

1. Does Community law require the courts of their own motion to conduct an examination, that is to say an examination of grounds which are outside the terms of the dispute but are based on Directive 85/511/EEC? ⁽¹⁾
2. If the answer to Question 1 is affirmative, does the obligation on Member States under the first indent of Article 11(1) of Directive 85/511/EEC, read in conjunction with the second indent of Article 13(1) thereof, to ensure that laboratory testing to detect the presence of FMD is carried out by a laboratory listed in Annex B to Directive 85/511/EEC have direct effect?
3. (a) Must Article 11(1) of Directive 85/511/EEC be interpreted as meaning that legal consequences must be attached to the fact that the presence of FMD is found by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

(b) If the answer to Question 3(a) is in the affirmative:

Is the purpose of Article 11(1) of Directive 85/511/EEC to protect the interests of individuals, such as the appellants in the main proceedings? If not, can individuals, such as the appellants in the main proceedings, plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?

(c) If the answer to Question 3(b) means that individuals can rely on Article 11(1) of Directive 85/511/EEC:

What legal consequences must be attached to a finding of the presence of FMD by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

4. Must Annex B to Directive 85/511/EEC be interpreted, having regard to Articles 11 and 13 thereof, as meaning that the mention in Annex B to Directive 85/511/EEC of 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.?
5. If it follows from the above answers that the presence of FMD can be found by a laboratory which is not listed in Annex B to Directive 85/511/EEC or that Annex B to Directive 85/511/EEC must be interpreted as meaning that the mention of the 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.:

Must Directive 85/511/EEC be interpreted as providing that the national administrative authority authorised to adopt decisions is bound by the outcome of an examination by a laboratory which is listed in Annex B to Directive 85/511/EEC or — if the answer to Question 2a means that the administrative authority may base its FMD control

measures also on results obtained by a laboratory which is not listed in Annex B to Directive 85/511/EEC — by the results of the latter laboratory, or does the determination of final authority in that regard fall within the procedural autonomy of the Member State and must the court before which the main proceedings are pending examine whether the rules in that respect apply irrespective of whether the laboratory examination is carried out by virtue of a Community or national legal obligation and of whether or not the application of the provisions of national procedural law renders the implementation of the Community rules extremely difficult or practically impossible?

6. If the answer to Question 5 means that the issue of whether national authorities are bound by the laboratory result is governed by Directive 85/511/EEC:

Are the national authorities bound unconditionally by the result of an FMD examination carried out by a laboratory? If not, what margin of discretion does Directive 85/511/EEC leave these national authorities?

⁽¹⁾ Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11).

Reference for a preliminary ruling from the Commissione Tributaria di Primo Grado di Trento, by order of that court of 21 March 2005 in Stradasfalti Srl v Agenzia Entrate Ufficio Trento

(Case C-228/05)

(2005/C 193/25)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria di Primo Grado di Trento of 21 March 2005 received at the Court Registry on 24 May 2005, for a preliminary ruling in the proceedings between Stradasfalti Srl and Agenzia Entrate Ufficio Trento on the following questions:

1. Is the first sentence of Article 17(7) of Sixth Council Directive 77/388/EEC of 17 May 1977⁽¹⁾, in relation to paragraph 2 of that article, on the harmonisation of the laws of the Member States on turnover taxes, to be interpreted as:

(a) precluding from being treated as 'consultation of the VAT Committee', for the purposes of Article 29 of that directive, the mere notification by a Member State of the adoption of a rule of national law, like the present Article 19a(1)(c) and (d) of Presidential Decree No 633/1972, as subsequently extended, which restricts the right of VAT deduction in respect of the use and maintenance of goods under Article 17(2), on the basis that the VAT Committee has merely taken notice of the adoption of that rule;

(b) also precluding from being treated as a measure falling within its scope any restriction whatsoever of the right to deduct VAT connected to the purchase, use and maintenance of the goods referred to in (a) introduced before the consultation of the VAT Committee and maintained in force by means of various legislative extensions adopted in unbroken succession for more than 25 years;

(c) if the answer to 1(b) is in the affirmative, the Court is asked to provide guidelines for determining the maximum period, if any, for such extensions on grounds of cyclical economic reasons referred to in Article 17(7) of the Sixth Directive, or else to state whether the failure to observe the temporary nature of the derogations (repeated over time) confers on the tax payer the right to deduct.

2. If the requirements and conditions for the procedure under Article 17(7) referred to above have not been complied with, the Court of Justice is asked to state whether Article 17(2) of that directive is to be interpreted as precluding a rule of national law or an administrative practice adopted by a Member State after the entry into force of the Sixth Directive (1 January 1979 for Italy) which, objectively and without limitation in time, restricts VAT deduction in respect of the purchase, use and maintenance of certain motor vehicles.

⁽¹⁾ OJ L 145 of 13/06/1997 p. 1.

Reference for a preliminary ruling from the Korkein hallinto-oikeus by order of that court of 23 May 2005 in the proceedings brought by Oy Esab

(Case C-231/05)

(2005/C 193/26)

(Language of the case: Finnish)

Reference has been made to the Court of Justice of the European Communities by order of the Korkein hallinto-oikeus of 23 May 2005, received at the Court Registry on 25 May 2005, for a preliminary ruling in the proceedings brought by Oy Esab on the following question:

Are Articles 43 and 56 of the Treaty establishing the European Communities, having regard to Article 58 of the Treaty and Council Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States,⁽¹⁾ to be interpreted as precluding a system such as that of the Finnish group subsidy legislation in which a condition for the deductibility in taxation of a group subsidy is that both the donor and the donee of the group subsidy are companies resident in Finland?

⁽¹⁾ 23 July 1990, OJ L 225 of 20.8.1990, p. 6.

Action brought on 30 May 2005 by Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-236/05)

(2005/C 193/27)

(Language of the case: English)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 30 May 2005 by the Commission of the European Communities, represented by Karen Banks, acting as Agent, with an address for service in Luxembourg.