

at the Court on 28 October 2002, 12 November 2002 and 8 November 2002 respectively, in the criminal proceedings against Silvio Berlusconi (C-387/02), Sergio Adelchi (C-391/02), Marcello Dell'Utri and Others (C-403/02) — the Court (Grand Chamber), composed of V. Skouris, President of the Chamber, P. Jann, C.W.A. Timmermans (Rapporteur), A. Rosas and A. Borg Barthet, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr, M. Ilešič, J. Malenovský, U. Lohmus and E. Levits, Judges; J. Kokott, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 3 May 2005, the operative part of which is as follows:

In a situation such as that in issue in the main proceedings, First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, cannot be relied on as such against accused persons by the authorities of a Member State within the context of criminal proceedings, in view of the fact that a directive cannot, of itself and independently of national legislation adopted by a Member State for its implementation, have the effect of determining or increasing the criminal liability of those accused persons.

(¹) OJ C 19 of 25.01.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 28 April 2005

in Case C-104/03: Reference for a preliminary ruling from the Gerechtshof te Amsterdam St. Paul Dairy Industries NV v Unibel Exser BVBA (¹)

(Brussels Convention — Provisional, including protective, measures — Hearing of witnesses)

(2005/C 171/03)

(Language of the case: Dutch)

In Case C-104/03: Reference for a preliminary ruling pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters from the Gerechtshof te Amsterdam (Netherlands), made by decision of 12 December 2002, received at the Court on 6 March 2003, in the proceedings

between **St. Paul Dairy Industries NV and Unibel Exser BVBA** — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, N. Colneric, J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges; D. Ruiz-Jarabo Colomer, Advocate General, M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 28 April 2005, the operative part of which is as follows:

Article 24 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as meaning that a measure ordering the hearing of a witness for the purpose of enabling the applicant to decide whether to bring a case, determine whether it would be well founded and assess the relevance of evidence which might be adduced in that regard is not covered by the notion of 'provisional, including protective, measures'.

(¹) JO C 101, 26.04.2003.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 28 April 2005

in Case C-410/03: Commission of the European Communities v Italian Republic (¹)

(Failure of a Member State to fulfil obligations — Directive 1999/95/EC — Seafarers' hours of work on board ships — Failure to transpose within the prescribed period)

(2005/C 171/04)

(Language of the case: Italian)

In Case C-410/03, Commission of the European Communities (Agents: K. Banks and K. Simonsson) v Italian Republic (Agent: I.M. Braguglia, assisted by A. Cingolo) — action under Article 226 EC for failure to fulfil obligations, brought on 1 October 2003 — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 28 April 2005, in which it:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 3 to 7, 8(2) and 9 of Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, the Italian Republic has failed to fulfil its obligations under that directive;
2. Dismisses the remainder of the action;
3. Orders the Italian Republic to pay the costs.

(¹) OJ C 304 of 13.12.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 28 April 2005

in Case C-31/04: Commission of the European Communities v Kingdom of Spain (¹)

(Failure by a Member State to fulfil its obligations — Directive 2001/29/EC — Harmonisation of certain aspects of copyright and related rights in the information society — Failure to transpose within the period prescribed)

(2005/C 171/05)

(Language of the case: Spanish)

In Case C-31/04: Commission of the European Communities (Agents: K. Banks and F. Castillo de la Torre) v Kingdom of Spain (Agent: M. Muñoz Pérez) — Action for failure to fulfil obligations under Article 226 EC, brought on 29 March 2004 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, A. La Pergola, J. Malenovský (Rapporteur) and A. Ó. Caoimh, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 28 April 2005, in which it:

1. Declares that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, the Kingdom of Spain has failed to fulfil its obligations under that directive
2. Orders the Kingdom of Spain to pay the costs

(¹) OJ C 71 of 20.03.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 12 May 2005

in Case C-42/04: Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven in Maatschap J. B. en R. A. M. Elshof v Minister van Landbouw, Natuur en Voedselkwaliteit (¹)

(Foot and mouth disease — Regulation (EC) No 1046/2001 — Grant of aid for the delivery of animals destined for rendering — Upper limit of aid determined on the basis of the average weight of animals per batch)

(2005/C 171/06)

(Language of the case: Dutch)

In Case C-42/04: reference for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 23 January 2004, received at the Court on 3 February 2004, in the proceedings between Maatschap J. B. en R. A. M. Elshof and Minister van Landbouw, Natuur en Voedselkwaliteit — the Court (Fourth Chamber), composed of K. Lenaerts (Rapporteur), President of the Chamber, N. Colneric and E. Levits, Judges; M. Poiares Maduro, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 12 May 2005, the operative part of which is as follows: