

## ORDER OF THE COURT

(Fourth Chamber)

of 26 April 2005

in Case C-149/04: Reference for a preliminary ruling from the Corte suprema di cassazione in Ugo Fava v Comune di Carrara <sup>(1)</sup>

*(Tax levied on marble extracted within municipal boundaries by reason of its transport out of the municipality — Articles 92(1) and 104(3) of the Rules of Procedure — Partial inadmissibility — Question identical to one upon which the Court has already ruled)*

(2005/C 182/37)

(Language of the case: Italian)

In Case C-149/04: reference for a preliminary ruling under Article 234 EC from the Corte suprema di cassazione (Supreme Court of Cassation) (Italy), made by decision of 27 October 2003, received at the Court on 23 March 2004, in the proceedings between Ugo Fava (administrator of the insolvent company, IMEG Srl) and Comune di Carrara — the Court (Fourth Chamber), composed of K. Lenaerts, (Rapporteur), President of the Chamber, N. Colneric and J.N. Cunha Rodrigues, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, made an order on 26 April 2005, the operative part of which is as follows:

1. The reference for a preliminary ruling is inadmissible in so far as it relates to the interpretation of Articles 81 EC, 85 EC and 86 EC;
2. A proportional tax on goods by weight, levied in one municipality of a Member State only on a category of goods by reason of their transport out of the municipality, is a charge having equivalent effect to a customs duty on exports within the meaning of Article 23 EC, notwithstanding the fact that the tax also applies to those goods whose final destination is within the Member State concerned;
3. Article 23 EC may not be relied upon in support of applications for the restitution of sums levied as the tax on marble prior to

16 July 1992 except by those applicants who had commenced legal proceedings or made an equivalent complaint prior to that date.

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<sup>(1)</sup> OJ 2004 C 106 of 30.04.2004.

## ORDER OF THE COURT

(Sixth Chamber)

of 7 April 2005

in Case C-160/04 P Gustaaf Van Dyck v Commission of the European Communities <sup>(1)</sup>

*(Appeal — Officials — Lists for promotion — Act adversely affecting an official — Preparatory acts)*

(2005/C 182/38)

(Language of the case: Dutch)

In Case C-160/04 P: appeal under Article 56 of the Statute of the Court of Justice, lodged at the Court on 19 March 2004 by **Gustaaf Van Dyck**, an official of the Commission of the European Communities, residing in Wuustwezel (Belgium) (lawyer: A. Bywater, assisted by W. Mertens), the other party to the proceedings being the **Commission of the European Communities** (Agents: F. Clotuche-Duvieusart and A. Weimar) — the Court (Sixth Chamber), composed of A. Borg Barthet, President of the Chamber, A. Ó Caoimh and U. Löhmus (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, made an order on 7 April 2005, the operative part of which is as follows:

1. The appeal is dismissed;
2. Mr Van Dyck shall pay the costs.

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<sup>(1)</sup> OJ C 106 of 30.4.2004.