Chamber), composed of R. Silva de Lapuerta, President of the Chamber, J. Makarczyk and P. Kūris (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 10 March 2005, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directives 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), and 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), the Grand Duchy of Luxembourg has failed to fulfil its obligations under those directives.*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

([1]) OJ C 190, 24.07.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 10 March 2005

in Case C-240/04: Commission of the European Communities v Kingdom of Belgium ([1])

(Failure of a Member State to fulfil obligations — Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC — Electronic communications networks and services — Failure to transpose within the prescribed period)

(2005/C 115/16)

(Language of the case: French)

In Case C-240/04 Commission of the European Communities (Agent: M. Shotter) v Kingdom of Belgium (Agent: E. Dominkovits) — Action under Article 226 EC for failure to fulfil obligations, brought on 8 June 2004 — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, J. Makarczyk and P. Kūris (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 10 March 2005, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directives 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), and 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), the Kingdom of Belgium has failed to fulfil its obligations under those directives.*

2. *Orders the Kingdom of Belgium to pay the costs.*

([1]) OJ C 190, 24.07.2004.

ORDER OF THE COURT

(Second Chamber)

of 17 February 2005

in Case C-250/03: Reference for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia in Giorgio Emanuele Mauri v Ministero della Giustizia, Commissione per gli esami di avvocato presso la Corte d'appello di Milano ([1])

(Article 104(3) of the Rules of Procedure — Access to the profession of advocate — Rules on the examination for authorisation to practise as an advocate)

(2005/C 115/17)

(Language of the case: Italian)

In Case C-250/03: reference for a preliminary ruling under Article 234 EC from the Tribunale amministrativo regionale per la Lombardia, (Italy), made by decision of 13 November 2002, received at the Court on 11 June 2003, in the proceedings between Giorgio Emanuele Mauri and Ministero della Giustizia, Commissione per gli esami di avvocato presso la Corte d'appello di Milano — the Court (Second Chamber), composed of C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, R. Schintgen, J. Makarczyk and J. Klučka, Judges; P. Léger, Advocate General; R. Grass, Registrar, made an order on 17 February 2005, the operative part of which is as follows:

Articles 81 EC, 82 EC and 43 EC do not preclude a rule, such as that laid down by Article 22 of Royal Decree-Law No 1578 of 27 November 1933, in the version applicable at the time of the facts in the main proceedings, which provides that, in connection with the examination regulating access to the profession of advocate, the examination committee is to be composed of five members appointed by the Minister for Justice, namely two judges, a professor of law and two advocates, the latter being nominated by the Consiglio nazionale forense (National Bar Council) on a joint proposal by the bar councils of the district concerned.

([1]) OJ C 200 of 23.08.2003.

Appeal brought on 14 February 2005 by Kingdom of Sweden against the judgment delivered on 30 November 2004 by the Fifth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-168/02 between IFAW Internationaler Tierschutz-Fonds gGmbH, supported by Kingdom of the Netherlands, Kingdom of Sweden and by Kingdom of Denmark and Commission of the European Communities, supported by United Kingdom of Great Britain and Northern Ireland

(Case C-64/05 P)

(2005/C 115/18)

(Language of procedure: English)

An appeal against the judgment delivered on 30 November 2004 by the Fifth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-168/02 ([1]) between IFAW Internationaler Tierschutz-Fonds gGmbH, supported by Kingdom of the Netherlands, Kingdom of Sweden and by Kingdom of Denmark and Commission of the European Communities, supported by United Kingdom of Great Britain and Northern Ireland, was brought before the Court of Justice of the European Communities on 14 February 2005 by Kingdom of Sweden, represented by K. Wistrand, acting as agent.

The Appellant claims that the Court should:

1. set aside the Judgment of the Court of First Instance of 30 November 2004 in Case T-168/02;

2. annul the decision of the Commission of 26 March 2002 and

3. order the Commission to pay the costs incurred by the Kingdom of Sweden in the proceedings before the Court of Justice.

Pleas in law and main arguments:

The Swedish Government submits that the Court of First Instance has infringed Community law in the judgment under appeal.

The Court of First Instance first observed that the right of access to documents of the institutions, provided for in Article 2 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ('openness regulation'), covers all documents held by those institutions and, as a result, they may be required, in appropriate cases, to make available documents originating from third parties, including, in particular, the Member States. The Court of First Instance pointed out that the so-called authorship rule, that is to say, the principle that the person who drew up a document has control over the document and thus decides whether it may be disclosed, regardless of who holds the document, was not incorporated into the Regulation.

The Court of First Instance none the less took the view that Article 4(5) of the openness regulation implies that the Member States are subject to special treatment and that the authorship rule therefore applies to documents drawn up by Member States. To justify that position, the Court of First Instance pointed out, first, that the obligation to obtain agreement, under Article 4(5) of the openness regulation, would otherwise risk becoming a dead letter and, second, that it is neither the object nor the effect of that regulation to amend national legislation. According to the Court of First Instance, the Member State is under no obligation to state the reasons for any request made by it under Article 4(5) of the openness regulation.

However, the Swedish Government finds that there is no express and unequivocal support for the Court of First Instance's interpretation in the provision in question or elsewhere in the openness regulation. Under those circumstances none of the arguments on which the Court of First Instance based its interpretation, either on its own or taken together with the others, can constitute a reason to disregard the fundamental rule on which the openness regulation is based. According to the regulation, it is for the institution holding the document to assess whether a document should be disclosed. If none of the exceptions to the rule of disclosure in Articles 4(1) to 4(3) of the openness regulation is applicable, the document is to be disclosed. The obligation to obtain agreement under Article 4(5) of the openness regulation is a procedural rule which would serve its purpose even if the Member States were not allowed an absolute right of veto. Nor does the absence of a right of veto entail any amendment to national legislation.

Under the openness regulation a decision to refuse access to a document can only be made on the basis of one of the exceptions set out in Article 4(1) to 4(3). If the Member State in question does not state reasons for its refusal to disclose a document, that Member State thus incurs the risk that the institution will not be in a position to find that there is a specific need for confidentiality which can constitute a ground not to disclose the document according to the exceptions to the rule of disclosure in the openness regulation.