authority used its discretionary powers in a clearly erroneous manner. The Court also carried out an inaccurate assessment of the interest of the service and failed to take the welfare of officials into account. The Court also misapplied the principle of proportionality in deciding that the contested decision complied with the principle, although the decision was neither an appropriate measure, nor the least restrictive one. The Court made a further error in assessing the equivalence or comparability of the new position with the former post. In fact, if the Court's reasoning were accepted, every transfer related to the current grade would comply with the principle of assignment to an equivalent post. Finally, the Court failed to indicate which elements it took into account when it assessed the non-material damage suffered by the appellant.

The Court also made a number of errors in law. First of all, it exempted the transfer decision from the duty to state reasons in considering it a mere measure of internal organisation, even though that duty has been held to constitute a general principle of law. Secondly, the Court made an error of law in finding there to be no infringement of the right to a fair hearing to the detriment of the appellant. The Court also made an error of law in failing to make a clear statement on the scope of the right to freedom of expression, on which the appellant should have been able to rely in this instance. Finally, the Court made an error of law concerning the application of the rights of defence, in particular the right to be heard before the transfer decision was made.

Reference for a preliminary ruling from the Commissione Tributaria Provinciale di Napoli by order of that court of 15 July 2004 in Salus S.p.A v Agenzia Entrate Ufficio Napoli 4

(Case C-18/05)

(2005/C 93/09)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria Provinciale di Napoli (Italy) of 15 July 2004, received at the Court Registry on 20 January 2005, for a preliminary ruling in the proceedings between Salus S.p.A and Agenzia Entrate Ufficio Napoli 4 on the following questions:

1. Does the exemption under Article 13B(c) of Sixth Council Directive 77/388/EEC [1] of 17 May 1977 refer to input VAT paid on the acquisition of goods or services used for exempted activities or rather to cases in which a taxable person who has acquired goods intended for such activities subsequently sells those goods to other taxable persons?

2. Is that provision sufficiently precise and unconditional to be directly effective in the national legal system?

3. For the purposes of the direct applicability of the directive, what is the effect of the requirement in the first paragraph of Article 13B whereby, in implementing Article 13B(c), Member States are to lay down conditions for 'preventing any possible evasion, avoidance or abuse?

[1] OJ 1977 L 145 of 13.06.1977, p. 1.

Action brought on 20 January 2005 by the Commission of the European Communities against the Kingdom of Denmark

(Case C-19/05)

(2005/C 93/10)

(Language of the case: Danish)

An action against the Kingdom of Denmark was brought before the Court of Justice of the European Communities on 20 January 2005 (fax 14.01.) by the Commission of the European Communities, represented by N. B. Rasmussen and G. Wilms, with an address for service in Luxembourg.

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

— declare that, by failing to pay the Commission the sum of DKK 18 687 475 as own resources, together with default interest from 27 July 2000, the Kingdom of Denmark has failed to fulfil its obligations under Community law, in particular Article 10 EC and Articles 2 and 8 of Council Decision 94/728/EC, Euratom [1] of 31 October 1994 on the system of the European Communities' own resources;

— order the Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

The amount referred to in the application represents the duty that the Danish customs authorities omitted to collect in the period 1994-1997 from an undertaking wrongly permitted by the said authorities to import certain goods at zero rate. That permission was given as concerning goods intended for incorporation in or for fitting to or equipping ships, boats or other vessels in accordance with Council Regulation (EEC) No 2658/87 ([2]) of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, Annex 1, Section II. The goods were, however, intended for the manufacture of containers and could not, as was later acknowledged by the Danish authorities, be covered by the said provision.

The Danish authorities have unlawfully failed to make the said amount available to the Commission as own resources. The claims made in this connection correspond to those made by the Commission in its application against Denmark in Case C-392/02 ([3]).

([1]) OJ L 293 of 12.11.1994, p. 9.
([2]) OJ L 256 of 7.09.1987, p.1.
([3]) OJ C 31 of 8.02.2003, p. 4.

Reference for a preliminary ruling from the Tribunale Civile e Penale di Forlì by order of that court of 14 December 2004 in the criminal proceedings against K.J.W. Schwibbert

(Case C-20/05)

(2005/C 93/11)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Civile e Penale di Forlì (Italy) of 14 December 2004, received at the Court Registry on 21 January 2005, for a preliminary ruling in the criminal proceedings pending against K.J.W. Schwibbert on the following questions:

— whether the affixing of the distinctive sign SIAE [società italiana degli autori ed editori] is compatible with Council Directive 92/100/EEC ([1]) on rental right and lending right and on certain rights related to copyright in the field of intellectual property, and Articles 3 EC and 23 EC to 27 EC;

— whether it is further compatible with Council Directive 83/189/EEC ([2]) and Council Directive 88/182/EEC ([3]).

([1]) OJ 1992 L 346 of 27.11.1992, p. 61.
([2]) OJ 1983 L 109 of 26.04.1983, p. 8.
([3]) OJ 1988 L 81 of 26.03.1988, p. 75.

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) by order of that court of 18 January 2005 in G.J. Dokter, Maatschap Van den Top and W. Boekhout v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-28/05)

(2005/C 93/12)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (the Netherlands) of 18 January 2005, received at the Court Registry on 28 January 2005, for a preliminary ruling in the proceedings between G.J. Dokter, Maatschap Van den Top and W. Boekhout and Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality) on the following questions:

1. Does the obligation on Member States under the first indent of Article 11(1) of Directive 85/511/EEC, ([1]) read in conjunction with the second indent of Article 13(1) thereof, to ensure that laboratory testing to detect the presence of FMD is carried out by a laboratory listed in Annex B to Directive 85/511/EEC have direct effect?

2. (a) Must Article 11(1) of Directive 85/511/EEC be interpreted as meaning that legal consequences must be attached to the fact that the presence of FMD is found by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

   (b) If the answer to Question 2a is in the affirmative:

   Is the purpose of Article 11(1) of Directive 85/511/EEC to protect the interests of individuals, such as the appellants in the main proceedings? If not, can individuals, such as the appellants in the main proceedings, plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?