

Pleas in law and main arguments

The appellant bases its appeal on a single plea, alleging infringement of Article 236 EC and of the conditions governing the liability of the Commission. The appellant essentially claims that the Court of First Instance wrongly interpreted the notion of loss of an 'opportunity' to fill a post as being a notion equivalent to the loss of a 'guarantee' to fill a post — thus failing to have regard to the discretion traditionally accorded to the Commission in recruitment — and, consequently, used an erroneous method of calculation of the sum payable by the Commission to compensate for the loss of an opportunity to be recruited resulting from an unlawful decision of the Commission. Only actual and certain damage can give rise to compensation. However, in the present case, the only actual and certain damage caused to the interested party is that which results from the Commission's failure to consider her candidature, and not that which results from a hypothetical loss of earnings.

Moreover, the Commission notes that the criterion of loss of earnings used by the Court of First Instance to calculate the damage to be compensated is itself uncertain because if the interested party had, during the period in question, taken employment outside the Community Institutions which was better paid than the post which she could have obtained in the Commission, there would have been no loss of earnings to compensate. The method used by the Court of First Instance may therefore also lead to discrimination between candidates for the same recruitment on the basis of whether or not they occupy a post that is better paid than that to which they had the opportunity of being recruited.

Action brought on 24 August 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-351/06)

(2006/C 249/12)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: L. Pignataro-Nolin and I. Kaufmann-Bühler, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The Court is asked to:

- declare that, by not adopting the laws, regulations and administrative provisions necessary to transpose Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States

relating to the advertising and sponsorship of tobacco products ⁽¹⁾ or by not informing the Commission of such provisions, the Federal Republic of Germany has failed to fulfil its obligations under Article 10 of that directive;

- order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 31 July 2005.

⁽¹⁾ OJ 2003 L 152, p. 16

Action brought on 25 August 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-354/06)

(2006/C 249/13)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J. Hottiaux, F. Simonetti, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

By its action, the applicant claims that the Court should:

- declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Directive 2003/35/EC 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 ⁽¹⁾, and, in any event, by failing to notify such provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive;
- order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period within which Directive 2003/35/EC had to be transposed expired on 25 June 2005.

⁽¹⁾ OJ L 156, p. 17