

The obligation to provide coverage constitutes an obstacle which is neither justified nor proportionate in relation to the aim pursued. Indeed, *'the concept of public policy may be relied upon in the event of a genuine and sufficiently serious threat to ... one of the fundamental interests of society'* and *'the public policy exception, like all derogations from a fundamental principle of the Treaty, must be interpreted restrictively'* (see Case C-348/96 *Criminal proceedings against Donatella Calfa* [1999] ECR I-11, paragraphs 21 and 23).

Furthermore, that restriction appears to be an inappropriate means of attaining the objective for which it was adopted, in that such a generalised obligation to provide coverage hampers the development and operability of specialised services within insurance undertakings, which would be better able to satisfy the needs of consumers properly and efficiently simply because of being so specialised.

Lastly, such a restriction goes beyond what is necessary in order to achieve the objective of maintaining public order or of protecting consumers, both in geographical terms — in that the problems relating to public order concern, according to the Italian authorities themselves, only *'specific geographical areas'* of the national territory — and in terms of content — in that insurance undertakings operating in Italy are required to offer coverage to any owner or driver of motor vehicles, regardless of the risk posed in practice by that owner or driver as regards liability for damage caused to third parties.

(¹) OJ 1992 L 228, p. 1.

Appeal brought on 21 December 2006 by Athinaiki Techniki AE against the order delivered by the Court of First Instance (Second Chamber) on 26 September 2006 in Case T-94/05 Athinaiki Techniki AE v Commission

(Case C-521/06 P)

(2007/C 42/26)

Language of the case: French

Parties

Appellant: Athinaiki Techniki AE (represented by: S.A. Pappas, lawyer)

Other parties to the proceedings: Commission of the European Communities, Athens Resort Casino AE Symmetochon

Form of order sought

The Court is asked to:

- annul the contested order;

- grant the forms of order sought at first instance;
- order the Commission to pay the costs.

Pleas in law and main arguments

The appellant relies on a single plea in support of its appeal, based on the error allegedly committed by Court of First Instance in its legal characterisation of the letter deciding to take no further action on its complaint. First, the decision taken by the Commission not to take any further action clearly assumes a final character in the light of the file; secondly, it is unambiguously apparent from the context in which the Commission ruled that it had indeed implicitly taken a reasoned decision on the classification of the State aid which was the subject of the complaint. Consequently, the Court of First Instance erred in law in finding that the contested letter could not be subject of an action and in dismissing the action as inadmissible.

Action brought on 22 December 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-522/06)

(2007/C 42/27)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro, B. Stromsky, Agents)

Defendant: Kingdom of Belgium

Form of order sought

The Court is asked to:

- Declare that, by failing to define the minimum qualification requirements for certain members of personnel working in recovery, recycling, reclamation and destruction of controlled substances in accordance with Article 16(5) of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (¹) and, in respect of the Walloon Region, by failing to take all precautionary measures practicable to prevent and minimise leakages of controlled substances and by failing to carry out annual checks to establish the presence or not of leakages in accordance with Article 17(1) of that regulation, the Kingdom of Belgium has failed to fulfil its obligations under Articles 16(5) and 17(1) of that regulation.
- Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant asserts that the Kingdom of Belgium, first, has failed to define the minimum qualification requirements for personnel responsible for recovery, recycling, reclamation and destruction of controlled substances referred to in Article 2 of the Regulation and contained in refrigeration, air-conditioning and heat pump equipment, fire protection systems and fire extinguishers — except, in respect of extinguishers containing halons, the Region of Brussels-Capital — and, secondly, in respect of the Walloon Region, has failed to take all precautionary measures practicable to prevent and minimise leakages of controlled substances and to carry out annual checks to establish the possible presence or not of such leakages.

⁽¹⁾ OJ 2000 L 244, p. 1.

Action brought on 22 December 2006 — Commission of the European Communities v Republic of Finland

(Case C-523/06)

(2007/C 42/28)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: M. Huttunen and K. Simonsson, acting as Agents)

Defendant: Republic of Finland

Form of order sought

- declare that, by failing to draw up and implement waste reception and handling plans in respect of all ports, the Republic of Finland has failed to fulfil its obligations under Articles 5(1) and 16(1) of Directive 2000/59/EC ⁽¹⁾ of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues;
- order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period for implementing the Directive expired on 28 December 2002.

⁽¹⁾ OJ L 332, p. 81.

Reference for a preliminary ruling from the Rechtbank van koophandel, Hasselt (Belgium) lodged on 22 December 2006 — NV De Nationale Loterij v BVBA Customer Service Agency

(Case C-525/06)

(2007/C 42/29)

Language of the case: Dutch

Referring court

Rechtbank van koophandel, Hasselt

Parties to the main proceedings

Applicant: NV De Nationale Loterij

Defendant: BVBA Customer Service Agency

Questions referred

1. Is Article 49 of the EC Treaty to be interpreted as meaning that restrictive national provisions, such as Article 37 of the Law of 19 April 2002, which obstruct the access to the market of an undertaking wishing to sell for profit group participation forms in Euro Millions, are still permitted having regard to the public interest (prevention of squandering through gaming), in the knowledge that:
 - (a) the Nationale Loterij, which acquired a statutory monopoly from the Belgian State and pays a monopoly rent for it and which has the objective of channelling man's inherent compulsion to gamble, regularly advertises participation in Euro Millions thereby in reality strengthening that compulsion;
 - (b) the regular advertising by Nationale Loterij and its sales methods have a foreclosure effect, in which the Nationale Loterij is induced to maximise turnover (financial reasons) rather than channel the citizens' inherent compulsion to gamble;
 - (c) less obstructive measures, such as restriction of possible stakes and winnings, would better achieve the objective pursued, namely the channelling of the inherent compulsion to gamble?
2. Is a restrictive national provision such as Article 37 of the Law of 19 April 2002, which prevents the access to the market of an undertaking intending to sell, for profit, group participation forms in Euro Millions, contrary to the freedom to provide services (Article 49 of the EC Treaty) where the defendant itself does not organise a lottery but in fact seeks to organise, for profit, merely participation as a group in Euro Millions via the Nationale Loterij's own participation forms?