the facts found by it, that the applicant 'must be deemed to have been given the possibility of effectively expressing its views on the envisaged reductions in assistance, in accordance with the judgment in Lisrestal v Commission'.

— Second, the applicant maintains, with regard to sub-heading 14.3.1a (remuneration of the teaching staff) and sub-heading 14.3.13 (taxes and charges), that it is clear from the documentary evidence in the file that the findings of fact made by the Court of First Instance in relation to those sub-headings are incorrect.

— Third, the applicant maintains that the incorrectness of the findings of fact made by the Court of First Instance concerning sub-headings 14.3.1a (remuneration of the teaching staff) and sub-heading 14.3.13 (taxes and charges) led the Court of First Instance misapply the law to its case, in breach of the principle of proportionality and to give contradictory grounds for the judgment.

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**Reference for a preliminary ruling by the Appeal Commissioners, Dublin, by request of that court of 15 December 1998, in the case of Cabletron Systems Ltd against the Revenue Commissioners**

**(Case C-463/98)**

(1999/C 71/10)

Reference has been made to the Court of Justice of the European Communities by a request of the Appeal Commissioners, Dublin, of 15 December 1998, which was received at the Court Registry on 17 December 1998, for a preliminary ruling in the case of Cabletron Systems Ltd against the Revenue Commissioners, on the following questions:

(a) Is Commission Regulation (EC) No 1638/94 of 5 July 1994 (OJ L 172, 7.7.1994, p. 5) concerning the classification of certain goods in the Combined Nomenclature, valid insofar as it classifies under CN Code 8517 82 90 the goods respectively described at items 1, 2 and 3 of the annex to the said Regulation?

(b) Is Commission Regulation (EC) No 1165/95 of 23 May 1995 (OJ L 117, 24.5.1995, p. 15), concerning the classification of certain goods in the Combined Nomenclature, valid insofar as it classifies under CN Code 8517 82 90 the goods described at item 4 of the annex to the said Regulation?

(c) Is the Combined Nomenclature (Council Regulation 2658/87 [1] (as amended)) to be interpreted as requiring that those goods set out in the schedule attached hereto be classified as 'Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included ...' under tariff heading 8471 either (i) post 1 January 1996, or (ii) between 28 April 1993 and 31 December 1995, or (iii) for both periods of time?

(d) If the answer to any part of question (c) is in the negative in respect of one or more of the goods set out in the schedule attached hereto, is the Combined Nomenclature to be interpreted as requiring that such goods to be classified, ante 1 January 1996, as 'Electrical apparatus for line telephony or line telegraphy, including such apparatus for carriercurrent line systems ...' under tariff heading 8517 or, post 1 January 1996, as 'Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carriercurrent line systems or for digital line systems; video phones ...' under tariff heading 8517?

[1] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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**Reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien, by order of that court of 28 October 1998 in the case of Westdeutsche Landesbank Girozentrale against Friedrich Stefan, intervener: Republic of Austria**

**(Case C-464/98)**

(1999/C 71/11)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna), of 28 October 1998, received at the Court Registry on 18 December 1998, for a preliminary ruling in the case of Westdeutsche Landesbank Girozentrale against Friedrich Stefan, intervener: Republic of Austria, on the following questions:

(a) 'Does a refusal to allow a mortgage to be created to cover an existing foreign-currency debt (in this case in German marks (DM)) constitute a restriction on the movement of capital and payments compatible with Article 73b of the EC Treaty?'

(b) 'Does Article 73b of the EC Treaty apply retroactively to mortgages which were registered in German marks prior to the accession of Austria to the European Community, and thus incurably void at the time of registration, in such a way as to remedy them ex post facto?'

Alternatively,

'Have the Community rules concerning the free movement of capital, in particular Article 73b of the EC Treaty, had the effect, by virtue of the accession application made by Austria on 17 July 1989 and the Opinion of 31 July 1991, of rendering the registration of a foreign-currency mortgage in Austria on 16 December 1991 permissible?'

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**Reference for a preliminary ruling by the Oberlandesgericht Köln by order of 2 December 1998 in the case of Verein gegen Unwesen in Handel und Gewerbe Köln e.V. v Adolf Darbo AG**

**(Case C-465/98)**

(1999/C 71/12)

Reference has been made to the Court of Justice of the European Communities by order of 2 December 1998 from the Oberlandesgericht Köln (Higher Regional Court, Cologne), which was received at the Court Registry on 18 December 1998, for a preliminary ruling in the case of Verein gegen Unwesen in Handel und Gewerbe Köln e.V. v Adolf Darbo AG on the following question:

Is it contrary to Article 2(1)(a)(i) of Directive 79/112/EEC (OJ L 33, 8.2.1979, p. 1) ('the directive on labelling') for jam manufactured in a Member State (Austria) and sold there and in another Member State (the Federal Republic of Germany) under the description 'naturrein' ('naturally pure') to contain the gelling agent pectin and less than 0.01 mg/kg lead (atomic absorption spectrometry analysis — AAS), 0.008 mg/kg cadmium (AAS), and pesticides (0.016 mg/kg procymidone and 0.005 mg/kg vinclozolin)?

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**Action brought on 18 December 1998 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland**

**(Case C-466/98)**

(1999/C 71/13)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 18 December 1998 by the Commission of the European Communities, represented by Frank Benyon, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, member of the Legal Service of the Commission, Centre Wagner.

The Applicant claims that the Court should:

1) declare that by concluding and applying an Air Services Agreement signed on 23 July 1977 with the United States of America which provides for the revocation, suspension or limitation of traffic rights in cases where air carriers designated by the United Kingdom are not owned by the United Kingdom or nationals of the United Kingdom, the United Kingdom is in breach of Article 52 of the Treaty;

2) order the United Kingdom to pay the costs.

*Pleas in law and main arguments adduced in support:*

A Member State must allow nationals of any other Member State to set up businesses and pursue the same on national conditions: anything less would render the right of establishment pointless, an empty shell. Article 52 is not concerned with how and whether the right to supply services to another Member State may be exercised or restricted (which is governed at Community level by a separate Treaty article, Article 59) but, simply with the right to be treated as a national of the Member State for the purposes of its business where an undertaking is established in that same Member State.

Article 52 by its very nature does not refer to treatment under Community law (for example the rights granted under Regulation (EEC) No 2408/92 [1]) as the United Kingdom alleges, but to those granted nationally, in the present case, the rights which the United Kingdom correctly notes 'derive from bilateral Member State agreements with third countries'. By concluding a so-called 'open sky' agreement, the United Kingdom authorities have granted a right to benefit from the traffic rights granted under the agreement to designated airlines if under United Kingdom control since there is no possibility for the United States to refuse the same, but they have granted only a possibility, wholly unguaranteed, to benefit therefrom where the designated carrier is controlled by nationals of other Member States. This is a failure by the United Kingdom to grant equal treatment to nationals of other Member States irrespective of whether and how the United States of America excercises its rights.