

By his third plea, the appellant submits that the Court of First Instance erred in law in that it found that the AECE did not misuse its powers. The stated aim of employment of temporary agents was to reduce the number of posts vacant within the Commission and, in particular, to make up for the shortage of candidates who had been successful in competitions.

The latter aim was in no way met by the refusal to extend the appellant's contract following application of the rule prohibiting aggregation of service, since his post was advertised before any competition lists were published. Moreover, another temporary agent was given a long-term contract in that post, while the contracts of all the other temporary agents employed on a short-term basis in the same directorate were automatically extended, without prior advertisement of their posts.

Finally, the principle of equal treatment has been breached since all the other temporary agents who were in a comparable situation apart from their length of service, had their contracts extended without their posts being advertised, unlike the procedure adopted in the case of the appellant. In that context, the burden of proof was wrongly reversed in the proceedings before the Court of First Instance, since it is for the defendant — and not for the applicant — to prove that rules which it laid down itself have been followed.

Reference for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 15 January 2009 — Wood Floor Solutions Andreas Domberger GmbH v Silva Trade, SA

(Case C-19/09)

(2009/C 82/22)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Wood Floor Solutions Andreas Domberger GmbH

Defendant: Silva Trade, SA

Questions referred

1. (a) Is the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾ ('Regulation No 44/2001') applicable in the case of a contract for the

provision of services also where the services are, by agreement, provided in several Member States?

If the answer to that question is in the affirmative,

Should the provision referred to be interpreted as meaning that

- (b) the place of performance of the obligation that is characteristic of the contract must be determined by reference to the place where the service provider's centre of business is located, which is to be determined by reference to the amount of time spent and the importance of the activity;
 - (c) in the event that it is not possible to determine a centre of business, an action in respect of all claims founded on the contract may be brought, at the applicant's choice, in any place of performance of the service within the Community?
2. If the answer to the first question is in the negative: Is Article 5(1)(a) of Regulation No 44/2001 applicable in the case of a contract for the provision of services also where the services are, by agreement, provided in several Member States?

⁽¹⁾ OJ 2001 L 12, p. 1.

Action brought on 15 January 2009 — Commission of the European Communities v Portuguese Republic

(Case C-20/09)

(2009/C 82/23)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and A. Caeiros, Agents)

Defendant: Portuguese Republic

Form of order sought

- A declaration that, by providing, in connection with adjustment in accordance with Law No 39-A/2005, preferential tax treatment for public debt securities issued by the Portuguese State alone, the Portuguese Republic has failed to fulfil its obligations under Article 56 of the EC Treaty and Article 40 of the Agreement on the European Economic Area (EEA);
- an order that the Portuguese Republic should pay the costs.