

1. *The appeal is dismissed.*
2. *Mr Fichtner to bear the costs.*

(<sup>1</sup>) OJ C 146 of 21.6.2003.

**Reference for a preliminary ruling by the Tribunale di Larino — Sezione Distaccata di Termoli — by order of that court of 8 July 2004 in criminal proceedings against Massimiliano Placanica**

(Case C-338/04)

(2004/C 273/19)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Larino — Sezione Distaccata di Termoli (Larino District Court, Termoli section, Italy) of 8 July 2004, received at the Court Registry on 6 August 2004, for a preliminary ruling in the case of criminal proceedings against Massimiliano Placanica on the following question:

'Does the Court of Justice consider Article 4(4a) of Law No 401/89 to be compatible with the principles enshrined in Articles 43 et seq. and 49 of the EEC Treaty concerning the freedom of establishment and the freedom to provide cross-border services, having regard to the difference between the interpretation emerging from the decisions of the European Court of Justice (in particular the judgment in Gambrelli) and the decision of the Corte Suprema di Cassazione, Sezione Uniti in Case No 23271/04? In particular, the Court is requested to rule on the validity of the legislation referred to in the indictment and under which Massimiliano Placanica is charged in Italy'.

**Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 26 May 2004 in the case of Centro Equestro da Leziria Grande LDA against Bundesamt für Finanzen**

(Case C-345/04)

(2004/C 273/20)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal

Finance Court (Germany)) of 26 May 2004, received at the Court Registry on 12 August 2004, for a preliminary ruling in the case of Centro Equestro da Leziria Grande LDA against Bundesamt für Finanzen (Federal Tax Office) on the following question:

Is it contrary to Article 59 of the Treaty establishing the European Communities if a person with restricted tax liability in Germany who is a national of a Member State may claim repayment of tax deducted at source on his income in Germany only when the operating expenses that have a direct economic connection to that income are higher than half of the income?

**Reference for a preliminary ruling by the Finanzgericht Köln by order of that court of 15 July 2004 in the case of REWE Zentralfinanz e.G., as universal legal successor of ITS Reisen GmbH against Finanzamt Köln-Mitte**

(Case C-347/04)

(2004/C 273/21)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Köln (Finance Court, Cologne) (Germany) of 15 July 2004, received at the Court Registry on 13 August 2004, for a preliminary ruling in the case of REWE Zentralfinanz e.G., as universal legal successor of ITS Reisen GmbH against Finanzamt Köln-Mitte on the following question:

- Are Article 52 (now Article 43) in conjunction with Article 58 (now Article 48) and Articles 67-73 and 73b et seq. (now Article 56 et seq.) of the EC Treaty to be interpreted as precluding a rule which — like the rule laid down in Paragraph 2a(1)(3)(a) and Paragraph 2a(2) of the Einkommensteuergesetz which is at issue in the main proceedings — restricts the immediate tax set-off of losses stemming from write-downs to the book value of subsidiaries in other EC countries, where those subsidiaries pursue passive activities within the meaning of the national provision and/or where the subsidiaries pursue active activities within the meaning of the national provision only through their own second-tier subsidiaries, whilst write-downs to the book value of domestic subsidiaries are possible without these restrictions?