

- 3) Articles 43 EC and 56 EC do not preclude legislation of a Member State which provides that any relief for tax paid abroad made available to a resident company which has received foreign-sourced dividends is to reduce the amount of corporation tax against which that company may offset advance corporation tax.

Article 43 EC precludes legislation of a Member State which allows a resident company to surrender to resident subsidiaries the amount of advance corporation tax paid which cannot be offset against the liability of that company to corporation tax for the current accounting period or previous or subsequent accounting periods, so that those subsidiaries may offset it against their liability to corporation tax, but does not allow a resident company to surrender such an amount to non-resident subsidiaries where the latter are taxable in that Member State on the profits which they made there.

- 4) Articles 43 EC and 56 EC preclude legislation of a Member State which, while exempting from advance corporation tax resident companies paying dividends to their shareholders which have their origin in nationally-sourced dividends received by them, allows resident companies distributing dividends to their shareholders which have their origin in foreign-sourced dividends received by them to elect to be taxed under a regime which permits them to recover the advance corporation tax paid but, first, obliges those companies to pay that advance corporation tax and subsequently to claim repayment and, secondly, does not provide a tax credit for their shareholders, whereas those shareholders would have received such a tax credit in the case of a distribution made by a resident company which had its origin in nationally-sourced dividends.

- 5) Article 57(1) EC is to be interpreted as meaning that where, before 31 December 1993, a Member State has adopted legislation which contains restrictions on capital movements to or from non-member countries which are prohibited by Article 56 EC and, after that date, adopts measures which, while also constituting a restriction on such movements, are essentially identical to the previous legislation or do no more than restrict or abolish an obstacle to the exercise of the Community rights and freedoms arising under that previous legislation, Article 56 EC does not preclude the application of those measures to non-member countries when they apply to capital movements involving direct investment, including investment in real estate, establishment, the provision of financial services or the admission of securities to capital markets. Holdings in a company which are not acquired with a view to the establishment or maintenance of lasting and direct economic links between the shareholder and that company and do not allow the shareholder to participate effectively in the management of that company or in its control cannot, in this connection, be regarded as direct investments.

- 6) In the absence of Community legislation, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, including the classification of claims brought by injured parties before the national courts and tribunals. Those courts and tribunals are, however, obliged to ensure that individuals should have an effective legal remedy enabling them to obtain reimbursement of the tax unlawfully levied on them and the amounts paid to that Member State or withheld by it directly against that tax. As regards other loss or damage which a person may have sustained by reason of a breach of Community law for which a Member State is liable, the latter is under a duty to make reparation for the loss or damage caused to individuals in the conditions

set out in paragraph 51 of the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, but that does not preclude the State from being liable under less restrictive conditions, where national law so provides.

(¹) OJ C 6, 8.1.2005.

Judgment of the Court (Second Chamber) of 23 November 2006 — Commission of the European Communities v Italian Republic.

(Case C-486/04) (¹)

(Failure of a Member State to fulfil obligations — Assessment of the effects of certain projects on the environment — Waste recovery — Installation for the production of electricity by the incineration of combustible materials derived from waste and biomass in Massafra (Taranto) — Directives 75/442/EEC and 85/337/EEC)

(2006/C 331/09)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek, Agent, A. Capobianco and F. Louis, lawyers)

Defendant: Italian Republic (represented by: I.M. Braguglia, agent, M. Fiorilli and G. Fiengo, lawyers)

Re:

Failure of a Member State to fulfil obligations — Article 2(1) and Article 4(1), (2) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) — Installation for the production of electricity by the incineration of combustible material derived from waste and biomass at Massafra (Taranto)

Operative part of the judgment

The Court:

1. Declares that

— by exempting from the environmental impact assessment procedure the Massafra installation for the incineration of combustible materials derived from waste and biomass, with a capacity exceeding 100 tonnes per day, covered by point 10 of Annex I to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997,

- by adopting Article 3(1) of the Decree of the President of the Council of Ministers of 3 September 1999, entitled 'Policy and coordination measure amending and completing the earlier policy and coordination measure for the implementation of Article 40(1) of Law No 146 of 22 February 1994 concerning provisions relating to the assessment of environmental impact', amending Annex A(i) and (l) to the Decree of the President of the Republic of 12 April 1996, entitled 'Policy and coordination measure for the implementation of Article 40(1) of Law No 146 of 22 February 1994 concerning provisions relating to the assessment of environmental impact', allowing projects for the recovery of hazardous and non-hazardous waste with a capacity exceeding 100 tonnes per day covered by Annex I to Council Directive 85/337, as amended by Council Directive 97/11, to avoid the environmental impact assessment procedure provided for in Articles 2(1) and 4(1) of that directive, and
- by adopting Article 3(1) of the Decree of the President of the Council of Ministers of 3 September 1999, laying down, for the purposes of determining whether a project covered by Annex II to Directive 85/337, as amended by Directive 97/11, must be subject to an environmental impact assessment, a criterion which is inappropriate in that it may exclude projects which have a significant effect on the environment from that assessment,

the Italian Republic has failed to fulfil its obligations under Articles 2(1) and 4(1), (2) and (3) of that directive;

2. Orders the Italian Republic to pay the costs.

(¹) OJ C 31, 5.2.2005.

Judgment of the Court (Third Chamber) of 23 November 2006 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Staatssecretaris van Financiën v B.F. Joustra

(Case C-5/05) (¹)

(Tax provisions — Harmonisation of laws — Directive 92/12/EEC — Excise duties — Wine — Articles 7 to 10 — Determination of the Member State in which duties are chargeable — Acquisition by a private individual for his own use and that of other private individuals — Transport to another Member State by a transport undertaking — Arrangements applicable in the Member State of destination)

(2006/C 331/10)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: B.F. Joustra

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 7, 8 and 9 of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Wine purchased without the intention of making a profit in one Member State by nationals of another Member State and transported by an undertaking from that second Member State — Excise duty paid in the first Member State

Operative part of the judgment

Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 92/108/EEC of 14 December 1992, must be construed as meaning that where, as in the case in the main proceedings, a private individual who is not operating commercially or with a view to making a profit acquires in one Member State, for his own personal requirements and those of other private individuals, products subject to excise duty which have been released for consumption in that Member State and arranges for them to be transported to another Member State on his behalf by a transport company established in that other State, Article 7 of that Directive, and not Article 8 thereof, is applicable, with the result that excise duty is also to be levied in that other State. Under Article 7(6) of the Directive, the excise duty paid in the first State is, in such a case, to be reimbursed in accordance with Article 22 (3) of the Directive.

(¹) OJ C 69, 19.3.2005.

Judgment of the Court (Third Chamber) of 30 November 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-32/05) (¹)

(Failure of a Member State to fulfil obligations — Environment — Directive 2000/60/EC — Failure to notify implementing measures — Obligation to adopt framework legislation in national law — None — Incomplete implementation of or failure to implement Articles 2, 7(2) and 14)

(2006/C 331/11)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and J. Hottiaux, Agents)

Defendant: Grand Duchy of Luxembourg (represented by: S. Schreiner, Agent, and by P. Kinsch, avocat)