

The Commission claims that the agreement of 15 September 1999 to transfer the responsibility for the collection and treatment of waste from the municipality of Mödling to AbfallGmbH does not fall to be classified as an 'internal transfer' within the administration of the municipality of Mödling, as the municipality of Mödling ceased to exercise the control over AbfallGmbH that it would have over its own departments. The transfer of responsibility for the carrying out of public services accordingly involves a public service contract which was subject to the compulsory tender procedure.

(¹) OJ 1992 L 209, p. 1.

Action brought on 29 January 2004 by the Commission of the European Communities against the Kingdom of Spain

(Case C-31/04)

(2004/C 71/20)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 29 January 2004 by the Commission of the European Communities, represented by K. Banks and F. Castillo de la Torre, of the Commission's Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (¹), or in any event by failing to communicate those provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under Article 13 of that directive.
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed by the Directive for its transposition into national law expired on 22 December 2002.

(¹) OJ 2001 L 167, p. 10.

Action brought on 29 January 2004 by the Commission of the European Communities against the French Republic

(Case C-32/04)

(2004/C 71/21)

An action against the French Republic was brought before the Court of Justice of the European Communities on 29 January 2004 by the Commission of the European Communities, represented by U. Wölker and F. Simonetti, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2001/58/EC of 27 July 2001 amending for the second time Directive 91/155/EEC defining and laying down the detailed arrangements for the system of specific information relating to dangerous preparations in implementation of Article 14 of European Parliament and Council Directive 1999/45/EC and relating to dangerous substances in implementation of Article 27 of Council Directive 67/548/EEC (safety data sheets) (¹), or, in any event, by failing to inform the Commission thereof, the French Republic has failed to fulfil its obligations under that directive;
- order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 30 July 2002.

(¹) OJ 2001 L 212, p. 24.

Action brought on 29 January 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg

Case C-33/04

(2004/C 71/22)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 29 January 2004 by the Commission of the European Communities, represented by W. Wils and M. Shotter, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should declare that:

- by failing to comply with the obligation to verify the compliance of cost accounting systems by an independent competent body and to publish a statement of compliance for 1998 and 1999, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 7(5) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) ⁽¹⁾;
- by failing in practice to apply correctly the measures adopted for the purpose of implementing Article 18(1) and (2) of Directive 98/10/EC as regards verification of the compliance of the cost accounting system by the national regulatory authority or another competent body, independent of the telecommunications organisation and approved by the national regulatory authority, and as regards annual publication of a statement of compliance, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 18 of Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment ⁽²⁾.

Pleas in law and main arguments:

The Grand Duchy of Luxembourg has not yet adopted all the measures necessary in order to ensure the full transposition and implementation of Article 7(5) of Directive 97/33 as regards:

- verification of the compliance of the cost accounting system by the national regulatory authority or another competent body;
- annual publication of a statement of compliance.

As regards Directive 98/10, verification of the compliance of the cost accounting system of the operator *Entreprise des Postes et Télécommunications* (EPT) has not yet taken place. In addition, no statement concerning compliance has been published.

⁽¹⁾ OJ 1997 L 199, p. 32.

⁽²⁾ OJ 1998 L 101, p. 24.

Action brought on 29 January 2004 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-34/04)

(2004/C 71/23)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 29 January 2004 by the Commission of the European Communities, represented by T. van Rijn and C. Diderich, acting as Agents.

The applicant claims that the Court should:

- declare that, by failing to withdraw the fishing licences granted to the fishing vessels WIRON III and WIRON IV following the definitive transfer of those vessels to Argentina, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 5 of Regulation (EC) No 3690/93 of 20 December 1993 establishing a Community system laying down rules for the minimum information to be contained in fishing licences;
- order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

Under the Agreement on relations in the sea fisheries sector between the European Economic Community and the Argentine Republic (OJ 1993 L 318, p. 2), the fishing vessels WIRON III and WIRON IV, which flew the Netherlands flag and were registered in the Netherlands, were transferred to Argentina. The vessels were removed from the Netherlands register of fishing vessels, transferred to Argentina and registered there in the national shipping register. The Commission discovered that the fishing licences granted to the vessels WIRON III and WIRON IV had been used again for other vessels. Such conduct is inconsistent with the obligation imposed on the Netherlands under Article 5 of Regulation No 3690/93 to withdraw the fishing licences of vessels which have been definitively withdrawn from fishing activities. From the Community's point of view, the definitive transfer of a vessel to a non-member country is equivalent to the definitive withdrawal of that vessel from fishing activity.