

**Operative part of the judgment**

1. Individuals who have been harmed by the incorrect transposition and application of Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat, as amended by Council Directive 91/497/EEC of 29 July 1991, and Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market may rely on the right to the free movement of goods in order to be able to render the State liable for the breach of Community law.
2. Where the Commission of the European Communities has brought infringement proceedings under Article 226 EC, Community law does not require the limitation period laid down by national legislation for a claim seeking reparation on account of State liability for breach of Community law to be interrupted or suspended during those proceedings.
3. Community law does not preclude the limitation period applicable to an action for damages against the State for incorrect transposition of a directive from beginning to run on the date on which the first injurious effects of the incorrect transposition have been produced and the further injurious effects thereof are foreseeable, even if that date is prior to the correct transposition of the directive.
4. Community law does not preclude the application of national legislation which lays down that an individual cannot obtain reparation for loss or damage which he has wilfully or negligently failed to avert by utilising a legal remedy, provided that utilisation of that remedy can reasonably be required of the injured party, a matter which is for the referring court to determine in light of all the circumstances of the main proceedings. The likelihood that a national court will make a reference for a preliminary ruling under Article 234 EC or the existence of infringement proceedings pending before the Court of Justice cannot, in itself, constitute a sufficient reason for concluding that it is not reasonable to have recourse to a legal remedy.

(<sup>1</sup>) OJ C 326, 30.12.2006.

**Judgment of the Court (Fourth Chamber) of 19 March 2009  
— Commission of the European Communities v Hellenic Republic**

(Case C-489/06) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Directives 93/36/EEC and 93/42/EEC — Public contracts — Procedures for the award of public supply contracts — Hospital supplies)*

(2009/C 113/04)

Language of the case: Greek

**Parties**

Applicant: Commission of the European Communities (represented by: M. Patakia and X. Lewis, acting as Agents)

Defendant: Hellenic Republic (represented by: D. Tsagkaraki and S. Chala, acting as Agents)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 8(2) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and of Articles 17 and 18 of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1) — Rejection of medical devices, in the context of calls for tenders for supplies to public hospitals in Greece, on grounds relating to the 'general sufficiency and safety of use' of the devices, notwithstanding their certification with the CE marking, and without, in any event, the procedure provided for in Directive 93/42/EEC being followed

**Operative part of the judgment**

The Court:

1. Declares that, by rejecting tenders in respect of medical devices bearing the CE certification marking, without the competent contracting authorities of Greek hospitals having complied with the procedure provided for in Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, the Hellenic Republic has failed to fulfil its obligations under Article 8(2) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, and Articles 17 and 18 of Directive 93/42, as amended by Regulation No 1882/2003;
2. Orders the Hellenic Republic to pay the costs.

(<sup>1</sup>) OJ C 326, 30.12.2006.

**Judgment of the Court (First Chamber) of 19 March 2009  
— Archer Daniels Midland Co. v Commission of the European Communities**

(Case C-510/06 P) (<sup>1</sup>)

*(Appeal — Competition — Agreements, decisions and concerted practices — Sodium gluconate market — Fines — Guidelines on the method of setting fines — Community competition policy — Equal treatment — Turnover to be taken into account — Attenuating circumstances)*

(2009/C 113/05)

Language of the case: English

**Parties**

Appellant: Archer Daniels Midland Co. (represented by: M. Garcia, Solicitor)

*Other party to the proceedings:* Commission of the European Communities (represented by: A. Bouquet and X. Lewis, Agents)

**Re:**

Appeal against the judgment of the Court of First Instance (Third Chamber) of 27 September 2006 in Case T-329/01 Archer Daniels Midland Co. v Commission, by which the Court dismissed an action for annulment of Articles 1 and 3 of Commission Decision C(2001)2931 final of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.756 — Sodium Gluconate) and, in the alternative, for a reduction in the fine imposed on the applicant

**Operative part of the judgment**

*The Court:*

1. Dismisses the appeal;
2. Orders Archer Daniels Midland Co. to pay the costs.

(<sup>1</sup>) OJ C 56, 10.3.2007.

**Judgment of the Court (Second Chamber) of 26 March 2009 — Selex Sistemi Integrati SpA. v Commission of the European Communities, European Organisation for the Safety of Air Navigation (Eurocontrol)**

(Case C-113/07 P) (<sup>1</sup>)

*(Appeals — Competition — Article 82 EC — Concept of an ‘undertaking’ — Economic activity — International organisation — Abuse of a dominant position)*

(2009/C 113/06)

*Language of the case: Italian*

**Parties**

*Appellant:* Selex Sistemi Integrati SpA (represented by: F. Sciaudone, R. Sciaudone and D. Fioretti, avvocati)

*Other parties to the proceedings:* Commission of the European Communities, European Organisation for the Safety of Air Navigation (Eurocontrol) (represented by: F. Montag and T. Wessely, Rechtsanwälte)

**Re:**

Appeal against the judgment of the Court of First Instance (Second Chamber) delivered on 12 December 2006 in Case T-155/04 *Selex Sistemi Integrati v Commission* by which that Court dismissed an application for annulment or amendment of the Commission’s decision of 12 February 2004 rejecting the complaint lodged by Selex concerning an alleged infringement by Eurocontrol of the provisions of the EC Treaty relating to competition

**Operative part of the judgment**

*The Court:*

1. Dismisses the appeal;
2. Orders Selex Sistemi Integrati SpA to pay, in addition to its own costs, those incurred by the Commission of the European Communities and half the costs incurred by the European Organisation for the Safety of Air Navigation (Eurocontrol);
3. Orders the European Organisation for the Safety of Air Navigation to pay half its own costs.

(<sup>1</sup>) OJ C 117, 26.5.2007.

**Judgment of the Court (Grand Chamber) of 10 March 2009 (reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria)) — Hartlauer Handelsgesellschaft mbH v Wiener Landesregierung, Oberösterreichische Landesregierung**

(Case C-169/07) (<sup>1</sup>)

*(Freedom of establishment — Social security — National health system financed by the State — System of benefits in kind — System of reimbursement of costs paid by the person insured — Authorisation to set up a private outpatient dental clinic — Criterion of assessment of the need to set up a health institution — Objective of maintaining a balanced high-quality medical or hospital service open to all — Objective of preventing a risk of serious harm to the financial balance of the social security system — Consistency — Proportionality)*

(2009/C 113/07)

*Language of the case: German*

**Referring court**

Verwaltungsgerichtshof

**Parties to the main proceedings**

*Applicant:* Hartlauer Handelsgesellschaft mbH

*Defendants:* Wiener Landesregierung, Oberösterreichische Landesregierung

**Re:**

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Articles 43 EC and 48 EC — Authorisation of a private hospital to provide outpatient dental medicine — Authorisation subject to an assessment of the needs of the market