)

(2002/C 247/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 August 2002 by the Italian Republic, represented by Umberto Leanza, acting as Agent, assisted by Maurizio Fiorilli, avvocato dello Stato.

The applicant claims that the Court should:

— annul decision C(2002) 2263 ([1]) def. of 28 July 2002 in so far as it provides with regard to Italy: — B.4.1. -ITALY — Investigation No 1999 (666) on alcohol correction to budget post 1622 in respect of 1998 financial year of EUR — 4 085 724,85; — B.8.1. Olive oil production aid — Italy financial correction of EUR — 22 678 386,33 for the financial years 1997, 1998 and 1999

Pleas in law and main arguments

The Commission takes the view that the proper application of Regulation (EEC) No 3597/90 ([2]) requires that wherever there is stock missing in Community stocks the budget post must automatically be adjusted without inquiring into the reasons for the shortfall, the Member State being held objectively liable. According to the Italian Government, such an interpretation must be rejected because it does not conform with legal reasoning, or with the letter and spirit of the provision.

Furthermore, the Italian Government argues that, even if the regulation were to be considered 'substantive', the fact that the Italian Government is not responsible for the withdrawal of the amount of alcohol as a result of a judicial decision should lead to the decision itself being considered a 'case of *force majeure*' which justifies replacing the product which was withdrawn. In that case, precisely because the body responsible for payment is not at fault, there has been no failure to fulfil the obligation to assign the alcohol to the abovementioned stock nor, a fortiori, has their been any damage to the Community, whose sole interest is that Community stocks be maintained.

Olive oil production aid

The flat-rate financial correction of 2 % of the expenditure declared by Italy in respect of October 1997 to October 1998 amounting in all to EUR 22 678 386,83 was applied as a result of the finding that the Italian authorities' checks and inspections were inadequate. The finding was based on the following three factors:

— belated notification of data relating to mill production by the paying agency AIMA (Azienda di Stato per gli interventi nel mercato agricolo) to the inspection body AGECONTROL;

— lack of coordination of the various inspections and checks between the paying agency and the inspection body;

— inadequate analysis and assessment of the available information on risk factors.

By way of answer to the Commission's criticisms, the Italian Government would submit the following:

(a) Coordination between AIMA and AGECONTROL

The Agency has always sought to ask AIMA timeously and with the necessary precision for all the appropriate computerised data in order to allow it to carry out the checks required by the work schedules for each financial year, issuing reminders for such information when it was late in providing it. Moreover, AIMA has for some years entered formal memoranda of understanding with the Agency with the aim of ensuring a regular and orderly exchange of computerised information with AGECONTROL. The claim that there was no coordination is therefore unfounded.