

If the answer is in the affirmative, would the answer be different if in determining the amount of the transitional stock and surplus stock it were possible also to take into account the growth of the operator's production, processing or sales volume, the maturation period of the agricultural product, the time when the stocks were built up, and other circumstances independent of the operator?

- 2.2 Is it compatible with the objective of Commission Regulation (EC) No 1972/2003 to levy the surplus stock charge where the operator is found to have a surplus stock as at 1 May 2004 but the operator shows that he has not obtained a real advantage in terms of a price difference from marketing the surplus stock after 1 May 2004?

⁽¹⁾ OJ L 139, 30.4.2004, p. 55.

⁽²⁾ OJ L 256, 7.9.1987, p. 1.

⁽³⁾ Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 293, 11.11.2003, p. 3).

Action brought on 8 April 2008 — Commission of the European Communities v Republic of Finland

(Case C-144/08)

(2008/C 171/24)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: I. Koskinen and D. Triantafyllou)

Defendant: Republic of Finland

Form of order sought

- declare that, by using an incomplete definition of normal residence in order to determine whether the temporary import of certain forms of transport is subject to tax exemptions, the Republic of Finland has failed to fulfil its obligations under Article 7(1) of Council Directive No 83/182/EEC ⁽¹⁾ of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another;
- order Republic of Finland to pay the costs.

Pleas in law and main arguments

For the purpose of determining tax exemptions, Article 7(1) of Directive 83/182/EEC governs normal residence, which determines the Member State under whose rules on temporary imports the vehicle in question falls, and the Member State which is entitled to charge tax on that vehicle. Article 7(1) of Directive 83/182/EEC governs certain exceptions to the rule according to which normal residence means the place where a person usually lives for at least 185 days in each calendar year. In particular, the second subparagraph of Article 7(1) states that if the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. However, it is expressly stated that the last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration.

However, Finnish legislation imposes a requirement for the person concerned to return to the place of normal residence also in the case where he is living in Finland in order to carry out a task of a definite duration. Therefore, Finland has failed to correctly transpose Article 7(1) of Directive 83/182/EEC into national law.

⁽¹⁾ OJ 1998 L 105, p. 59.

Appeal brought on 3 April 2008 by Efkon AG against the order of the Court of First Instance (Fifth Chamber) of 22 January 2008 in Case T-298/04, Efkon AG v European Parliament and Council of the European Union

(Case C-146/08 P)

(2008/C 171/25)

Language of the case: German

Parties

Appellant: Efkon AG (represented by: M. Novak, Rechtsanwalt)

Other parties to the proceedings: European Parliament, Council of the European Union, Commission of the European Communities

Form of order sought

- Set aside the order of the Court of First Instance of 22 January 2008 under appeal (T-298/04) as unlawful, and direct the Court to follow due process of law and to reach a decision on the merits;