listing (including in the first category the listing of priority sites) with the result that, in order to ensure the effectiveness of the directive, where a Member State identifies a site of Community importance sustaining priority natural habitat types or species, there must be considered to be an obligation to carry out an assessment of plans and projects with a significant effect on the site even before the Commission draws up the draft list of sites or adopts the final version of that list pursuant to Article 21 of the directive and, in fact, with effect from the drawing up of the national list?

(1) OJ L 206 of 22.7.1992, p. 7.

Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 11 March 2003 in the case of (1) Artrada (Freezone) NV, (2) Videmecum BV and (3) Jac. Meisner Internationaal Expeditiebedrijf BV against Rijksdienst voor de Keuring van Vee en Vlees

(Case C-124/03)

(2003/C 124/13)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) of 11 March 2003, received at the Court Registry on 20 March 2003, for a preliminary ruling in the case of (1) Artrada (Freezone) NV, (2) Videmecum BV and (3) Jac. Meisner Internationaal Expeditiebedrijf BV against Rijksdienst voor de Keuring van Vee en Vlees (Netherlands Livestock and Meat Inspectorate) on the following questions:

1(a) Must the term ‘milk for the manufacture of milk-based products’ in Article 2(2) of Directive 92/46/EEC (1) be interpreted as meaning that it (also) includes milk constituents of a product which also contains other non-milk constituents and where the milk constituent cannot be separated from the non-milk constituents?

1(b) If the answer to question 1(a) is affirmative: must Article 22 of Directive 92/46/EEC be interpreted as meaning that in the case of imports from non-Member States that directive is applicable only to the milk constituent of a product and thus not to the product of which it is a constituent?

2(a) Does the concept of ‘milk-based products’ in Article 2(4) of Directive 92/46/EEC concern only finished products or also semifinished products which must undergo further processing before they can be offered for sale to the consumer?

2(b) In the event that Article 2(4) of Directive 92/46/EEC also refers to semifinished products, according to which criteria must it be determined whether milk or a milk product forms an essential part of a product, either in terms of quantity or for characterization of those products, as referred to in Article 2(4) of Directive 92/46/EEC?

(1) OJ L 268 [1992], p. 1.

Action brought on 20 March 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-126/03)

(2003/C 124/14)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 20 March 2003 by the Commission of the European Communities, represented by Klaus Wiedner, of the Commission’s Legal Service, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

— Declare that, by reason of the fact that the contract for waste transport concluded by the City of Munich was awarded without compliance with the notification requirements laid down in Article 8, in conjunction with Articles 15(2) and 16(1), of Directive 92/50 (1), the Federal Republic of Germany has failed to fulfil its obligations under that directive; and

— Order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

If — as is the case with the Municipality of the City of Munich — the conditions for the existence of a body governed by public law are met, there is no need under the directive to draw a distinction, in the case of every requested provision of services, as to whether such services are provided in the general interest and are commercial in nature. It is for that reason irrelevant that, in the present case, the City of Munich, in connection with the provision of a service for a third party, burns waste in its own incineration plant and does not effect the transport to that plant itself but relies on a private undertaking to do so. If a public body tenders successfully for a contract but is obliged to subcontract out certain services in order to ensure provision of the overall service, that public body must apply the procedures set out in Directive 92/50.

The obligation to end breaches of the Community law on the award of contracts even by terminating contracts that have already been concluded can also not be placed in question by Article 2(6) of Directive 89/665 (2), which deals with ex post facto review of potential breaches of the Community law on tendering. A Treaty infringement can be treated as terminated only once the Member State concerned recognises the illegal nature of its action and the breach has been completely brought to an end.

(1) OJ 1992 L 209, p. 1.
(2) OJ 1989 L 395, p. 33.

Reference for a preliminary ruling by the Consiglio di Stato by order of that Court of 14 January 2003 in the appeal brought by AEM SpA (C-128/03) and by AEM Torino SpA (C-129/03) against l'Autorità per l'energia elettrica e per il gas; Third party: ENEL Produzione SpA

(Case C-128/03 and C-129/03)

(2003/C 124/15)

Reference has been made to the Court of Justice of the European Communities by order of the Consiglio di Stato (Council of State) of 14 January 2003, received at the Court Registry on 24 March 2003, for a preliminary ruling in the appeal brought by AEM SpA (C-128/03) and by AEM Torino SpA (C-129/03) against l'Autorità per l'energia elettrica e per il gas; Third party: ENEL Produzione SpA on the following questions:

(a) Can an administrative measure which, on the terms and for the purposes stated in the reasoning, imposes on certain undertakings using the electricity transmission network an increased charge for access and use in order to finance general revenue charges of the electricity system be regarded as a State aid for the purposes of Article 87 et seq. EC

(b) Must the principles established in Directive 96/92 (1) concerning the liberalisation of the internal electricity market and in particular Article 7 and 8 thereof concerning operation of the electricity transmission network be interpreted as precluding the possibility for the Member State to adopt measures imposing for a transitional period on certain undertakings for access to and use of the transmission network an increased charge in order to offset the overvaluation of hydroelectric and geothermal electricity occasioned, as stated in the reasoning, by the altered legislative framework and to finance general revenue charges of the electricity system.

(1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ L 27 of 30.1.1997, p. 20).

Action brought on 24 March 2003 by the Commission of the European Communities against the Italian Republic

(Case C-130/03)

(2003/C 124/16)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 24 March 2003 by the Commission of the European Communities, represented by Niels Bertil Rasmussen and Luigi Cimaglia, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to designate Community trade mark courts and tribunals of first and second instance, or in any event by failing to forward to the Commission, within the prescribed period, a list of such courts and tribunals indicating their names and territorial jurisdiction, the Italian Republic has failed to fulfil its obligations under Article 91 of Council Regulation (EC) No 40/94 (1) of 20 December 1993 on the Community trade mark;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Under the second paragraph of Article 249 of the Treaty establishing the European Community, regulations are binding in their entirety and directly applicable in all Member States.

In the present case, Article 91 of Regulation (EC) No 40/94 imposes an obligation on Member States to designate, in accordance with their own national legal systems, national courts and tribunals of first and second instance with jurisdiction in matters of infringement and validity of Community trade marks, and to forward to the Commission a list of designated Community trade mark courts and tribunals indicating their names and territorial jurisdiction. The final date for compliance with these obligations was 15 March 1997.