

In light of the Court's case-law (Case C-463/00 *Commission v Spain* [2003] ECR I-4581; Case C-483/99 *Commission v France* [2002] ECR I-4781; Case C-503/99 *Commission v Belgium* [2002] ECR I-4809, and Joined Cases C-282/04 and C-293/04 *Commission v Netherlands* [2006] ECR I-9141), the Commission considers therefore that the legislation in question goes beyond what is necessary in order to safeguard the public interests provided for by Article 1.2 of the Decree of 10 June 2004 and that it is contrary to both Article 56 EC and Article 43 EC. In the Commission's view, for the sectors thus regulated, such as energy, gas or telecommunications, the aim of protecting the State's vital interests may be attained by adopting less restrictive measures regulating those activities, such as Directive 2003/54/EC ⁽¹⁾ and Directive 2003/55/EC ⁽²⁾ or Directive 2002/21/EC ⁽³⁾ and Directives 2002/19/EC ⁽⁴⁾, 2002/20/EC ⁽⁵⁾, 2002/22/CE ⁽⁶⁾ and 2002/58/EC ⁽⁷⁾. It is the Commission's opinion, furthermore, that those acts guarantee the safeguarding of national minimum provisions and that there is no causal link between the need to ensure power supplies, the provision of public services and the supervision of the ownership structure or of the management of the undertaking.

⁽¹⁾ OJ L 176, p. 37.

⁽²⁾ OJ L 176, p. 57.

⁽³⁾ OJ L 108, p. 33.

⁽⁴⁾ OJ L 108, p. 7.

⁽⁵⁾ OJ L 108, p. 21.

⁽⁶⁾ OJ L 108, p. 51.

⁽⁷⁾ OJ L 201, p. 37.

Action brought on 16 July 2007 — Commission of the European Communities v Hellenic Republic

(Case C-331/07)

(2007/C 247/06)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: E. Tserepa-Lacombe and F. Erlbacher)

Defendant: Hellenic Republic

Form of order sought

— a declaration that, by not having adopted all the measures necessary to remedy the serious shortage of staff in the services responsible for veterinary controls in Greece, which is likely to undermine the correct and effective application

of the Community veterinary legislation, the Hellenic Republic has failed to fulfil its obligations under that legislation

— an order that the Hellenic Republic pay the costs.

Pleas in law and main arguments

By this action, the Commission asks the Court to find that by not having adopted the legal and administrative measures necessary first to comply with the obligation laid down by Article 4(2) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1 as amended in OJ 2004 L 191, p. 1) ('Regulation 882/2004') and the obligation to have a sufficient number of properly qualified and experienced staff to be able effectively to carry out the official controls, and secondly to comply with the obligation laid down by the provisions of the Community veterinary legislation relating to the financing of the staff necessary to carry out the prescribed veterinary controls, the Hellenic Republic has failed to fulfil its obligations under that legislation.

The Commission states that the Community veterinary legislation requires Member States to ensure that there are carried out a substantial number of checks and controls relating to the application of the prescribed conditions and requirements. Thus, certain provisions, in particular Article 4(2)(c) of Regulation 882/2004, lay down that Member States must have a sufficient number of properly qualified and experienced staff to be able to carry out the veterinary controls. Further, many of those provisions either expressly provide that certain veterinary controls — the procedures for implementation of which are more or less detailed — must be carried out, or define the conditions and specifications which presuppose the existence of veterinary controls.

However, relying on a large number of inspection reports submitted by the Food and Veterinary Office (FVO) of the Commission, the Commission states that on expiry of the period specified in the reasoned opinion and beyond that date, and despite certain efforts of the Greek authorities, the Hellenic Republic has not adopted all the measures necessary to remedy the failings for which it has been criticised. Since 1998, the FVO has made a large number of inspection visits to Greece, and has found a serious shortage of staff in the services responsible for carrying out the official controls prescribed by the Community legislation, at all levels of administration. The shortage discovered was such that, according to the Commission experts, the official controls which are essential to the effective application of the Community legislation relating to animal protection could not be carried out, the programmes to combat and eradicate animal diseases have not been completed, and the rules relating to animal welfare have not been complied with.

The majority of the recommendations addressed to the Greek authorities have been implemented either not at all or inadequately. Further, the inspection reports disclose a very worrying picture of the official controls carried out in Greece.

Reference for a preliminary ruling from the Verwaltungsgericht Hannover (Germany) lodged on 19 July 2007 — Kabel Deutschland Vertrieb und Service GmbH & Co. KG v Niedersächsische Landesmedienanstalt für privaten Rundfunk

(Case C-336/07)

(2007/C 247/07)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Kabel Deutschland Vertrieb und Service GmbH & Co. KG

Defendant: Niedersächsische Landesmedienanstalt für privaten Rundfunk

Interveners: Norddeutscher Rundfunk, Hamburg, and 39 others

Questions referred

1. Is a provision like Paragraph 37(1) of the Niedersächsisches Mediengesetz (Lower Saxony Law on the Media) compatible with Article 31(1) of the Universal Service Directive 2002/22/EC if a cable network operator is forced to provide access, on more than half of the channels permanently usable for analogue broadcasting which are available on its networks, to programmes which — although they do not cover the whole of the Land of Lower Saxony — are already being broadcast terrestrially according to the DVB-T standard?
2. Is a provision like Paragraph 37(1) of the Niedersächsisches Mediengesetz compatible with Article 31(1) of the Universal

Service Directive 2002/22/EC if a cable network operator is forced to provide access to television programmes on its analogue cable networks even in those areas of the Land in which the cable end-user would in any event be in a position to receive the same television programmes terrestrially according to the DVB-T standard by means of a terrestrial antenna and a decoder?

3. Are 'television ... services' within the meaning of the first sentence of Article 31(1) of the Universal Service Directive 2002/22/EC to be interpreted as including providers of media services or telemedia, for example teleshopping?
4. Is a provision like Paragraph 37(2) of the Niedersächsisches Mediengesetz compatible with Article 31(1) of the Universal Service Directive 2002/22/EC if, in the event of a shortage of channels, the competent national authority has to establish an order of priority of applicants which results in full use of the channels available to the cable network operator?

Reference for a preliminary ruling from the Corte d'Appello di Torino (Italy) lodged on 25 July 2007 — Bavaria N.V. and Bavaria Italia Srl v Bayerischer Brauerbund e.V

(Case C-343/07)

(2007/C 247/08)

Language of the case: Italian

Referring court

Corte d'Appello di Torino

Parties to the main proceedings

Applicants: Bavaria N.V. and Bavaria Italia Srl

Defendant: Bayerischer Brauerbund e.V

Questions referred

1. Is Council Regulation (EC) No 1347/2001 ⁽¹⁾ of 28 June 2001 invalid, possibly as a consequence of the invalidity of other acts, in light of the following: