

2. Regulation No 1347/2001 must be interpreted as having no adverse effects on the validity and the possibility of using, in one of the situations referred to in Article 13 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, pre-existing trade marks of third parties in which the word 'Bavaria' appears and which were registered in good faith before the date on which the application for registration of the protected geographical indication 'Bayerisches Bier' was lodged, provided that those marks are not affected by the grounds for invalidity or revocation as provided for by Article 3(1)(c) and (g) and Article 12(2)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.

(<sup>1</sup>) OJ C 247, 20.10.2007.

### **Judgment of the Court (Grand Chamber) of 7 July 2009 — Commission of the European Communities v Hellenic Republic**

(Case C-369/07) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — State aid — Measures for compliance with a judgment of the Court — Article 228 EC — Financial penalties — Penalty payment — Lump sum payment)*

(2009/C 205/05)

Language of the case: Greek

#### **Parties**

*Applicant:* Commission of the European Communities (represented by: E. Righini, I. Hadjiyiannis and D. Triantafyllou, Agents)

*Defendant:* Hellenic Republic (represented by: A. Samoni-Rantou and P. Mylonopoulos, Agents, and V. Christianos and P. Anestis, dikigoroi)

#### **Re:**

Failure of a Member State to fulfil obligations — Article 228 EC — Non-compliance with the judgment of the Court of 12 May 2005 in Case C-415/03 — Infringement of Articles 3 and 4 of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways (OJ 2003 L 132, p. 1) — Failure to take measures to recover aid incompatible with the Treaty and aid granted unlawfully — Application for imposition of a penalty payment

#### **Operative part of the judgment**

*The Court:*

1. Declares that, by failing to adopt, by the date on which the period prescribed in the reasoned opinion expired, the measures necessary to comply with the judgment in Case C-415/03 *Commission v Greece* concerning repayment of the aid found to be unlawful and incompatible with the common market in accordance with Article

3 of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways, the Hellenic Republic has failed to fulfil its obligations under that decision and under Article 228(1) EC.

2. Orders the Hellenic Republic to pay to the Commission of the European Communities, into the 'European Community own resources' account, a penalty payment of EUR 16 000 for each day of delay in adopting the measures necessary to comply with the judgment in Case C-415/03 *Commission v Greece*, from one month after the day on which judgment is delivered in the present case until the day on which the judgment in Case C-415/03 is complied with.

3. Orders the Hellenic Republic to pay to the Commission of the European Communities, into the 'European Community own resources' account, a lump sum of EUR 2 million.

4. Orders the Hellenic Republic to pay the costs.

(<sup>1</sup>) OJ C 269, 10.11.2007.

### **Judgment of the Court (Fourth Chamber) of 9 July 2009 — Commission of the European Communities v Kingdom of Spain**

(Case C-397/07) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Indirect taxes on the raising of capital — Capital companies — Directive 69/335/EEC — Articles 2(1) and (3), 4(1) and 7 — Capital duty — Exemption — Conditions — Transfer of effective centre of management or of registered office from one Member State to another Member State — Capital duty on the capital allocated to commercial activities pursued in a Member State by branches or permanent establishments of companies established in another Member State)*

(2009/C 205/06)

Language of the case: Spanish

#### **Parties**

*Applicant:* Commission of the European Communities (represented by: E. Gippini Fournier and M. Afonso, Agents)

*Defendant:* Kingdom of Spain (represented by: B. Plaza Cruz and M. Muñoz Pérez, Agents)

#### **Re:**

Failure by a Member State to fulfil its obligations — Infringement of Council Directive 69/335/EEC of 17 June 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412) — Transfer of the registered office of a company — National law providing for the taxation of a transfer of registered office to the extent that the company involved is not subject to capital duty in the Member State of origin — Conditions for application of obligatory exemptions

## Operative part of the judgment

The Court:

1. Declares that:

- by making the exemption from capital duty for the transactions referred to in Article 7(1)(b) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 73/79/EEC of 9 April 1973, Council Directive 73/80/EEC of 9 April 1973 and Council Directive 85/303/EEC of 10 June 1985, subject to the conditions laid down in Article 96 of the second additional provision of the consolidated version of the Spanish Law on corporation tax (*Disposición Adicional Segunda del texto Refundido de la Ley del Impuesto sobre Sociedades*), enacted by Royal Legislative Decree No 4/2004 of 5 March 2004;
- by subjecting to capital duty the transfer, from a Member State to Spain, of the effective centre of management or the registered office of capital companies which have not been subject to a similar tax in their country of origin, and
- by subjecting to capital duty capital allocated to commercial activities pursued in Spain by branches or permanent establishments of companies established in a Member State which does not apply a similar tax,

the Kingdom of Spain has failed to fulfil its obligations under Directive 69/335, as amended by Directives 73/79, 73/80 and 85/303;

2. Dismisses the action as to the remainder;
3. Orders the Kingdom of Spain to pay the costs.

(<sup>1</sup>) OJ C 269, 10.11.2007.

**Judgment of the Court (Third Chamber) of 25 June 2009**  
(Reference for a preliminary ruling from the Raad van State — Netherlands) — *Exportslachterij J. Gosschalk & Zoon BV v Minister van Landbouw, Natuur en Voedselkwaliteit*

(Case C-430/07) (<sup>1</sup>)

**(Decision 2000/764/EC — Testing and epidemio-surveillance of bovine spongiform encephalopathy — Regulation (EC) No 2777/2000 — Market support measures — Veterinary measures — Community contribution to the financing of part of the costs of the tests — Directive 85/73/EEC — Whether possible for the Member States to finance the part of the costs not covered by the Community by charging national fees for the inspection of meat and fees for combating epizootic diseases)**

(2009/C 205/07)

Language of the case: Dutch

## Referring court

Raad van State

## Parties to the main proceedings

Applicant: *Exportslachterij J. Gosschalk & Zoon BV*

Defendant: *Minister van Landbouw, Natuur en Voedselkwaliteit*

## Re:

Reference for a preliminary ruling — Netherlands Raad van State — Interpretation of Article 1(3) of Commission Decision 2000/764/EC of 29 November 2000 on the testing of bovine animals for the presence of bovine spongiform encephalopathy and amending Decision 98/272/EC on epidemic-surveillance for transmissible spongiform encephalopathies (OJ 2000 L 305, p. 35), of Article 2(1) and (2) of Commission Regulation (EC) No 2777/2000 of 18 December 2000 adopting exceptional support measures for the beef market (OJ 2000 L 321, p. 47), of Article 1(2)(b) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103), of Council Regulation (EC) No 1254/99 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21) and of Article 5(4), last sentence, of Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14), as amended and consolidated by Council Directive 96/43/EC (OJ 1996 L 162, p. 1) — BSE testing — Approved rapid tests — Exclusive financing by the Community or compulsory co-financing by the Member States with costs passed on to traders by way of fees — Judgment in Case C-239/01 *Germany v Commission*.

## Operative part of the judgment

1. Article 2(1) of Commission Regulation (EC) No 2777/2000 of 18 December 2000 adopting exceptional support measures for the beef market, as amended by Commission Regulation No 111/2001 of 19 January 2001, must be interpreted as covering the obligatory tests for bovine spongiform encephalopathy carried out in the Netherlands in May and June 2001 on all meat from bovine animals aged more than 30 months slaughtered for human consumption;
2. Article 2(1) of Regulation No 2777/2000, as amended by Regulation No 111/2001, must be interpreted as meaning that the prohibition on marketing meat from bovine animals aged more than 30 months which did not produce a negative result in the bovine spongiform encephalopathy test which it imposed with effect from 1 January 2001, constitutes a veterinary measure, within the meaning of Article 1(2)(d) of Council Regulation No 1258/1999 on the financing of the common agricultural policy, which forms part of the programmes of eradication and monitoring of bovine spongiform encephalopathy;