

- (1) Is the Combined Nomenclature (CN) in the version of Annex I to Regulation (EC) No 1789/2003⁽¹⁾ of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87⁽²⁾ on the tariff and statistical nomenclature and the Common Customs Tariff (CCT) to be interpreted as meaning that pizza cheese (mozzarella) that was stored after its manufacture for one to two weeks at 2 to 4° C is to be classified under subheading 0406 10 CN?
- (2) In the absence of Community rules, may the examination of whether cheese is fresh cheese within the meaning of subheading 0406 10 CN be carried out on the basis of organoleptic features?

⁽¹⁾ OJ 2003 L 281, p. 1.

⁽²⁾ OJ 1987 L 256, p. 1.

in so far as it lays down that lending is not subject to any authorisation or remuneration after at least 18 months from the first act of the distribution period, or after at least 24 months from the realisation of those works if the right of distribution is not exercised.

The Commission submits that in exempting all State book and record libraries from the payment of remuneration, that article of Law No 633/41 simultaneously infringes Article 5(2) and Article 5(3) of Directive 92/100/EEC. By not complying with the conditions for the grant of a derogation from exclusive lending right for public institutions, that provision also infringes Article 1 of that directive.

⁽¹⁾ OJ 1992 L 346, p. 61 of 27.11.1992.

Action brought on 4 May 2005 by the Commission of the European Communities against the Italian Republic

(Case C-198/05)

(2005/C 182/48)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 4 May 2005 by the Commission of the European Communities, represented by W. Wils and L. Pignataro, acting as Agents.

The applicant claims that the Court should:

1. declare that the Italian Republic has failed to fulfil its obligations under Articles 1 and 5 of Directive 92/100/EEC of 19 November 1992⁽¹⁾ in that all the categories of establishments which are accessible to the public within the meaning of the directive are exempt from public lending right.
2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission notes that Article 69(1)(b) of Law No 633/41 exempts all State book and record libraries from lending right

Reference for a preliminary ruling from the Cour d'appel de Bruxelles by judgment of that court of 28 April 2005 in European Community v Belgian State

(Case C-199/05)

(2005/C 182/49)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'appel de Bruxelles (Court of Appeal, Brussels) of 28 April 2005, received at the Court Registry on 9 May 2005, for a preliminary ruling in the proceedings between the European Community and the Belgian State on the following questions:

1. Must the second paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities, which provides that the governments of the Member States shall take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes, be interpreted as meaning that a proportional duty levied in respect of decisions of courts and tribunals, given in all matters, concerning orders to pay amounts of money or securities and calculation of amounts of money or securities payable falls within its scope?

2. Must the third paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities, which provides that no exemption shall be granted in respect of a mere charge for a public utility service, be interpreted as meaning that the tax charged at the outcome of proceedings to the losing party, who is ordered to pay a specified amount, constitutes a mere charge for a public utility service?

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division, by order of that court of 18 March 2005 in *The Test Claimants in the CFC and Dividend Group Litigation v Commissioners of Inland Revenue*

(Case C-201/05)

(2005/C 182/50)

(Language of the case: English)

Reference has been made to the Court of Justice of the European Communities by order of the High Court of Justice (England and Wales), Chancery Division of 18 March 2005, received at the Court Registry on 6 May 2005, for a preliminary ruling in the proceedings between *The Test Claimants in the CFC and Dividend Group Litigation* and *Commissioners of Inland Revenue* on the following questions:

1. Is it contrary to Articles 43 or 56 of the EC Treaty for a Member State to keep in force and apply measures which:
 - (i) exempt from corporation tax dividends received by a company resident in that Member State ('the resident company') from other resident companies; but which
 - (ii) subject to corporation tax dividends received by the resident company from a company resident in another Member State and in particular a company controlled by it resident in another Member State and subject to a lower level of taxation there ('the controlled company'), after giving double taxation relief for any withholding tax payable on the dividend and for the underlying tax paid by the controlled company on its profits?
2. Do Articles 43, 49 or 56 of the EC Treaty preclude national tax legislation such as that in issue in the main proceedings under which, prior to 1st July 1997:

(i) certain dividends received by an insurance company resident in a Member State from a company resident in another Member State ('the non-resident company') were chargeable to corporation tax; but

(ii) the resident insurance company was allowed to elect that corresponding dividends received from a company resident in the same Member State should not be chargeable to corporation tax, with the further consequence that a company which had made the election was unable to claim payment of the tax credit to which it would otherwise have been entitled?

3. Do Articles 43, 49 or 56 of the EC Treaty preclude national tax legislation in a Member State such as that in issue in the main proceedings which:

a) provides in specified circumstances for the imposition of a charge to tax upon the resident company in respect of the profits of a controlled company being a company resident in another Member State as defined in Question 1 (ii) above; and

b) imposes certain compliance requirements where the resident company does not seek or is not able to claim any exemption and pays tax in respect of the profits of that controlled company; and

c) imposes further compliance requirements where the resident company seeks to obtain exemption from that tax?

4. Would the answer to Questions 1, 2 or 3 be different if the controlled company (in Questions 1 and 3) or the non-resident company (in Question 2) was resident in a third country?

5. Where, prior to 31 December 1993, a Member State adopted the measures outlined in Questions 1, 2 and 3, and after that date amended those measures in the manner described in Part C of this Schedule, and if those measures as amended constitute restrictions prohibited by Article 56 of the EC Treaty, are those restrictions to be taken to be restrictions which did not exist on the 31 December 1993 for the purposes of Article 57 EC?

6. In the event that any of the measures referred to in Questions 1, 2 and 3 are contrary to the Community provisions referred to, then in circumstances where the resident company and/or the controlled company make any of the following claims: