establishment in a non-Member State fundamentally affects the exercise of the freedom of establishment within the meaning of Articles 43 EC to 48 EC. Those provisions cannot be relied upon in a situation involving such an establishment in a non-Member State.

Order of the Court (Third Chamber) of 8 November 2007 — Fratelli Martini and Cargill

(Case C-421/06)

First subparagraph of Article 104(3) of the Rules of Procedure — Judgment of the Court declaring a Community provision invalid — Obligations of the institutions — Animal health and public health requirements — Compound feedingstuffs for animals — Indication, on the label, of the percentages in weight of the raw materials present in the feedingstuff, with a tolerance of ± 15% of the declared value — Prohibition on misleading the consumer

1. *Preliminary rulings — Answer clearly able to be deduced from case-law — Application of Article 104(3) of the Rules of Procedure (Rules of Procedure of the Court, Art. 104(3)) (see para. 20)*

2. *Protection of public health — Compound feedingstuffs — Directive 2002/2 (Regulation of the European Parliament and of the Council No 178/2002, Arts 8 and 16; Directive of the European Parliament and of the Council 2002/2, Art. 1(4) (see para. 45, operative part 1)*

3. *Protection of public health — Compound feedingstuffs — Directive 2002/2 (Arts 233 EC and 234 EC; Directive of the European Parliament and of the Council 2002/2, Art. 1(1)(b)) (see para. 63, operative part 2)*

Re:

REFERENCE for a preliminary ruling — Consiglio di Stato — Effects of the judgment of the Court of Justice in Joined Cases C-453/03, C-11/04, C 12/04 and C-194/04 (*ABNA and Others*) by which Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ 2002 L 63, p. 23) was declared partially invalid — Obligation for the institutions to adopt a new act.

Operative part

1. Article 1(4) of Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC, which lays down an obligation to indicate, on the labels of compound feedingstuffs for animals, the percentages in weight of the raw materials of which the feedingstuff is composed with a tolerance of ± 15% of the declared value as regards those percentages, must be interpreted as meaning that it does not contradict Articles 8 and 16 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, which are intended, inter alia, to prevent the labelling and presentation of feedingstuffs for animals from misleading the consumer;

2. Since Article 1(1)(b) of Directive 2002/2 laid down an independent obligation bearing no relation to the obligations laid down by the other provisions of that directive, the Court's declaration, in its judgment of

6 December 2005 in Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others*, that that provision was invalid, did not create a legal vacuum or a situation of inconsistency requiring the Community institutions to adopt the substantive amendments of Directive 2002/2.

In any event, the invalidity of a Community provision results directly from the judgment of the Court declaring that invalidity and it is for the national authorities and courts of the Member States to draw the consequences from that declaration in their national legal order.

Judgment of the Court (Eighth Chamber) of 8 November 2007 — Commission v Belgium

(Case C-3/07)

Failure of a Member State to fulfil obligations — Directive 2003/110/EC — Assistance in cases of transit — Removal by air — Failure to transpose within the period prescribed

1. *Actions for failure to fulfil obligations — Subject-matter of the dispute — Directive not sufficiently transposed without legislative action (Art. 226 EC; Council Directive 2003/110, Art. 5(2) (see paras 6, 7)*

2. *Acts of the institutions — Directives — Implemention by the Member States (Art. 249, third para., EC) (see para. 11)*

3. *Actions for failure to fulfil obligations — Examination of merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 13)*