

1. On a proper construction of Clause 8(3) of the Framework Agreement on fixed-term contracts concluded on 18 March 1999, put into effect by Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, domestic legislation such as that at issue in the main proceedings, which for reasons connected with the need to encourage employment and irrespective of the implementation of that agreement, has lowered the age above which fixed-term contracts of employment may be concluded without restrictions, is not contrary to that provision.
2. Community law and, more particularly, Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a provision of domestic law such as that at issue in the main proceedings which authorises, without restriction, unless there is a close connection with an earlier contract of employment of indefinite duration concluded with the same employer, the conclusion of fixed-term contracts of employment once the worker has reached the age of 52.

It is the responsibility of the national court to guarantee the full effectiveness of the general principle of non-discrimination in respect of age, setting aside any provision of national law which may conflict with Community law, even where the period prescribed for transposition of that directive has not yet expired.

(<sup>1</sup>) JO C 146 of 29.5.2004.

## JUDGMENT OF THE COURT

(Second Chamber)

of 15 December 2005

in Case C-148/04 (Reference for a preliminary ruling from the Commissione tributaria provinciale di Genova) **Unicredito Italiano SpA v Agenzia delle Entrate, Ufficio Genova 1** (<sup>1</sup>)

(State aid — Decision 2002/581/EC — Tax advantages granted to banks — Statement of reasons for a decision — Categorisation as State aid — Conditions — Compatibility with the common market — Conditions — Article 87(3)(b) and (c) EC — Important project of common European interest — Development of certain activities — Tax advantages granted previously — Recovery of the aid — Principle of the protection of legitimate expectations — Principle of legal certainty — Principle of proportionality)

(2006/C 36/19)

(Language of the case: Italian)

In Case C-148/04: reference for a preliminary ruling under Article 234 EC from the Commissione tributaria provinciale di

Genova (Italy), made by decision of 11 February 2004, received at the Court on 23 March 2004, in the proceedings between Unicredito Italiano SpA and Agenzia delle Entrate, Ufficio Genova 1 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, G. Arestis and J. Klůčka, Judges; C. Stix-Hackl, Advocate General; M. Ferreira, Principal Administrator, Registrar, gave a judgment on 15 December 2005, the operative part of which is as follows:

1. Examination of the questions referred has disclosed nothing capable of affecting the validity of Commission Decision 2002/581/EC of 11 December 2001 on the tax measures for banks and banking foundations implemented by Italy;
2. Article 87 et seq. EC, Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, and the principles of legal certainty, proportionality and the protection of legitimate expectations cannot preclude a national measure ordering repayment of aid in compliance with a Commission decision which found that aid to be incompatible with the common market and examination of which in the light of those provisions and general principles has not disclosed any factor capable of affecting its validity.

(<sup>1</sup>) OJ C 118 of 30.04.2004.

## JUDGMENT OF THE COURT

(Second Chamber)

of 27 October 2005

in Joined Cases C-187/04 and C-188/04: **Commission of the European Communities v Italian Republic** (<sup>1</sup>)

(Failure of a Member State to fulfil obligations — Directive 93/37/EEC — Public works contracts — Public works concessions — Rules on advertising)

(2006/C 36/20)

(Language of the case: Italian)

In Joined Cases C-187/04 and C-188/04 **Commission of the European Communities** (Agent: K. Wiedner, Lawyer: G. Bambara) v **Italian Republic** (Agent: I.M. Braguglia, Lawyer: M. Fiorilli) — two actions under Article 226 EC for failure to fulfil obligations, brought on 22 April 2004 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk (Rapporteur), R. Silva de Lapuerta, P. Kūris and J. Klůčka, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 27 October 2005, in which it:

1. Declares that, since the public invitation ANAS S.p.A. awarded the contract for the construction and management of the Valtrompia and Pedemontana Veneta Ovest motorways to the Società per l'autostrada Brescia-Verona-Vicenza-Padova p.a. by direct concession without prior publication of a contract notice, where the requirements for such a concession were not met, the Italian Republic has failed to fulfil its obligations under Council Directive 93/37/EEC of 14 June 1993 coordinating the procedures for the award of public works contracts and in particular Articles 3(1) and 11(3), (6) and (7) thereof;

2. Orders the Italian Republic to pay the costs.

<sup>(1)</sup> OJ C 179 of 10.7.2004  
OJ C 168 of 26.6.2004.

## JUDGMENT OF THE COURT

(Third Chamber)

of 1 December 2005

**in Case C-213/04: Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) Ewald Burtscher v Josef Stauderer <sup>(1)</sup>**

**(Free movement of capital — Article 56 EC — Declaration procedure in respect of the acquisition of built-on land — Retroactive invalidity of the transaction if declaration by the purchaser is submitted after the due date)**

(2006/C 36/21)

(Language of the case: German)

In Case C-213/04: reference for a preliminary ruling under Article 234 EC from the Oberster Gerichtshof (Austria), made by decision of 29 April 2004, received at the Court on 19 May 2004, in the proceedings between Ewald Burtscher and Josef Stauderer — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J. Malenovský, J. P. Puissochet (Rapporteur), S. von Bahr and U. Löhms, Judges; F.G. Jacobs, Advocate General; K. Sztranc, Administrator for the Registrar, gave a judgment on 1 December 2005 in which it ruled:

Article 56(1) EC precludes the application of national legislation such as the Vorarlberg Land Transfer Law (Vorarlberger Grundverkehrsgesetz) of 23 September 1993, in its amended version, under which the

mere fact that the requisite declaration of acquisition is submitted after the due date results in the retroactive invalidity of the property transaction concerned.

<sup>(1)</sup> OJ C 190 of 24.07.2004.

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 December 2005

**in Case C-250/04: Commission of the European Communities v Hellenic Republic <sup>(1)</sup>**

**(Failure of a Member State to fulfil obligations — Directive 2002/19/EC — Access to electronic communications networks and associated facilities — Failure to transpose within the prescribed period)**

(2006/C 36/22)

(Language of the case: Greek)

In Case C-250/04 Commission of the European Communities (Agents: G. Zavvos and M. Shotter) v Hellenic Republic (Agent: N. Dafniou) — action for failure to fulfil obligations under Article 226 EC, brought on 14 June 2004 — the Court (Fifth Chamber), composed of J. Makarczyk, President of the Chamber, R. Silva de Lapuerta and P. Kūris (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 15 December 2005, in which it:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), the Hellenic Republic has failed to fulfil its obligations under that directive.

2. Orders the Hellenic Republic to pay the costs.

<sup>(1)</sup> OJ C 201, 07.08.2004.