

it is for the national court to establish whether the transactions concerned in the main proceedings involve only very limited use of assets or services subject to value added tax and, if so, to exclude interest generated by those transactions from the denominator of the fraction used to calculate the deductible proportion.

2. Operations such as those at issue in the main proceedings, carried out by the members of a consortium in accordance with the provisions of a consortium contract and corresponding to the share assigned to each of them in that contract, do not constitute supplies of goods or services 'effected for consideration' within the meaning of Article 2(1) of Sixth Directive 77/388, nor, consequently, a taxable transaction under that directive. The fact that such operations are carried out by the member of the consortium which manages it is irrelevant in that respect. On the other hand, where the performance of more of the operations than the share thereof fixed by the said contract for a consortium member involves payment by the other members against the operations exceeding that share, those operations constitute a supply of goods or services 'effected for consideration' within the meaning of that provision.

(<sup>1</sup>) OJ C 118, 21.4.2001.

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

**in Case C-91/01: Italian Republic v Commission of the European Communities (<sup>1</sup>)**

**(State aid — Recommendation concerning the definition of small and medium-sized enterprises — Guidelines for State aid to small and medium-sized enterprises — Independence criterion — Protection of legitimate expectations — Legal certainty)**

(2004/C 118/12)

(Language of the case: Italian)

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

In Case C-91/01: Italian Republic (Agent: I. Braguglia, assisted by D. Del Gaizo), with an address for service in Luxembourg v Commission of the European Communities (Agents: V. Di Bucci and J. M. Flett), with an address for service in Luxembourg — application for annulment of Commission Decision 2001/779/EC of 15 November 2000 on the State aid which Italy is planning to grant to Solar Tech Srl (OJ 2001 L 292, p. 45), in so far as it did not allow the application to that aid of the bonus of 15 % gross grant equivalent provided for small and medium-sized enterprises — the Court (Fifth Chamber), composed of: C. W. A. Timmermans, acting for the President

of the Fifth Chamber, A. Rosas and S. von Bahr (Rapporteur), Judges; Advocate General: F. G. Jacobs; Registrar: M. Múgica Arzamendi, Principal Administrator, has given a judgment on 29 April 2004, in which it:

- 1) Dismisses the action;
- 2) Orders the Italian Republic to pay the costs

(<sup>1</sup>) OJ C 118, 21.4.2001.

## JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

**in Case C-106/01 (reference for a preliminary ruling from the Court of Appeal (Civil Division) (England and Wales)): The Queen, on the application of Novartis Pharmaceuticals UK Ltd v The Licensing Authority established by the Medicines Act 1968 (acting by the Medicines Control Agency), and SangStat UK Ltd, and Imtix-SangStat UK Ltd (<sup>1</sup>)**

**(Medicinal products — Marketing authorisation — Procedure relating to essentially similar products)**

(2004/C 118/13)

(Language of the case: English)

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

In Case C-106/01: reference to the Court under Article 234 EC from the Court of Appeal (Civil Division) (England and Wales) for a preliminary ruling in the proceedings pending before that court between The Queen on the application of Novartis Pharmaceuticals UK Ltd and The Licensing Authority established by the Medicines Act 1968 (acting by the Medicines Control Agency), and SangStat UK Ltd, and Imtix-SangStat UK Ltd — on the interpretation of Article 4.8(a) of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (OJ, English Special Edition 1965-1966, p. 20), as amended by Council Directives 87/21/EEC of 22 December 1986 (OJ 1987 L 15, p. 36), 89/341/EEC of 3 May 1989 (OJ 1989 L 142, p. 11) and 93/39/EEC of 14 June 1993 (OJ 1993 L 214, p. 22) — the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann (Rapporteur), J.-N. Cunha Rodrigues, J.-P. Puissochet and R. Schintgen, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled: