

4. Orders *Compañía española para la fabricación de aceros inoxidables SA (Acerinox)* to pay the costs of the present proceedings. The costs of the proceedings at first instance leading to the judgment of the Court of First Instance referred to in paragraph 1 of the operative part of this judgment shall be borne in the manner set out in paragraph 3 of the operative part of that judgment.

(<sup>1</sup>) OJ C 109 of 04.05.2002.

2. Orders *ThyssenKrupp Stainless GmbH, ThyssenKrupp Acciai speciali Terni SpA* and the Commission of the European Communities to bear their own costs.

(<sup>1</sup>) OJ C 109 of 04.05.2002.

## JUDGMENT OF THE COURT

(First Chamber)

of 14 July 2005

**in Joined Cases C-65/02 P and C-73/02 P: ThyssenKrupp Stainless GmbH and Others v Commission of the European Communities** (<sup>1</sup>)

*(Appeals — ECSC Treaty — Agreements, decisions and concerted practices — Alloy surcharge — Reduction of the fine — Cooperation in the administrative procedure — Attributability of the infringement — Rights of the defence)*

(2005/C 217/05)

*(Languages of the case: German and Italian)*

In Joined Cases C-65/02 P and C-73/02 P: two appeals under Article 49 of the ECSC Statute of the Court of Justice, brought on 28 February 2002 by ThyssenKrupp Stainless GmbH, formerly Krupp Thyssen Stainless GmbH (Lawyer: M. Klusmann), and by ThyssenKrupp Acciai speciali Terni SpA, formerly Acciai speciali Terni SpA (Lawyers: A. Giardina and G. Di Tommaso), the other party to the proceedings being: Commission of the European Communities (Agents: A. Whelan, assisted by H.-J. Freund, and A. Whelan and V. Superti, assisted by A. Dal Ferro) — the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta, K. Lenaerts and S. von Bahr (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 14 July 2005, in which it:

1. Dismisses the appeals and the cross-appeal;

## JUDGMENT OF THE COURT

(Grand Chamber)

of 12 July 2005

**in Case C-304/02: Commission of the European Communities v French Republic** (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Fisheries — Control obligations placed on the Member States — Judgment of the Court establishing a breach of obligations — Non-compliance — Article 228 EC — Payment of a lump sum — Imposition of a penalty payment)*

(2005/C 217/06)

*(Language of the case: French)*

In Case C-304/02, **Commission of the European Communities** (Agents: M. Nolin, H. van Lier and T. van Rijn) v **French Republic** (Agents: G. de Bergues and A. Colomb), action under Article 228 EC for failure to fulfil obligations brought on 27 August 2002, the Court (Grand Chamber), composed of V. Skouris, President, P. Jann (Rapporteur) and C.W.A. Timmermans, Presidents of Chambers, C. Gulmann, J.P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; M. Múgica Arzamendi, Principal Administrator, subsequently M.F. Contet, Principal Administrator, and H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 12 July 2005, in which it:

1. Declares that:

— by failing to carry out controls of fishing activities in accordance with the requirements laid down by the Community provisions, and

— by failing to ensure that action is taken in respect of infringements of the rules governing fishing activities in accordance with the requirements laid down by the Community provisions,

the French Republic has not implemented all the necessary measures to comply with the judgment of 11 June 1991 in Case C-64/88 *Commission v France* and has accordingly failed to fulfil its obligations under Article 228 EC;

2. Orders the French Republic to pay to the Commission of the European Communities, into the account 'European Community own resources', a penalty payment of EUR 57 761 250 for each period of six months from delivery of the present judgment at the end of which the judgment in Case C-64/88 *Commission v France* has not yet been fully complied with;

3. Orders the French Republic to pay to the Commission of the European Communities, into the account 'European Community own resources', a lump sum of EUR 20 000 000;

4. Orders the French Republic to pay the costs.

(<sup>1</sup>) OJ C 247 of 12.10.2002.

## JUDGMENT OF THE COURT

(Third Chamber)

of 2 June 2005

in Case C-378/02: Reference for a preliminary ruling from the Hoge Raad in Waterschap Zeeuws Vlaanderen v Staatssecretaris van Financiën (<sup>1</sup>)

(VAT — Capital goods acquired by a body governed by public law — Public authority — Transaction engaged in as taxable person and transaction engaged in as non-taxable person — Right to adjustment and deduction)

(2005/C 217/07)

(Language of the case: Dutch)

In Case C-378/02: reference for a preliminary ruling under Article 234 EC from the Hoge Raad (Netherlands), made by decision of 18 October 2002, received at the Court on 21 October 2002, in the proceedings between Waterschap Zeeuws Vlaanderen and Staatssecretaris van Financiën — the Court (Third Chamber) composed of A. Rosas, President of the

Chamber, J.-P. Puissechot, S. von Bahr (Rapporteur), J. Malenovský and U. Lohmus, Judges; F.G. Jacobs, Advocate General, M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 2 June 2005, the operative part of which is as follows:

A body governed by public law which purchases capital goods as a public authority within the meaning of the first subparagraph of Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, that is to say as a non-taxable person, and subsequently sells those goods as a taxable person, is not entitled, in respect of that sale, to a right of adjustment based on Article 20 of that directive in order to deduct the VAT paid on the purchase of those goods.

(<sup>1</sup>) OJ C 7 of 11.01.2003.

## JUDGMENT OF THE COURT

(Second Chamber)

of 7 July 2005

in Case C-418/02: Reference for a preliminary ruling from the Bundespatentgericht in Praktiker Bau- und Heimwerkermärkte AG (<sup>1</sup>)

(Trade marks — Directive 89/104/EEC — Trade marks in respect of services — Registration — Services provided in connection with retail trade — Specification of content of services — Similarity between the services in question and goods or other services)

(2005/C 217/08)

(Language of the case: German)

In Case C-418/02: reference for a preliminary ruling under Article 234 EC from the Bundespatentgericht (Germany), made by decision of 15 October 2002, received at the Court on 20 November 2002, in the proceedings concerning Praktiker Bau- und Heimwerkermärkte AG — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, N. Colneric and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 7 July 2005, in which it ruled: