

## I

(Information)

## COURT OF JUSTICE

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**Judgment of the Court (Second Chamber) of 29 June 2006**  
**— Showa Denko KK v Commission of the European Communities**

(Case C-289/04 P) <sup>(1)</sup>

*(Appeals — Competition — Agreements, decisions and concerted practices — Graphite electrodes — Article 81(1) EC — Fines — Guidelines on the method of setting fines — Leniency Notice — Principle of non bis in idem)*

(2006/C 237/01)

*Language of the case: English***Parties**

*Appellant:* Showa Denko KK (represented by: M. Dolmans and P. Werdmuller, advocaten, and J. Temple-Lang, Solicitor)

*Other parties to the proceedings:* Commission of the European Communities (represented by: P. Hellström and H. Gading, Agents), Tokai Carbon Co. Ltd, established in Tokyo, SGL Carbon AG, established in Wiesbaden (Germany), Nippon Carbon Co. Ltd, established in Tokyo, GrafTech International Ltd, formerly UCAR International Inc., established in Wilmington (United States), SEC Corp., established in Amagasaki (Japan), The Carbide/Graphite Group Inc., established in Pittsburgh (United States)

**Re:**

Appeal against the judgment of the Court of First Instance (Second Chamber) of 29 April 2004 in Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 Tokai Carbon Co. Ltd and Others v Commission annulling in part Commission Decision 2002/271/EC of 18 July 2001 relating to a proceeding under Article 81 of the EC Treaty (COMP/E-1/36.490 — Graphite electrodes) and reducing the amount of the fine imposed on the applicants

**Operative part of the judgment***The Court:*

1. Dismisses the appeal;

2. Orders Showa Denko KK to pay the costs.

<sup>(1)</sup> OJ C 239, 25.09.2004.

**Judgment of the Court (Fifth Chamber) of 15 June 2006 — Commission of the European Communities v Republic of Austria**

(Case C-262/05) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Directive 2001/19/EC — Mutual recognition of diplomas, certificates and other qualifications — Nurse, dentist, veterinary surgeon, midwife, architect, pharmacist and doctor — Failure to transpose within the period prescribed)*

(2006/C 237/02)

*Language of the case: German***Parties**

*Applicant:* Commission of the European Communities (represented by: A. Manville and H. Støvlbæk, Agents)

*Defendant:* Republic of Austria (represented by: E. Riedl, Agent)

**Re:**

Failure of a Member State to fulfil obligations — Failure to transpose, within the prescribed period, Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (OJ 2001 L 206, p. 1)

## Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor, the Republic of Austria has failed to fulfil its obligations under that directive;

2. Orders the Republic of Austria to pay the costs.

(<sup>1</sup>) OJ C 205, 20.08.2005.

**Action brought on 6 June 2006 — Commission of the European Communities v Federal Republic of Germany**

(Case C-253/06)

(2006/C 237/03)

*Language of the case: German*

## Parties

*Applicant:* Commission of the European Communities (represented by: F. Simonetti and B. Schima, acting as Agents)

*Defendant:* Federal Republic of Germany

## Forms of order sought

The applicant claims that the Court should:

— declare that, by not bringing into force the laws, regulations and administrative provisions necessary to implement Directive 2003/35/EC (<sup>1</sup>) of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, or by not

informing the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under Article 6 of that directive;

— order the Federal Republic of Germany to pay the costs of the proceedings.

## Pleas in law and main arguments

The period laid down for implementing the directive expired on 25 June 2005.

(<sup>1</sup>) OJ 2003 L 156, p. 17.

**Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 29 June 2006 — Finanzamt Hamburg-Am Tierpark v Burda Verlagsbeteiligungen GmbH**

(Case C-284/06)

(2006/C 237/04)

*Language of the case: German*

## Referring court

Bundesfinanzhof

## Parties to the main proceedings

*Appellant:* Finanzamt Hamburg-Am Tierpark

*Respondent:* Burda Verlagsbeteiligungen GmbH

## Questions referred

1. Is there withholding tax within the meaning of Article 5(1) of Council Directive 90/435/EEC (<sup>1</sup>) of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6, ..., now Article 5 as amended by Directive 2003/123/EC of 22 December 2003, OJ 2004 L 7, p. 41) in the case in which national law provides that, where profits are distributed by a subsidiary to its parent company, income and asset increases of the capital company are taxed which, under national law, would not be taxed if they remained with the subsidiary and were not distributed to the parent company?