

above all,

- where, according to the information available to the first Member State, when the driving licence was issued the holder of the driving licence had his normal residence in that Member State and not in the Member State which issued the driving licence, and
- where, according to the information available to the first Member State, it must be assumed, on the basis of objective and judicially verifiable facts, that the holder of the right to drive would not have had any possibility of lawfully acquiring a right to drive in the first Member State.

⁽¹⁾ OJ L 237, p. 1.

2. If so, is a third party who is affected by such concentrations of particulate matter PM₁₀ as could be detrimental to health entitled to have an action plan drawn up laying down the measures to be taken in the short term to ensure strict compliance with the nuisance limit value for particulate matter PM₁₀?
3. If the answer to Question 2 is in the negative, to what extent must the measures included in an action plan serve to reduce the risk of exceeding the limit value and to limit the duration of such an occurrence? Can an action plan be limited, on the principle of 'one step at a time', to measures which, while not guaranteeing compliance with the limit value, nevertheless contribute in the short term to improvements in ambient air quality?

⁽¹⁾ OJ L 296, p. 55.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 14 May 2007 — Dieter Janecek v Freistaat Bayern

(Case C-237/07)

(2007/C 183/29)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Dieter Janecek

Defendant: Freistaat Bayern

Questions referred

1. Is Article 7(3) of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management ⁽¹⁾ to be interpreted as meaning that a third party whose health is impaired is entitled to the preparation of an action plan even if, irrespective of any action plan, he is in a position to enforce his right to avoid any detriment to his health as a result of the nuisance limit value for particulate matter PM₁₀ being exceeded, by bringing an action for intervention by the public authority?

Appeal brought on 14 May 2007 by Derya Beyatli against the order of the Court of First Instance (Fifth Chamber) delivered on 5 March 2007 in Case T-455/04: Derya Beyatli and Armagan Candan v Commission of the European Communities

(Case C-238/07 P)

(2007/C 183/30)

Language of the case: English

Parties

Appellant: Derya Beyatli (represented by: A. Demetriades, Δικηγόρος)

Other party: Commission of the European Communities

Form of order sought

The applicant claim that the Court should:

- set aside the contested Order
- annul the Respondent's decision of 5 May 2004
- order the Respondent to pay the costs of this appeal

Pleas in law and main arguments

The appellant maintains that the contested order should be set aside on the following grounds:

The Court of First Instance erred in law in failing to seek out evidence by means of measures of instruction or inquiry for the opening of the archives of not only EPSO but also of the European Community Representation in Cyprus and/or the Commission in general;

As a result of the CFI's omission, the Respondents did not disclose all relevant correspondence between the European Community Representation in Cyprus and/or the Commission and/or EPSO. Therefore the appellant's rights regarding a fair hearing were infringed during the proceedings before the CFI.

Action brought on 22 May 2007 — Commission of the European Communities v Kingdom of Sweden

(Case C-246/07)

(2007/C 183/31)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: G. Valero Jordana and C. Tufvesson, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by proposing unilaterally that a substance, PFOS (perfluorooctane sulphate), be added to Annex A to the Stockholm Convention on persistent organic pollutants, the Kingdom of Sweden has failed to fulfil its obligations under Article 10 EC and Article 300(1) EC;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

Sweden has proposed unilaterally that a substance, PFOS (perfluorooctane sulphate), be added to Annex A to the Stockholm Convention on persistent organic pollutants.

The Commission claims that Sweden's unilateral proposal of PFOS meant that the EC's international representation was

divided. Sweden acted unilaterally with regard to PFOS despite the fact that Sweden was aware that the Community was engaged in drafting legislation which included that substance. Sweden's action meant that the Community and Member States could not jointly present proposals for additions to the Stockholm Convention. Thus Sweden has failed to fulfil its obligations under Articles 10 EC and 300(1) EC.

Action brought on 23 May 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-249/07)

(2007/C 183/32)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and S.B. Noë, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by introducing a system of prior authorisation for oysters and mussels that come lawfully from other Member States, belong to species indigenous to the Netherlands and are intended to be planted in Netherlands coastal waters, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 and 30 EC;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Netherlands legislation prohibiting the planting, without prior authorisation, of oysters and mussels originating from other Member States impedes intra-Community trade and market access for oysters and mussels from other Member States.

This national rule cannot be justified.