

2. order Belgium to pay the costs.

Pleas in law and main arguments

The Commission relies on the following grounds in support of its action:

- (a) As regards the legislation of the Flemish Region, the Commission states that that legislation does not take account of all the relevant criteria of Annex III to the Directive when determining whether or not it is necessary to make the projects listed in Annex II to the Directive subject to an environmental impact assessment, in accordance with Articles 5 to 10 of the Directive. The Flemish Government has failed to show that the alternative procedures to which it refers for the projects in question satisfy the requirements of Articles 2 and 5 to 10 of the Directive.
- (b) As regards the legislation of the Walloon Region, the Commission first states that in respect of the projects listed in point 18(a) of Annex I (industrial plants for the production of pulp from timber or similar fibrous materials), that legislation sets a threshold, whereas the Directive does not provide for this, and in respect of the projects listed in point 8(a) of Annex I (ports for inland-waterway traffic) sets a threshold which is expressed in terms of the number of ships and not in tonnes, as the Directive does. Second, the Commission states that Article 7(1)(b) of the Directive has not been correctly transposed in the legislation of the Walloon Region.
- (c) As regards the legislation of the Brussels-Capital Region, the Commission states first that it takes no account of the relevant selection criteria of Annex III to the Directive in its transposition of Article 4(3) of the Directive and that the alternative forms of assessment referred to by the Brussels Government do not satisfy all the characteristics listed in the Directive. The Commission states second that in that legislation Annex III to the Directive is not transposed as such.

⁽¹⁾ OJ 1985 L 175, p. 40.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 9 November 2009 — Attila Belkiran v Lord Mayor of Krefeld — Other party to the proceedings: The representative for federal interests at the Bundesverwaltungsgericht

(Case C-436/09)

(2010/C 24/47)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Attila Belkiran

Defendant: Lord Mayor of Krefeld

Other party to the proceedings: The representative for federal interests at the Bundesverwaltungsgericht

Question referred

Is the protection against expulsion provided for in Article 14(1) of Decision No 1/80 (of the EEC-Turkey Association Council) and enjoyed by a Turkish national, whose legal status derives from Article 7 of Decision No 1/80 and who has resided for the previous ten years in the Member State in respect of which this legal status applies, to be determined in accordance with Article 28(3)(a) of Directive 2004/38/EC ⁽¹⁾, with the result that expulsion is permitted only on imperative grounds of public security, as defined by Member States?

⁽¹⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77)

Reference for a preliminary ruling from the Tribunal de Grande Instance de Périgueux (France) lodged on 9 November 2009 — AG2R Prévoyance v Beaudout Père et Fils SARL

(Case C-437/09)

(2010/C 24/48)

Language of the case: French

Referring court

Tribunal de Grande Instance de Périgueux

Parties to the main proceedings

Applicant: AG2R Prévoyance

Defendant: Beaudout Père et Fils SARL

Question referred

Are a provision making affiliation to a supplementary healthcare scheme compulsory, as provided for under Article L 912-1 of the Social Security Code, and the addendum, made compulsory by the public authorities at the request of organisations representing employers and workers in a given sector, which provides for affiliation to a single body, designated

to manage a supplementary healthcare scheme, without any possibility for undertakings in that sector to be granted a waiver of the affiliation obligation, in compliance with Articles 81 EC and 82 EC, or are they such as to place the designated body in a dominant position constituting an abuse?

Reference for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 10 November 2009 — Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la Concurrence, Ministre de l'Economie de l'Industrie et de l'Emploi

(Case C-439/09)

(2010/C 24/49)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Pierre Fabre Dermo-Cosmétique SAS

Defendants: Président de l'Autorité de la Concurrence, Ministre de l'Economie de l'Industrie et de l'Emploi

Question referred

Does a general and absolute ban on selling contract goods to end users via the Internet, imposed on authorised distributors in the context of a selective distribution network, in fact constitute a 'hardcore' restriction of competition by object for the purposes of Article 81(1) EC which is not covered by the block exemption provided for by Regulation No 2790/1999 ⁽¹⁾ but which is potentially eligible for an individual exemption under Article 81(3) EC?

⁽¹⁾ Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336 p. 21)

Action brought on 11 November 2009 — Commission of the European Communities v Republic of Austria

(Case C-441/09)

(2010/C 24/50)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and B.-R. Killmann, Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by applying a reduced rate of value added tax (VAT) to the supply, importation and intra-Community acquisitions of certain live animals, in particular horses, not intended for use in the preparation of foodstuffs for human or animal consumption, the Republic of Austria has failed to fulfil its obligations under Article 96 and 98 in conjunction with Annex III of the Directive on the VAT system ⁽¹⁾;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that Austrian law on VAT infringes Article 96 and 98 in conjunction with Annex III of the Directive on the VAT system, by also applying a reduced rate of VAT to the supply of certain live animals (in particular horses), where those animals are not intended for the production of foodstuffs.

The expression 'live animals' in point 1 of Annex III to the Directive on the VAT system is not a separate category but encompasses only those animals which are normally used as foodstuffs for human or animal consumption. That interpretation is supported by the Spanish, French, English, Italian, Dutch, Portuguese and Swedish versions of that provision. In addition the fact that that provision is an exception requires according to settled case-law that it be interpreted strictly.

Particularly animals of the family of equids are clearly used principally as pack or riding animals (and not as foodstuffs for human or animal consumption).

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).