

Is Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) to be interpreted as meaning that a seller of goods domiciled in one Member State who, as agreed, has delivered the goods to the purchaser, domiciled in another Member State, at various places within that other Member State, can be sued by the purchaser regarding a claim under the contract relating to all the (part) deliveries — if need be, at the plaintiff's choice — before the court of one of those places (of performance)?

Artificial insemination services in France, in fact and in law, are subject to a monopoly in favour of 'centres de mise en place', which prevents providers of those services from other Member States from performing those activities, either by means of the right of establishment or by that of freedom to provide services. The French authorities put forward health considerations which, they submit, may justify adopting or retaining domestic measures so restrictive as to nullify those two Treaty freedoms for practical purposes. The Commission disputes the validity of those justifications, however, considering that, by their very nature, those restrictions are in any event disproportionate to the health and safety objectives put forward as the main grounds for them.

Action brought on 27 October 2005 by the Commission of the European Communities against the French Republic

(Case C-389/05)

(2006/C 10/23)

(Language of the case: French)

An action against the French Republic was brought before the Court of Justice of the European Communities on 27 October 2005 by the Commission of the European Communities, represented by A. Bordes, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by allowing only 'centres de mise en place' authorised in France to carry out activities related to the artificial insemination of cattle, the French Republic has failed to fulfil its obligations under Articles 43 and 49 EC;
2. order the French Republic to pay the costs.

Pleas in law and main arguments

Articles 43 and 49 EC respectively lay down the right of establishment and freedom to provide services. Article 46 also provides that the provisions of those Articles and the measures taken in pursuance thereof shall not prejudice the applicability of the domestic provisions of a Member State providing for special treatment for foreign nationals on grounds of public policy, public security, or public health. However, that latter provision is not at issue here, as the Commission's challenge does not concern special treatment for foreign nationals who wish to provide artificial insemination services in France, but the impossibility, in law and in fact, of Community nationals performing that activity because of the monopoly granted in France to 'insemination centres' by means of, inter alia, two provisions of French legislation.

Reference for a preliminary ruling from the Finanzgericht Hamburg by order of that court of 30 August 2005 in Jan de Nul N.V. v Hauptzollamt Oldenburg

(Case C-391/05)

(2006/C 10/24)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Hamburg of 30 August 2005, received at the Court Registry on 21 October 2005, for a preliminary ruling in the proceedings between Jan de Nul N.V. and Hauptzollamt Oldenburg on the following questions:

1. What interpretation should be given to the term 'Community waters' in the first paragraph of Article 8(1)(c) of Directive 92/81 in contrast to the term 'inland waterways' for the purposes of the first paragraph of Article 8(2)(b) of Directive 92/81 ⁽¹⁾?
2. Should the operation of a suction and holding vessel (so-called 'hopper dredger') in Community waters always be regarded as navigation within the meaning of the first paragraph of Article 8(1)(c) of Directive 92/81 or is it necessary to draw a distinction between the various forms of activity during the course of its use?

⁽¹⁾ OJ 1992 L 316, p. 12.