

The Commission claims that the Court should:

- declare that, by failing to adopt and to notify to the Commission, within the time limit laid down, the laws, regulations and administrative provisions necessary to comply fully with Directive 1999/5/EC<sup>(1)</sup> of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty,
- order the Hellenic Republic to pay the costs.

*Pleas in law and main arguments*

In accordance with the third paragraph of Article 249 of the Treaty establishing the European Community, directives are binding, as to the result to be achieved, upon each Member State to which they are addressed.

Under the first paragraph of Article 10 of the Treaty, Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

It is not disputed by the Hellenic Republic that it must adopt measures to comply with the abovementioned Directive.

The Commission records that until now the Hellenic Republic has not adopted the appropriate measures for the full incorporation of the Directive at issue into Greek law.

<sup>(1)</sup> OJ L 91, 7.4.1999, p. 10.

**Action brought on 25 September 2001 by the Kingdom of the Netherlands against the Commission of the European Communities**

**(Case C-368/01)**

(2001/C 331/21)

An action against the Commission of the European Communities was brought before the Court of Justice of the European

Communities on 25 September 2001 by the Kingdom of the Netherlands, represented by H.G. Sevenster and S. Terstal, acting as Agents.

The applicant claims that the Court should:

1. Annul Commission Decision SG (2001) D/289751 of 11 July 2001 relating to Aid Measure No C 56/2001 on the granting of State aid in the area of maritime transport to the activities of Netherlands tug boats in internal waters and seaports within the EU (by which the Commission informs the Netherlands of its decision to initiate the procedure set out in Article 88(2) EC);
2. Order the Commission to pay the costs.

*Pleas in law and main arguments*

- Decision contrary to Article 88 EC and Regulation (EC) No 659/1999: the Commission does not have the power to classify, as a new aid measure, a measure that has already been approved. If the Commission, in the exercise of its duties relating to the continuous monitoring of existing aid measures, were able, whether of its own motion or by reason of a complaint, to classify such an aid measure immediately and with retroactive effect as a new aid measure, that would be contrary to the system laid down in Article 88 EC and Regulation (EC) No 659/1999.

The Commission has in no way decided that the application of 'tax incentives' and 'taxation according to tonnage' to the activities of tug boats in ports and internal waters within the European Union is not covered by its decision approving the aid measure, with the result that the Commission cannot now decide to consider such application as constituting a new aid measure. The Commission's reasoning that there is now a case of new aid, on the ground that the Netherlands Government formally agreed to the Commission proposal to adopt appropriate measures, within the period specified for that purpose, which expired on 5 January 1999, in order to bring the existing aid measures into line with the Guidelines, which might suggest that the Netherlands aid measures, as approved, had been brought into line with the Guidelines and were compatible with them, is without basis in Article 88 EC or Regulation (EC) No 659/1999.

The Commission's reasoning in this regard is also entirely illogical. Assuming that the Netherlands Government had intended to notify the Commission that the Netherlands aid measures in question had been brought into line with the Guidelines and were thus in accordance with the conditions laid down therein, that must naturally also have been done on the basis of the Netherlands Government's knowledge of the interpretation of the Guidelines at that time.

In so far as the Commission has sought to suggest that the Netherlands Government had failed to make clear at an earlier stage that the activities of tug boats were also intended to be covered by the two measures, which might have constituted a reason enabling the Commission to classify that application of the existing measures as 'new aid', the Netherlands Government strenuously denies that assertion;

- Decision contrary to the principle of the protection of legitimate expectations and the principle of legal certainty;
- Decision contrary to the principle that reasons must always be given.

**Action brought on 25 September 2001 by the Commission of the European Communities against the Italian Republic**

(Case C-370/01)

(2001/C 331/22)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 25 September 2001 by the Commission of the European Communities, represented by Antonio Aresu, acting as Agent.

The applicant claims that the Court should:

- Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with:
  - (a) Commission Directive 1999/21/EC<sup>(1)</sup> of 25 March 1999 on dietary foods for special medical purposes; and
  - (b) Commission Directive 1999/50/EC<sup>(2)</sup> of 25 May 1999 amending Directive 91/321/EEC on infant formulae and follow-on formulae;

or in any event by failing to communicate them to the Commission, the Italian Republic has failed to fulfil its obligations under those directives;

- Order the Italian Republic to pay the costs.

*Pleas in law and main arguments*

Under Article 249 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time limits laid down in directives for their transposition. Those time limits expired on 30 April 2000 and 30 June 2000 respectively without the Italian Republic having brought into force the necessary provisions in order to comply with the Directive referred to in the Commission's application.

<sup>(1)</sup> OJ 1999 L 91, p. 29.

<sup>(2)</sup> OJ 1999 L 139, p. 29.

**Action brought on 27 September 2001 by the Commission of the European Communities against the United Kingdom**

(Case C-373/01)

(2001/C 331/23)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 27 September 2001 by the Commission of the European Communities, represented by Richard Wainwright, acting as agent, with an address for service in Luxembourg.

The Applicant requests that the Court should:

- declare that by failing to adopt and publish before 1 January 2000 the provisions necessary to comply with Commission Directive 98/101/EC of 22 December 1998 adapting to technical progress Commission Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances<sup>(1)</sup>, or in any event by failing to inform the Commission thereof, the United Kingdom has failed to fulfil its obligations under that Directive, and
- order the United Kingdom to pay the costs.

*Pleas in law and main arguments*

Article 249 EC under which a directive shall be binding as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the