

4. Is the procedure for verifying the compatibility with Community provisions of the hunting derogations authorised by the Italian Regions under Article 19a of Law No 157/92, preceded by a period of notice and therefore requiring fixed periods of time, which are also necessary for the adoption and publication of the measure, during which the brief period of hunting derogations itself may expire, suitable for ensuring effective application of Directive 79/409/EC?

(¹) OJ L 103 of 25.04.1979, p. 1.

Action brought on 14 February 2005 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-66/05)

(2005/C 93/25)

(Language of the case: Dutch)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 14 February 2005 by the Commission of the European Communities, represented by Dennis Martin and Pieter van Nuffel, acting as Agents.

The Commission claims that the Court should:

1. Declare that by taking into account, when calculating sickness insurance contributions, the pensions paid under the legislation of a Member State other than the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 33(1) of Regulation (EEC) No 1408/71; (¹)
2. Order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The purpose of the Algemene Wet Bijzondere Ziektekosten (General law on special sickness costs; 'AWBZ') is to cover the cost of treatment, care and nursing in the case of serious long-term sickness or invalidity. All inhabitants, that is to say all persons resident in the Netherlands, are insured. It is therefore

a 'national insurance' scheme. Under the Wet Financiering Volksverzekeringen (Law on the financing of national insurance schemes) all insured persons are liable to pay contributions. The contribution is calculated on the basis of their income as a whole.

The result of this legislation is that a person who lives in the Netherlands and receives both a Netherlands pension and a pension under the legislation of another Member State is insured under the AWBZ for special sickness costs but is also liable to pay contributions. When calculating that contribution, both his Netherlands pension and his other pension are taken into account.

According to the Commission, Article 33(1) of the Regulation only permits the Netherlands pension to be taken into account when calculating that contribution; according to the Netherlands, the entire income may be taken into account, including the pension which the person concerned receives under the legislation of another Member State.

(¹) (OJ, English special edition, 1971 (II), p. 416). Regulation amended and updated by Regulation (EC) No 118/97 (OJ L 28 of 30.1.1997, p. 1) and last amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council (OJ L 100 of 6.4.2004, p. 1).

Reference for a preliminary ruling from the Finanzgericht München by order of that court of 1 February 2005 in Household of Jörg and Stefanie Wollny v Finanzgericht Landshut

(Case C-72/05)

(2005/C 93/26)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht München (Germany) of 1 February 2005, received at the Court Registry on 15 February 2005, for a preliminary ruling in the proceedings between Household of Jörg and Stefanie Wollny and Finanzgericht Landshut on the following question:

How is the term 'full cost' in Article 11(A)(1)(c) of Directive 77/388/EC⁽¹⁾ to be interpreted? Does the full cost for the privately used dwelling in a building forming, in its entirety, part of the assets of a business comprise, in addition to recurring expenses, annual depreciation for the wear and tear of buildings in accordance with the applicable national rules and/or the annual proportion of the acquisition and production cost - calculated on the basis of the applicable national period for adjustment of deductions - that has given rise to a right to deduct value added tax?

⁽¹⁾ OJ L 145 of 13.06.1977, p. 1.

Reference for a preliminary ruling from the Tribunale di Livorno by order of that court of 22 December 2004 in Gentilini unberto v Dal Colle Industria Dolciaria S.p.A.

(Case C-78/05)

(2005/C 93/28)

(Language of the case: Italian)

Reference for a preliminary ruling from the Finanzgericht Köln by order of that court of 27 January 2005 in Herbert Schwarz and Marga Gootjes-Schwarz v Finanzamt Bergisch Gladbach

(Case C-76/05)

(2005/C 93/27)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Köln (Germany) of 27 January 2005, received at the Court Registry on 16 February 2005, for a preliminary ruling in the proceedings between Herbert Schwarz and Marga Gootjes-Schwarz and Finanzamt Bergisch Gladbach on the following question:

Is it contrary to Articles 8(a)/18 (freedom of movement), 48/39 (freedom of movement for workers), 52/43 (freedom of establishment) or 59/49 (freedom to provide services) of the EC Treaty to treat payments of school fees to certain German schools, but not payments of school fees to schools in the rest of the European Community area, as special expenditure leading to a reduction of income tax, pursuant to Paragraph 10(1)(9) of the Einkommensteuergesetz (Law on Income Tax) as applicable in 1998 and 1999?

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Livorno (Italy) of 22 December 2004, received at the Court Registry on 17 February 2005, for a preliminary ruling in the proceedings between Gentilini unberto and Dal Colle Industria Dolciaria S.p.A. on the following questions:

- (a) Given the content of Article 17 of Council Directive 86/653 of 18 December 1986⁽¹⁾ on the coordination of the laws of the Member States relating to self-employed commercial agents, can Article 19 be interpreted as meaning that it is permissible for the national implementing legislation to provide that the indemnity owed to an agent is payable under a collective agreement binding on its signatories, without regard to the conditions set out in the two indents of paragraph 2(a) of Article 17 and is calculated not in accordance with the criteria to be found in the directive but in accordance with the criteria set in the collective economic agreement itself, with the result that, in many cases, the level of the indemnity to be paid would have to be significantly lower than the ceiling provided for in the directive.
- (b) Should the indemnity be calculated individually by estimating the further commissions that the agent could have earned in the years following termination of the contract on the basis of the new customers he has brought or the growth in business that he has generated, using the criterion of equity only to adjust the amount, or are other, composite, methods of calculation permitted, which make greater use of the criterion of equity.

⁽¹⁾ OJ L 382 of 31.12.1986, p. 17.