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 ([2]) 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.

([1]) OJ 1996 L 272, p. 36.
([2]) 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-Adelaïde.

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.

Pleas in law and main arguments

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.

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 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1] or, in any event, by failing to communicate the same to the Commission, the Italian Republic has failed to fulfil its obligations under Article 13(1) of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposing the directive expired on 1 January 2002.

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[1] OJ L 203 of 3.8.1999, p. 53.

Action brought on 18 September 2003 by the Republic of Austria against the Commission of the European Communities

(Case C-393/03)

(2003/C 264/43)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 September 2003 (fax: 11.9.03) by the Republic of Austria, represented by Dr Harald Dossi of the Constitutional Service of the Federal Chancellor's Office of the Republic of Austria, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the negative opinion of the Commission of 1 July 2003 definitively refusing the request for action submitted to the Commission by the Republic of Austria under the second paragraph of Article 232 EC;

— order the Commission to pay the costs.

In the alternative, the Republic of Austria claims that the Court should:

— annul the Commission's decision of 1 July 2003 ordering the non-application of Article 11(2)(c) of Protocol No 9 to the 1994 Act of Accession [1] and the full award of ecopoints for the year 2003;

— order the Commission to pay the costs.

Pleas in law and main arguments

(Main application)

Infringement of the EC Treaty and/or of Protocol No 9 to the 1994 Act of Accession by definitively refusing the request made under the second paragraph of Article 232 EC. The Commission wrongly seeks to deduct from the number of transit journeys declared overall for the year 2002 (1 718 622) journeys declared as transit journeys in respect of which there is no information on departure (69 433), journeys declared as transit journeys where both entry and departure were effected at the same border point (52 642) and journeys involving 'piggyback transportation' (7 812).

The ecopoint system under Protocol No 9 to the 1994 Act of Accession is based on the principle of declarations. Accordingly, if journeys are clearly declared by a driver as transit journeys, they are included within the ecopoint statistics and are relevant to the question whether the 108 % threshold has been exceeded, whereupon the Commission is bound under Article 11(2)(c) of Protocol No 9, in conjunction with paragraph 3 of Annex 5 thereto, to adopt appropriate measures, namely to reduce the number of ecopoints for the following year in accordance with a calculation method laid down in the Annex to the Protocol. It cannot, in the light of the principle of declarations, be for the Republic of Austria, either legally or factually, to provide evidence in each individual case that, where a journey is clearly declared to be a transit journey, such a transit journey actually took place. The Republic of Austria merely has to deduct journeys declared to be transit journeys where it is beyond doubt that, despite a clear declaration, there cannot have been a transit journey. It clearly follows, therefore, that the 108 % threshold was exceeded in 2002. In the light of its decision of 1 July 2003, the Commission consequently failed to fulfil its obligations under Protocol 9 to the 1994 Act of Accession, in particular its obligations under Article 11(2)(c) in conjunction with Article 16 and paragraph 3 of Annex 5 to that Protocol, thereby creating grounds for annulment on account of infringement of the EC Treaty and/or of Protocol No 9 to the 1994 Act of Accession pursuant to the second paragraph of Article 230 EC.

(In the alternative)

Infringement of the EC Treaty and/or of Protocol No 9 to the 1994 Act of Accession. In relation to the grounds, the applicant refers to its arguments regarding the first plea in law.

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[1] Protocol No 9 on road, rail and combined transport in Austria.