JUDGMENT OF THE COURT (First Chamber)

29 November 2007 *

In Case C-393/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 4 November 2005,

Commission of the European Communities, represented by E. Traversa and G. Braun, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Austria, represented by C. Pesendorfer, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Tizzano, A. Borg Barthet, M. Ilešič and E. Levits (Rapporteur), Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2007,

gives the following

Judgment

1 By its application, the Commission of the European Communities asks the Court to declare that, by requiring of private inspection bodies of organically-farmed products ('private bodies') which are established and approved in another Member State that they maintain a place of business or other permanent infrastructure in Austria in order to be able to carry out their activities there, the Republic of Austria has failed to fulfil its obligations under Article 49 EC.

Legal background

Community legislation

2 Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ 1991 L 198, p. 1), as amended by Council Regulation (EC) No 1804/1999 of 19 July 1999 (OJ 1999 L 222, p. 1; 'Regulation No 2092/91'), lays down minimum rules in respect of organic production of agricultural products, inspection procedures of the production methods concerned and certification of the products of such production. Under that regulation, products which satisfy its requirements may be designated with the indication 'Organic Farming — EC Control System', particularly in the form of labelling.

3 Articles 1, 2 and 4 of Regulation No 2092/91 set out the products concerned and the indications referring to organic production methods, and define various terms. Article 3 of that regulation provides that the latter is to apply without prejudice to other Community provisions or national provisions, in conformity with the Community legislation. Article 5 of that regulation lays down the conditions in which the labelling and advertising of a product may refer to organic production methods, while Article 6 of the regulation sets out the rules of production implied by the concept of organic production methods.

4 Article 8 of Regulation No 2092/91 is worded as follows:

'1. Any operator who produces, prepares or imports from a third country products as specified in Article 1 for the purpose of marketing them shall:

(a) notify this activity to the competent authority of the Member State in which the activity is carried out; such notification shall include the information specified in Annex IV;

(b) submit his undertaking to the inspection system referred to in Article 9.

2. Member States shall designate an authority or body for the reception of notifications.

Member States may provide for the communication of any additional information which they consider to be necessary for effective supervision of the operators concerned.

3. The competent authority shall ensure that an updated list containing the names and addresses of operators subject to the inspection system is made available to interested parties.'

5 Article 9 of Regulation No 2092/91 provides:

'1. Member States shall set up an inspection system operated by one or more designated inspection authorities and/or by approved private bodies to which the operators producing, preparing or importing from third countries products as referred to in Article 1 shall be subject.

2. Member States shall adopt the measures necessary to ensure that an operator who complies with the provisions of this Regulation and pays his contribution to inspection expenses has access to the inspection system.

3. The inspection system shall comprise at least the application of the precautionary and inspection measures specified in Annex III.

4. For the application of the inspection system operated by private bodies, Member States shall designate an authority responsible for the approval and supervision of such bodies.

5. For the approval of a private inspection body, the following shall be taken into account:

(a) the standard inspection procedure to be followed, containing a detailed description of the inspection measures and precautions which the body undertakes to impose on operators subject to its inspection;

(b) the penalties which the body intends to apply where irregularities and/or infringements are found;

(c) the availability of appropriate resources in the form of qualified staff, administrative and technical facilities, inspection experience and reliability;

(d) the objectivity of the inspection body vis-à-vis the operators subject to its inspection.

6. After an inspection body has been approved, the competent authority shall:

(a) ensure that the inspections carried out by the inspection body are objective;

(b) verify the effectiveness of its inspections;

(c) take cognisance of any irregularities and/or infringements found and penalties applied;

(d) withdraw approval of the inspection body where it fails to satisfy the requirements referred to in (a) and (b) or no longer fulfils the criteria indicated in paragraph 5 or fails to satisfy the requirements laid down in paragraphs 7, 8, 9 and 11.

6a. Before 1 January 1996, Member States shall issue a code number to each inspection body or authority approved or designated in accordance with the provisions of this Article. They shall inform the other Member States and the Commission thereof; the Commission shall publish the code numbers in the list referred to in the last subparagraph of Article 15.

7. The inspection authority and the approved inspection bodies referred to in paragraph 1 shall:

(a) ensure that at least the inspection measures and precautions specified in Annex III are applied to undertakings subject to their inspection;

(b) not disclose information and data they obtain in their inspection activity to persons other than the person responsible for the undertaking concerned and the competent public authorities.

8. Approved inspection bodies shall:

(a) give the competent authority, for inspection purposes, access to their offices and facilities, together with any information and assistance deemed necessary by the competent authority for the fulfilment of its obligations pursuant to this Regulation;

(b) send to the competent authority of the Member State by 31 January each year a list of operators subject to their inspection on 31 December of the previous year and present to the said authority a concise annual report.

