Pleas in law and main arguments

— Infringement of Council Regulation (EC) No 994/98, hereinafter 'the enabling regulation'. Commission Regulation (EC) No 2204/2002, hereinafter 'the regulation at issue', does not observe the enabling regulation in that it does not attain any of the objectives relating to transparency and legal certainty pursued by the enabling regulation. First, the regulation at issue is not clear as regards the circumstances in which it applies, in view of the parallel existence of guidelines and frameworks which the Commission can apply at the same time to aid for employment. Secondly, the regulation at issue is not clear either as regards the rules it contains. Finally, the lack of clarity affects the very measures which should fall within the scope of Article 87(1) of the EC Treaty and in respect of which the application of the regulation is necessary. Indeed, the regulation at issue gives the impression that it must also be applied to measures of general scope, that is to say, general measures adopted at regional level, when such measures should automatically have been excluded from the scope of Article 87(1) of the EC Treaty.

— Breach of the principle of subsidiarity, by failing to take account of the constitutional organisation prevailing in Belgium and by therefore considering every action by a regional authority, which is exclusively competent in the field of employment, as specific and thus as falling within the scope of the regulation at issue.

— Breach of the principle of non-discrimination: by maintaining earlier aid schemes which had previously been authorised while introducing a scheme which is altogether stricter for new aid and allowing to exist side by side two schemes which are diametrically different depending on the date on which the aid was implemented, the regulation at issue also entails breach of the principle of non-discrimination, which is a general legal principle which must be observed when implementing Community administrative policy in general and in matters of competition and State aid in particular. By leaving intact previously authorised aid schemes, the regulation at issue discriminates between undertakings which will benefit from aid granted on the basis of earlier schemes and those which will be eligible to receive only lower levels of aid on the basis of the new scheme.

— Breach of the principle of proportionality, by making it difficult or impossible for Member States to pursue a genuine employment policy because of such lack of transparency, clarity and coherence of the legislation.

Finally, the Kingdom of Belgium wonders whether the regulation at issue should not be annulled for infringing the Treaty inasmuch as the regulation is based on the wrong legal basis. The Treaty provides for a specific legal basis for Community action in the field of employment. The enabling regulation enabled the Council to confer on the Commission the power to adopt actions in the field of employment; to that extent, that regulation should also be declared unlawful, since it runs counter to the provisions of the Amsterdam Treaty which does not permit any such conferment of powers by way of a Council regulation.

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(1) OJ 2002 L 337, p. 3.
(2) OJ 1998 L 142, p. 1.

Action brought on 12 March 2003 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-111/03)

(2003/C 112/25)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 12 March 2003 by the Commission of the European Communities, represented by L. Ström and A. Borders, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that by retaining a system of prior notification and health checks for importers of certain food products of animal origin from other Member States the Kingdom of Sweden has failed to fulfil its obligations under Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (1), and

2. Order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The Swedish provisions on compulsory prior notification (announcement by the national food administration (Livsmedelsverket) of 25 December 1998 — SLV FS 1998:39) are inconsistent with the purpose of Directive 89/662/EEC in so far as they do not recognise other checks carried out in other Member States. It is true that spot checks are allowed under Directive 89/662/EEC but the possibility of carrying out spot checks cannot be used by a Member State to monitor the effectiveness of the observance by other Member States of another regulatory system. Article 3 of Directive 89/662/EEC provides not only for official veterinary checks on production establishments but also for regular checks to be carried out by the competent authorities on establishments to ensure that the products comply with the Community requirements or the requirements of the Member State of destination. Furthermore, under Article 5(1)(b) of Directive 89/662 goods cannot circulate freely if they are not marked in a certain manner and accompanied by the necessary documentation.

The Swedish Government has submitted that the notification requirement is necessary to ensure observance of the special salmonella guarantees which apply on importation of certain animal products into Sweden. In that connection, the Commission points out that Directive 89/662/EEC offers a Member State ample opportunity to take steps in the event that breaches of Community rules are discovered when samples are taken. For instance, Article 8 of the Directive lays down the procedure to be applied if breaches are discovered by the Member State of destination.

([1]) OJ 1989 L 395, p. 13.

Reference for a preliminary ruling by the Cour d'Appel, Grenoble, by judgment of that Court of 20 February 2003 in the case of Société Financière & Industrielle du Peloux, formerly known as Sodequip Isolation, against Société AXA Belgium, formerly known as AXA Royale Belge, and Others

(Case C-112/03)

(2003/C 112/26)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'Appel, Grenoble (Commercial Chamber) of 20 February 2003, received at the Court Registry on 13 March 2003, for a preliminary ruling in the case of Société Financière & Industrielle du Peloux, formerly known as Sodequip Isolation, against Société AXA Belgium, formerly known as AXA Royale Belge, and Others on the following question:

May the insured beneficiary of a contract of insurance concluded on its behalf between a policyholder (subscribed) and an insurer who are domiciled in the same Member State, be made subject to the clause conferring jurisdiction on the courts of that State, when it has not personally approved the clause, when the damage occurred in another Member State and when it has also applied for insurers domiciled in the same State to be joined as parties to proceedings before a court of that State?

Action brought on 13 March 2003 by the Commission of the European Communities against the French Republic

(Case C-113/03)

(2003/C 112/27)

An action against the French Republic was brought before the Court of Justice of the European Communities on 13 March 2003 by the Commission of the European Communities, represented by Ch. Giolitto and M. Shotter, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should :

— Declare that, by failing to ensure that portability of non-geographic numbers was available on 1 January 2000 at the latest, as required by Article 12(5) of Directive 97/33/EC ([1]), as amended by Article 1(2) of Directive 98/61/EC of the European Parliament and of the Council of 24 September 1998 with regard to operator number portability and carrier pre-selection ([2]), the French Republic has failed to fulfil its obligations under that directive; and

— Order the French Republic to pay the costs.