

**Action brought on 18 July 2003 by the Italian Republic
against Commission of the European Communities**

(Case C-307/03)

(2003/C 226/13)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 July 2003 by the Italian Republic, represented by Ivo M. Braguglia, acting as Agent, assisted by Maurizio Fiorilli, Avvocato dello Stato.

The applicant claims that the Court should:

- Annul the financial correction imposed against Italy by Commission Decision No C(2003) 1539 final of 15 May 2003.

Pleas in law and main arguments

First, the applicant claims that the spot checks were of poor quality: it disagrees with the findings of the Commission's officials as regards the procedure and effectiveness of the checks carried out.

As regards failure to repay aid in respect of non-eligible areas, the applicant maintains that financial corrections may not be made where the Member State has kept to measures agreed with the Commission and improved checking procedures, as admitted by the Commission and as shown by the fact that it is sought to confer retroactive effectiveness to the scope of checking procedures which have been gradually improved.

Finally, the applicant maintains that the contested decision is vitiated by misapplication of Article 9(3) of Regulation No 3887/92 ⁽¹⁾ (areas to be used for calculation of the aid).

⁽¹⁾ OJ L 391, 31.12.1992, p. 36.

Reference for a preliminary ruling by the Juzgado de lo Social No 33 by order of that Court of 8 July 2003 in the case of Ana Isabel López Gil against Instituto Nacional de Empleo (Inem)

(Case C-309/03)

(2003/C 226/14)

Reference has been made to the Court of Justice of the European Communities by order of the Juzgado de lo Social (Social Court) No 33 of 8 July 2003, received at the Court Registry on 23 July 2003, for a preliminary ruling in the case of Ana Isabel López Gil against Instituto Nacional de Empleo (Inem) on the following questions:

1. Where the period for calculation of the basis of contribution for unemployment benefit coincided with exercise of the right to reduced working hours and salary in order to care for a child, does the correct transposition of clause 2 (8) of the framework agreement contained in Directive 96/34 ⁽¹⁾ into the domestic law of Member States, and specifically into Spanish law, require those States to adopt in social security legislation relating specifically to unemployment benefit measures to offset the effect of the lower contribution to the social security scheme as a result of the reduced salary received by a worker exercising that right, so as not to cause the worker's unemployment benefit to be reduced?
2. Should the preceding question be answered affirmatively,

Can failure to comply with the duty under clause 2(8) of the framework agreement contained in Directive 96/34, once the time-limit established in Article 2 of the Directive for its transposition has expired, be remedied directly by the national court in the proceedings in which these preliminary questions are raised, in the decision adopted to determine those proceedings?

⁽¹⁾ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ L 145 of 19.6.1996, p. 4).

**Action brought on 23 July 2003 by the Commission of the
European Communities against the Italian Republic**

(Case C-313/03)

(2003/C 226/15)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 23 July 2003 by the Commission of the European Communities, represented by M.-J. Jonczy, acting as Agent.

The applicant claims that the Court should:

- find that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/63/EC ⁽¹⁾ of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) — Annex: European Agreement on the organisation of working time of seafarers, or in any event, by failing to communicate any such provisions to the Commission, the Italian Republic has failed to satisfy its obligations under Article 3(1) of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit for implementing the directive expired on 30 June 2002.

(1) OJ L 167 of 2.7.1999, p. 33.

Reference for a preliminary ruling by the Tribunal Administratif de Paris by judgment of that Court of 3 July 2003 in the case of Serge Briheche against Minister for the Interior, Internal Security and Local Freedoms

(Case C-319/03)

(2003/C 226/16)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal Administratif de Paris (Administrative Court, Paris) of 3 July 2003, received at the Court Registry on 24 July 2003, for a preliminary ruling in the case of Serge Briheche against Minister for the Interior, Internal Security and Local Freedoms on the following question:

Does Directive 76/207/EEC of 9 February 1976 (1) preclude France from maintaining in force the provisions of Article 8 of Law No 75-3 of 3 January 1975, as amended by Law No 79-569 of 7 July 1979 and Law No 2001-397 of 9 May 2001, concerning widows who have not remarried?

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, 14.2.1976, p. 40).

Action brought on 24 July 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-320/03)

(2003/C 226/17)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 24 July 2003 by the Commission of the European Communities,

represented by Claudia Schmidt of the Commission's Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Rule that the imposition of a ban on the use of a section of the A 12 Inntal motorway between kilometre 20,359 in the Kundl local authority area and kilometre 66,780 in the Ampass local authority area by heavy goods vehicles with a total weight exceeding 7,5 tonnes which carry certain goods is incompatible with the Republic of Austria's obligations under Articles 1 and 3 of Council Regulation (EEC) No 881/92 (1), Articles 1 and 6 of Council Regulation (EEC) No 3118/93 (2) and Articles 28 EC to 30 EC;
2. Order the Republic of Austria to pay the costs of the proceedings.

Pleas in law and main arguments

On 27 May 2003, the First Minister of the Land of Tyrol imposed, on the basis of the Austrian Immissionsschutzgesetz — Luft (Immission Control Act — air), a ban on the use by heavy goods vehicles carrying certain goods of a 46 km stretch of the A 12 Inntal motorway. This absolute ban applies to the vehicles covered with immediate effect from 1 August 2003 for an indefinite period.

The Commission takes the view that, in imposing this ban, the Republic of Austria has acted in breach of the abovementioned obligations of primary and secondary law.

The transit ban or the 'pressure to use railways' creates additional delays and costs for the heavy goods vehicles and undertakings concerned. The ban thus constitutes a manifest obstacle to the free movement of goods. The approach chosen by the Republic of Austria in applying the ban only to transit traffic, approximately 80 % of which is effected by foreign hauliers, thus entails preferential treatment of the national/local movement of goods or, in other words, indirect discrimination of the transport of goods by foreign carriers. That discrimination cannot be justified on the ground of environmental protection. For that reason alone, it must be found that the Republic of Austria has infringed Article 28 EC.

The Commission argues alternatively that, even if the measure is not discriminatory, the argument based on protection of the environment cannot be accepted because the Austrian measure does not meet the requirements of the principle of proportionality. There are less stringent measures, that is to say, measures which appear equally suitable to achieve the aim sought but which present less of an obstacle to the free movement of goods. Since it cannot be justified on the grounds of environmental protection, the measure ultimately infringes Article 28 EC.

It is clear from Regulation (EEC) No 881/92 and Regulation (EEC) No 3118/93 that, in principle, conditions for the free circulation of goods transport other than those laid down in those regulations are impermissible. There is no exception limiting the scope of that principle. There has thus been a