2. *Dismisses the counterclaim by Intracom SA Hellenic Telecommunications & Electronic Industry;*

3. *Orders the Commission of the European Communities to pay the costs.*

([1]) OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 April 2005

in Case C-341/02: Commission of the European Communities v Federal Republic of Germany ([1])

(Failure of a Member State to fulfil obligations — Directive 96/71/EC — Posting of workers in the framework of the provision of services — Undertakings in the construction industry — Minimum wages — Comparison between the minimum wage established by the provisions of the Member State to the territory of which a worker is posted and the remuneration actually paid by his employer established in another Member State — Failure to take into account, as constituent elements of the minimum wage, all of the allowances and supplements paid by the employer established in another Member State)

(2005/C 143/04)

(Language of the case: German)

In Case C-341/02, Commission of the European Communities (Agents: J. Sack and H. Kreppel) v Federal Republic of Germany (Agents: W.-D. Plessing and A. Tiemann) — action for failure to fulfil obligations under Article 226 EC, brought on 25 September 2002, — the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas (Rapporteur), K. Lenaerts, S. von Bahr and K. Schiemann, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Declares that, by failing to recognise as constituent elements of the minimum wage allowances and supplements which do not alter the relationship between the service provided by a worker and the consideration which that worker receives in return, and which are paid by employers established in other Member States to their employees in the construction industry who are posted to Germany, with the exception of the general bonus granted to workers in the construction industry, the Federal Republic of Germany has failed to fulfil its obligations under Article 3 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services;*

2. *Dismisses the remainder of the action;*

3. *Orders each party to bear its own costs.*

([1]) OJ C 305 of 07.12.2002.

JUDGMENT OF THE COURT

(Grand Chamber)

of 26 April 2005

in Case C-376/02 Reference for a preliminary ruling from the Hoge Raad der Nederlanden Stichting 'Goed Wonen' v Staatssecretaris van Financiën ([1])

(Turnover tax — Common system of value added tax — Article 17 of Sixth Directive 77/388/EEC — Deduction of input tax — Amendment of national legislation — Retroactive effect — Principles of the protection of legitimate expectations and legal certainty)

(2005/C 143/05)

(Language of the case: Dutch)

In Case C-376/02: reference for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 18 October 2002, received at the Court on 21 October 2002, in the proceedings pending before that court between **Stichting 'Goed Wonen'** and **Staatssecretaris van Financiën** — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur), R. Silva de Lapuerta and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, P. Kūris, E. Juhász, G. Arestis and M. Ilešič, Judges; A. Tizzano, Advocate General, M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 26 April 2005, the operative part of which is as follows:

The principles of the protection of legitimate expectations and legal certainty do not preclude a Member State, on an exceptional basis and in order to avoid the large-scale use, during the legislative process, of contrived financial arrangements intended to minimise the burden of value added tax that an amending law is specifically designed to combat, from giving that law retroactive effect when, in circumstances such as those in the main proceedings, economic operators carrying out economic transactions such as those referred to by the law were warned of the impending adoption of that law and of the retroactive effect envisaged in a way that enabled them to understand the consequences of the legislative amendment planned for the transactions they carry out.

When that law exempts an economic transaction in respect of immovable property previously subject to value added tax, it may have the effect of revoking a value added tax adjustment made on account of the exercise, when immovable property was used for a transaction regarded at that time as taxable, of a right to deduct value added tax paid in respect of the supply of that immovable property.

([1]) OJ C 7 of 11.01.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 21 April 2005

in Case C-25/03 Reference for a preliminary ruling from the Bundesfinanzhof (Germany) Finanzamt Bergisch Gladbach v HE ([1])

(Sixth VAT Directive — Construction of a dwelling by two spouses forming a community which does not itself perform an economic activity — Use of one room by one of the co-owners for business purposes — Status of taxable person — Right to deduct — Rules governing exercise of that right — Invoicing requirements)

(2005/C 143/06)

(Language of the case: German)

In Case C-25/03: reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany) made by decision of 29 August 2002, received at the Court on 23 January 2003, in the proceedings pending before that court between Finanzamt Bergisch Gladbach and HE — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, R. Schintgen (Rapporteur), G. Arestis and J. Klučka, Judges; A. Tizzano, Advocate General, K. Sztranc, for the Registrar, gave a judgment on 21 April 2005, the operative part of which is as follows:

Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, both in its original version and following amendment by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, is to be interpreted as follows:

— *where a person purchases a house, or has a house built, in order to live in it with his family he is acting as a taxable person, and is thus entitled to make deductions under Article 17 of the Sixth Directive in so far as he uses one room in that building as an office for the purposes of carrying out an economic activity, albeit an ancillary one, within the meaning of Articles 2 and 4 of the directive and allocates that part of the building to the assets of his business;*

— *where a marital community which does not have legal personality and does not itself carry out an economic activity within the meaning of the Sixth Directive places an order for a capital item, the co-owners forming that community are to be regarded as recipients of the transaction for the purposes of the directive;*

— *where spouses forming a community by marriage purchase a capital item, part of which is used exclusively for business purposes by one of the co-owning spouses, that spouse is entitled to deduct in respect of all the input value added tax attributable to the share of the item which he uses for the purposes of his business, in so far as the amount deducted does not exceed the limits of the taxable person's interest in the co-ownership of the item;*

— *Articles 18(1)(a) and 22(3) of the Sixth Directive do not require the taxable person, in order to be able to exercise the right to deduct in circumstances such as those at issue in the main proceedings, to hold an invoice issued in his name and stating the proportions of the payments and value added tax corresponding to his interest in the property held in co-ownership. An invoice issued to the co-owning spouses without distinguishing between them and without reference to such apportionment is sufficient for that purpose.*

([1]) OJ C 70 of 22.3.2003.