

*Pleas in law and main arguments*

Under Article 18 of Directive 96/67/EC the Member States are entitled to take measures to protect the rights of workers. However, such measures must be without prejudice to the application of that directive, and subject to the other provisions of Community law. Although Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses <sup>(2)</sup> does not apply in cases where only a specific share of the market is 'transferred' to another undertaking as part of an opening-up of the market, Paragraph 8(2) of the Verordnung über Bodenabfertigungsdienste auf Flugplätzen (BADV) authorises the managing body of an airport to impose a general obligation on new bidders to take on airport staff, as part of the standard terms for tender and selection procedures, irrespective of whether there has been a transfer for the purposes of Directive 2001/23/EC. The clear effect of Paragraph 8(2) of the BADV is therefore to deter new undertakings from entering the market and to impede their competitiveness, thereby reducing the benefits of liberalisation as regards reduction of prices and improvement in the quality of services.

Furthermore, Paragraph 9(3) of the BADV permits the managing body of an airport to charge higher fees for access to airport installations in cases where suppliers and selfhandlers do not take on any staff from the airport operator upon entering the market. That provision infringes Article 16(3) of Directive 96/67/EC which provides that the fee for access to airport installations is to be determined according to relevant, objective, transparent and non-discriminatory criteria. The failure to take on airport staff is not a criterion which meets any of those requirements. Rather, that provision even enables the airport operator to charge selfhandlers or suppliers of services a higher fee for access to airport installations if they do not take on its staff, and thereby makes it possible for the airport to discriminate against its direct competitors.

<sup>(1)</sup> OJ 1996 L 272, p. 36.

<sup>(2)</sup> OJ 2001 L 82, p. 16.

**Action brought on 15 September 2003 by the Hellenic Republic against the Commission of the European Communities**

(Case C-387/03)

(2003/C 264/41)

An action against the Commission of the European Communities was brought before the Court of Justice of the European

Communities on 15 September 2003 by the Hellenic Republic, represented by I. Khalkias and E. Svolopoulou, Members of the State Legal Service, with an address for service in Luxembourg at the Greek Embassy, 27 rue Marie-Adelaide.

The applicant asks the Court to:

- annul Commission Decision C(2003)2587 excluding from Community financing certain expenditure incurred by the Member States under the EAGGF — Guarantee Section, in so far as concerns financial corrections chargeable to the Hellenic Republic in the wine, livestock premiums and olive oil sectors for the year 1999-2000.

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1. Infringement of law and of general principles.
2. Infringement of the principle of proportionality — misuse of discretion.
3. Error as to the facts, misassessment of the factual circumstances, inadequate statement of reasons for the contested decision.
4. Misinterpretation and misapplication of Article 5(2)(c) of Regulation No 729/70.

**Action brought on 16 September 2003 by the Commission of the European Communities against the Italian Republic**

(Case C-392/03)

(2003/C 264/42)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 16 September 2003 by the Commission of the European Communities, represented by A. Bordes and L. Visaggio, acting as Agents.