— Declare that Commission decision invalid, or in the alternative, refer the case back to the Court of First Instance for judgment;

— Order the Commission to bear the costs of the appeal.

Pleas in law and main arguments

Land Oberösterreich pleads that the Court of First Instance both infringed Community law and committed a procedural irregularity.

In relation to the examination of the plea in law alleging 'infringement of the Treaty' the contested judgment dealt only with the factual elements relating to the 'specific problem'; the remaining factual elements of Article 95(5) EC were not examined at all. However, the Court of First Instance also did not — in spite of extensive submissions made by the appellant which were supported by concrete figures — deal with the question of the specific problem in the detailed manner deserved given its importance to the outcome of the case. The Court of First Instance failed to take into account the fact that the specific problem in the unenforceability of traditional co-existence measures exists as a result of the distinctive small-scale structure of agriculture in Oberösterreich which has an unusually high proportion of biologically farmed areas. Failure to carry out an adequate assessment with the relevant information supplied constitutes, in the appellant's opinion, an infringement of the Court of First Instance's duty to give the reasons upon which its judgments are based, which in turn amounts to a procedural irregularity.

The Commission adopted its decision without giving Land Oberösterreich or the Republic of Austria the opportunity to comment on the single item of procedural evidence, namely the opinion of the European Food Safety Authority. In the contested judgment the Court of First Instance concluded that the Court of Justice's considerations in relation to Article 95(4) EC, by which it denied the validity of the basic principle of the adversarial procedure for the procedure under Article 95(4) EC, are simply transferable to the procedure under Article 95(5) EC. The appellant disagrees with that view of the law. The fact must not be overlooked that the judgments of the Court of Justice cited in the contested judgment were made on the basis of Article 100a of the EC Treaty, which was then in force and which did not yet differentiate between the retention of existing, and the introduction of new, provisions of the Member States. Land Oberösterreich also claims that the right to be heard is a fundamental principle of legal procedure the validity of which should not be restricted unnecessarily, even on grounds of procedural economy. The contested Commission decision ought to have been annulled for that reason alone.

([1]) OJ 2005 C 296 of 26.11.2005.
([2]) OJ 2003 L 230, p. 34.

Reference for a preliminary ruling from the Tribunal de Première Instance de Bruxelles by judgment of that court of 7 December 2005 in Crown Prosecutor — Parties claiming damages: L'Union des Dentistes et Stomatologistes de Belgique U.P:R. and Jean Totolidis v Ioannis Doulamis

(Case C-446/05)

(2006/C 48/30)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Première Instance de Bruxelles (Court of First Instance Brussels) of 7 December 2005, received at the Court Registry on 14 December 2005, for a preliminary ruling in the proceedings between the Crown Prosecutor — Parties claiming damages: L'Union des Dentistes et Stomatologistes de Belgique U.P.R. (The Belgian Association of Dentists and Stomatologists) and Jean Totolidis and Ioannis Doulamis on the following question:

Must Article 81 EC, read in conjunction with Article 3(1)(g) EC and the second paragraph of Article 10 EC, be interpreted as precluding a national law — in the present case the Law of 15 April 1958 on advertising in dental care matters — which prohibits (any person or) dental care providers, in the context of professional services or a dental surgery, from engaging in advertising of any kind, whether directly or indirectly, in the dental care sector?

Reference for a preliminary ruling from the Cour d'appel de Paris by judgment of that court of 18 November 2005 in Thomson Multimedia Sales Europe SA v Administration des Douanes et Droits Indirects

(Case C-447/05)

(2006/C 48/31)

(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 Paris (Paris Court of Appeal) of 18 November 2005, received at the Court Registry on 16 December 2005, for a preliminary ruling in the proceedings between Thomson Multimedia Sales Europe SA and Administration des Douanes et Droits Indirects on the following question:

'Is Annex 11 to Commission Regulation (EEC) No 2454/93 of 2 July 1993 ([1]) invalid as being contrary to Article 24 of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code ([2]) in that it has the result that a television receiver manufactured in Poland in the circumstances described in the proceedings is held to be of Korean origin?'

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, p. 1).

([2]) OJ L 302, p. 1.

Reference for a preliminary ruling from the Cour d'appel de Paris by judgment of that court of 18 November 2005 in Vestel France SA v Administration des Douanes et Droits Indirects

(Case C-448/05)

(2006/C 48/32)

(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 Paris (Paris Court of Appeal) of 18 November 2005, received at the Court Registry on 16 December 2005, for a preliminary ruling in the proceedings between Vestel France SA and Administration des Douanes et Droits Indirects on the following question:

'Is Annex 11 to Commission Regulation (EEC) No 2454/93 of 2 July 1993 ([1]) invalid as being contrary to Article 24 of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code ([2]) in that it has the result that a television receiver manufactured in Turkey in the circumstances described in the proceedings is held to be of Chinese origin?'

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, p. 1).

([2]) OJ L 302, p. 1.

Action brought on 19 December 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-452/05)

(2006/C 48/33)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 19 December 2005 by the Commission of the European Communities, represented by S. Pardo Quintillán and F. Simonetti, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, as it is not able to ensure that the minimum percentage of reduction of the overall load entering all treatment plants is at least 75 % for total phosphorus and at least 75 % for total nitrogen, the Grand Duchy of Luxembourg has failed to fulfil its obligations by reason of a misapplication of Article 5(4) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ([1]);

2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

Luxembourg stated in 1999 that, instead of applying more stringent treatment to all the treatment plants within its territory, it was choosing to rely on Article 5(4), which amounts to making an overall assessment of the level of reduction in nitrogen and phosphorus as regards all the agglomerations in Luxembourg.

However, according to the most recent information received from Luxembourg concerning the overall percentage of reduction of the load entering all treatment plants, the conditions for application of Article 5(4) have not been fulfilled.

Therefore, the Commission is obliged to conclude that the Luxembourg authorities have failed to establish that the minimum percentage of reduction of the overall load of nitrogen and phosphorus is at least 75 % as regards each of the two parameters; consequently, the conditions for application of Article 5(4) have not been satisfied.

([1]) OJ 1991 L 135, p. 40.