

2. Article 1(3) of Directive 89/665, as amended by Directive 92/50, must be interpreted as precluding a person who has participated in a contract award procedure from being regarded as having lost his interest in obtaining the contract on the ground that, before seeking the review provided for by the Directive, he failed to refer the case to a conciliation committee such as *Bundes-Vergabekontrollkommission* (Federal Public Procurement Review Commission, established by the *Bundesgesetz über die Vergabe von Aufträgen* (Bundesvergabegesetz) 1997 (1997 Federal Law on Public Procurement)).

(¹) OJ C 219 of 14.9.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 February 2004

in Case C-236/02 (Reference for a preliminary ruling from the *College van Beroep*): *J. Slob v Productschap Zuivel* (¹)

(Milk and milk products — Direct sales — Reference quantity — Overruns — Additional levy on milk — Obligation on producer to keep stock accounts — Contents — Interpretation of Article 7(1)(f) of Regulation (EEC) No 536/93)

(2004/C 85/12)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the *European Court Reports*)

In Case C-236/02: Reference to the Court under Article 234 EC by the *College van Beroep voor het bedrijfsleven* (Netherlands) for a preliminary ruling in the proceedings pending before that court between *J. Slob* and *Productschap Zuivel*, on the interpretation of Article 7(1)(f) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12), the Court (Sixth Chamber), composed of: C. Gulmann, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, F. Macken and N. Colneric (Rapporteur), Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator Registrar, has given a judgment on 12 February 2004, in which it has ruled:

The first sentence of Article 7(1) and Article 7(1)(f) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products should be interpreted as meaning that the stock accounts which producers are required to keep need state only the quantities, per month and per product, of milk and/or milk products sold.

(¹) OJ C 202 of 24.8.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 5 February 2004

in Case C-265/02 (Reference for a preliminary ruling from the *Corta suprema di cassazione*): *Frahuil SA v Assitalia SpA* (¹)

(Brussels Convention — Special jurisdiction — Article 5(1) — Meaning of ‘matters relating to a contract’ — Contract of guarantee entered into without the knowledge of the principal debtor — Subrogation of the guarantor to the rights of the creditor — Right of recourse of the guarantor against the principal debtor)

(2004/C 85/13)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the *European Court Reports*)

In Case C-265/02: Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters by the *Corte suprema di cassazione* (Italy) for a preliminary ruling in the proceedings pending before that court between *Frahuil SA* and *Assitalia SpA*, on the interpretation of Article 5(1) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended version — p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, C. W. A. Timmermans and S. von Bahr, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 5 February 2004, in which it has ruled:

Article 5(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic, must be interpreted as follows:

'matters relating to a contract' do not cover the obligation which a guarantor who paid customs duties under a guarantee obtained by the forwarding agent seeks to enforce in legal proceedings by way of subrogation to the rights of the customs authorities and by way of recourse against the owner of the goods, if the latter, who was not a party to the contract of guarantee, did not authorise the conclusion of that contract.

(¹) OJ C 233 of 28.9.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 5 February 2004

in Case C-270/02: Commission of the European Communities v Italian Republic (¹)

(Measures having equivalent effect — Foodstuffs for sportsmen and women lawfully manufactured and marketed in other Member States — Prior marketing authorisation)

(2004/C 85/14)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-270/02, Commission of the European Communities (Agents: C.-F. Durand and R. Amorosi) v Italian Republic (Agent: I. M. Braguglia, assisted by G. Aiello, avvocato dello Stato) with an address for service in Luxembourg: Application for a declaration that, by maintaining in force legislation which subjects the marketing of food products for sportsmen and women lawfully manufactured and marketed in other Member States to a requirement of applying for prior authorisation and

of initiating a procedure for that purpose without having shown that it is necessary and proportionate, the Italian Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC, the Court (Third Chamber), composed of: C. Gulmann, acting for the President of the Chamber, J.-P. Puissochet and F. Macken (Rapporteur), Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 5 February 2004, in which it:

1. Declares that, by maintaining in force legislation which subjects the marketing of food products for sportsmen and women lawfully manufactured and marketed in other Member States to a requirement of applying for prior authorisation and of initiating a procedure for that purpose without having shown that it is necessary and proportionate, the Italian Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC;
2. Orders the Italian Republic to pay the costs.

(¹) OJ C 219 of 14.9.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 12 February 2004

in Case C-406/02: Commission of the European Communities v Kingdom of Belgium (¹)

(Failure of a Member State to fulfil its obligations — Failure to communicate reports required under Directives 76/464/EEC, 78/659/EEC and 80/68/EEC — Standardising and rationalising reports on the implementation of certain directives relating to the environment)

(2004/C 85/15)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-406/02, Commission of the European Communities (Agent: B. Stromsky) with an address for service in Luxembourg, v Kingdom of Belgium (Agent: E. Dominkovitz) with an address for service in Luxembourg: Application for a declaration that, by failing to communicate to it, within the