

incompatible with the common market by Commission Decision 2004/800/EC of 30 March 2004 on the State aid scheme put into effect by Italy providing for urgent measures to assist employment, the Italian Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision;

2. Orders the Italian Republic to pay the costs.

**Judgment of the Court (Second Chamber) of 6 December 2007 —
Marcuccio v Commission**

(Case C-59/06 P)

Appeal — Officials — Employment in a non-Member State — Reassignment of post and post holder — Duty to respect the rights of the defence — Scope — Burden of proof

Officials — Principles — Rights of the defence — Scope — Obligation to hear the person concerned before adopting a decision involving his reassignment against his wishes — Burden of proof (see paras 45-48, 55-58, 67, 71)

Re:

APPEAL against the judgment of the Court of First Instance (Fifth Chamber) of 24 November 2005 in Case T-36/02 *Marcuccio v Commission* by which that Court dismissed an action seeking annulment of the Commission decision reassigning the appellant's post at the delegation of the Commission in Luanda (Angola) to the Commission's headquarters in Brussels and a claim for damages.

Operative part

The Court:

1. Sets aside the judgment of the Court of First Instance of 24 November 2005 in Case T-236/02 *Marcuccio v Commission*;
2. Refers the case back to the Court of First Instance of the European Communities;
3. Reserves the costs.

Judgment of the Court (Seventh Chamber) of 6 December 2007 — Commission v Luxembourg

(Case C-57/07)

Failure of a Member State to fulfil obligations — Directive 2003/86/EC — Right to family reunification — Non-transposition within the prescribed period

1. *Actions for failure to fulfil obligations — Examination of merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 9)*
2. *Acts of the institutions — Directives — Implementation by Member States (see para. 10)*

Re:

FAILURE of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).