

1. Is it permissible to resort to other language versions of the Sixth Council Directive 77/388/EEC<sup>(1)</sup> to elucidate the meaning of the word 'charitable' in Article 13A.1 (g) and (h), or must the word have the same meaning as in domestic law?
2. If article 13A(1)(g) and (h) are to be interpreted as applying to an organisation that is recognised as having a social character, are they to be interpreted as applying to a profitmaking entity such as the Kingscrest Residential Care Homes partnership?
3. Are article 13A.1 (g) and (h) of the Directive to be interpreted as meaning that they confer on Member States a discretion to recognise for the purposes of those provisions an organisation which is registered under the Care Standards Act 2000 (or the Registered Homes Act 1984 or the Children Act 1989) but which is not a body governed by public law and does not have the status of a charity under the domestic law of the Member State concerned?

(1) Of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145 of 13.6.77, p. 1).

**Appeal brought on 26 November 2003 (fax: 25 November 2003) by Peter Biegi Nahrungsmittel GmbH and Commonfood Handelsgesellschaft für Agrar-Produkte mbH against the judgment delivered on 17 September 2003 by the Fourth Chamber of the Court of First Instance of the European Communities in Joined Cases T-309/01 and T-239/02 between Peter Biegi Nahrungsmittel GmbH and Commonfood Handelsgesellschaft für Agrar-Produkte mbH, and the Commission of the European Communities**

(Case C-499/03 P)

(2004/C 21/46)

An appeal against the judgment delivered on 17 September 2003 by the Fourth Chamber of the Court of First Instance of the European Communities in Joined Cases T-309/01 and T-239/02 between Peter Biegi Nahrungsmittel GmbH and Commonfood Handelsgesellschaft für Agrar-Produkte mbH, and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 26 November 2003 (fax: 25 November 2003) by Peter Biegi Nahrungsmittel GmbH and Commonfood Handelsgesellschaft für Agrar-Produkte mbH, represented by Dr Klaus Landry and Dr Lothar Harings of Sozietät Graf von Westphalen Bappert & Modest, Große Bleichen 21, D-20354, Hamburg.

The appellant claims that the Court should:

- set aside the contested judgment of the Court of First Instance of 17 September 2003<sup>(1)</sup> and
- 1. in Case T-309/01,
  - annul the Commission Decision of 14 August 2001 (REC 4/00) in so far as it requires subsequent accounting for import duties in the amount of DEM 218 605,65, and order the Commission to pay the costs of the proceedings;
- 2. in Case T-239/02,
  - annul the Commission Decision of 5 March 2002 (REC 4/01) in so far as it requires subsequent accounting for import duties in the amount of DEM 222 116,06, and order the Commission to pay the costs of the proceedings.

*Pleas in law and main arguments*

The appellants contest the judgment of the Court of First Instance on the following grounds:

- Breach of Article 220(2)(b) of Council Regulation (EEC) No 2913/92<sup>(2)</sup>. The Court of First Instance incorrectly based its ruling on a finding that the error made by the competent customs authority was detectable by the appellants. In the contested judgment, the Court of First Instance exaggerated the duty of care to be expected of the economic operators concerned. In addition, it failed to appreciate the complexity of the applicable rules.
- Flawed procedure in so far as the Court of First Instance incorrectly declined to hear the witnesses named by the appellants. Instead, it based its judgment on assumptions detrimental to the appellants.

(1) Not yet published in the ECR.

(2) OJ L 302, p. 1.

**Action brought on 26 November 2003 by the Commission of the European Communities against the Portuguese Republic**

(Case C-500/03)

(2004/C 21/47)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 26 November 2003 by the Commission of the European Communities, represented by António Caeiros, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Declare that, by approving Order No 783/98 without notifying it at the draft stage, the Portuguese Republic has failed to fulfil its obligations under Article 8 of Directive 98/34/EC<sup>(1)</sup> of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, in the version in force at the material time;
- Order the Portuguese Republic to pay the costs.

*Pleas in law and main arguments*

Article 2 of the Regulamento da Navegação em Albufeiras (Waterway Navigation Regulations) (Order No 783/98 of 19 September 1998) contains technical regulations within the meaning of Community law. It is a regulatory measure adopted by the Government of the Portuguese Republic which is *de jure* mandatory and which lays down the technical characteristics (dimensions and power) which pleasure craft must observe in order to be used in Portugal for pleasure navigation in public waterways in Portugal, the only exception being the waterways in the Douro River. The article thus manifestly applies to Portugal or, at least, to a major part of it. Accordingly, the Portuguese Republic ought, pursuant to Article 8(1) of Directive 98/34/EC, to have forwarded to the Commission the draft legislative measure which was adopted by the Portuguese Government as Order No 783/98.

<sup>(1)</sup> OJ L 204 of 21.7.1998, p. 37.

**Action brought on 26 November 2003 by the Commission of the European Communities against the Kingdom of Sweden**

**(Case C-501/03)**

(2004/C 21/48)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 26 November 2003 by the Commission of the European Communities, represented by W. Wils and K. Simonsson, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/12/EC<sup>(1)</sup> of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC<sup>(2)</sup> on the development of the Community's railways, Directive 2001/13/EC<sup>(3)</sup> of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC<sup>(4)</sup> on the licensing of railway undertakings and Directive 2001/14/EC<sup>(5)</sup> of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification and, in any event, by not having communicated them to the Commission, the Kingdom of Sweden has failed to fulfil its obligations thereunder; and
2. Order the Kingdom of Sweden to pay the costs.

*Pleas in law and main arguments*

The time-limit for transposition of the directives expired on 15 March 2003.

<sup>(1)</sup> OJ 2001 L 75, p. 1.

<sup>(2)</sup> Of 29 July 1991 (OJ 1991 L 237, p. 1).

<sup>(3)</sup> OJ 2001 L 75, p. 26.

<sup>(4)</sup> Of 19 June 1995 (OJ 1995 L 143, p. 70).

<sup>(5)</sup> OJ 2001 L 75, p. 29.

**Action brought on 27 November 2003 by the Commission of the European Communities against the Kingdom of Spain**

**(Case C-503/03)**

(2004/C 21/49)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 27 November 2003 by the Commission of the European Communities, represented by Carmel O'Reilly and Luis Escobar Guerrero, acting as Agents, with an address for service in Luxembourg.