9. The inspection authority and inspection bodies referred to in paragraph 1 shall:

(a) ensure that, where an irregularity is found regarding the implementation of Articles 5, 6 and 7 or of the measures referred to in Annex III, the indications provided for in Article 2 referring to the organic production method are removed from the entire lot or production run affected by the irregularity concerned;

(b) where a manifest infringement, or an infringement with prolonged effects is found, prohibit the operator concerned from marketing products with indications referring to the organic production method for a period to be agreed with the competent authority of the Member State.

...

11. As from 1 January 1998 and without prejudice to the provisions of paragraphs 5 and 6, approved inspection bodies must satisfy the requirements laid down in the conditions of standard EN 45011.

...'

6 Article 10 of Regulation No 2092/91 provides for the affixing of an indication and/or a logo to the labelling of products subject to the inspection scheme under Article 9.

In that regard, Article 10(3) imposes on inspection bodies enforcement obligations equivalent to those laid down in Article 9(9).

7 Article 10a of Regulation No 2092/91, relating to general enforcement measures, states:

'1. Where a Member State finds irregularities or infringements relating to the application of this Regulation in a product coming from another Member State and bearing indications as referred to in Article 2 and/or Annex V it shall inform the Member State which designated the inspection authority or approved the inspection body and the Commission [thereof].

2. Member States shall take whatever measures and action are required to prevent fraudulent use of the indications referred to in Article 2 and/or Annex V.'

8 Annex III of Regulation No 2092/91 specifies the minimum inspection requirements and the precautionary measures under the inspection scheme referred to in Articles 8 and 9 of that regulation.

9 In particular, the general provisions of that Annex provide, in the second subparagraph of paragraph 9, and in paragraph 10, that private bodies are authorised to require, provisionally, that an operator may not market with an indication of organic production method a product suspected of non-compliance with the standards specified by Regulation No 2092/91 and that those bodies have the right of access to that operator's premises and accounting documents.

The Austrian legislation

10 Pursuant to Article 9(1) of Regulation No 2092/91, the Republic of Austria established a system of inspection of organically-farmed products operated by private bodies. Under the contested administrative practice for applying that regulation, the carrying out, in Austria, of inspection activities by a private body requires it to maintain there an establishment which satisfies the requirements relating to the resources of staff and administrative and technical facilities laid down by that regulation, even if it is already approved and, therefore, has an establishment in another Member State.

11 Paragraph 35 of the Law of 1975 on Foodstuffs (Lebensmittelgesetz 1975, BGBl. No 86/1975) provides that the approval and supervision of private bodies come within the powers of the Landeshauptmänner (Heads of the Regional Governments). In addition, under Paragraph 10(4) of that Law, the latter are, on the proposal of a private body, to adopt, among others, the prohibitions referred to in Article 9(9)(b) of Regulation No 2092/91.

The pre-litigation procedure

12 Following a complaint from a private body established and approved in Germany, the Commission sent two requests for information to the Austrian authorities regarding the requirements which private bodies approved in another Member State must satisfy in order to carry out their activities in Austria. Those requests referred, in particular, to the requirement to maintain an establishment or permanent infrastructure in Austria. In view of the replies received, the Commission, in a letter of formal notice sent on 8 November 2000 to the Republic of Austria, raised the question of that requirement's compatibility with Article 49 EC.

13 In the light of the Austrian authorities' reply to that letter, the Commission, on 16 October 2002, sent a reasoned opinion to the Republic of Austria, requesting it to comply with its obligations within two months from the date of notification of that opinion. In the opinion, the Commission claimed that the requirement imposed on private bodies established and approved in another Member State to maintain an establishment or permanent infrastructure in Austria contravened Article 49 EC and that, whilst it was legitimate for any Member State to satisfy itself that those bodies were actually approved in their Member State of establishment, an abbreviated authorisation procedure would have been sufficient for that purpose.

14 In its reply of 23 December 2002, the Republic of Austria contended that the activities of the private bodies were covered by the derogation, embodied in Article 55 EC read in conjunction with the first paragraph of Article 45 EC, from Article 49 EC. Alternatively, it maintained the position it had previously expressed, namely that it was in the interests of producers and consumers of organically-farmed products that the private bodies maintain an establishment or permanent infrastructure in Austria in order to enable the Austrian authorities to satisfy themselves as to the conditions under which their inspections were carried out.

15 Since it considered that the situation remained unsatisfactory, the Commission brought the present action.

The action

Arguments of the parties

16 The Commission submits that the contested administrative practice comes within a field harmonised by Regulation No 2092/91. In that regard, it points out that the

Council of the European Union, in adopting that regulation, did not refer to Article 66 of the EEC Treaty (which became Article 66 of the EC Treaty, now Article 55 EC), read in conjunction with Article 55 of the EEC Treaty (which became Article 55 of the EC Treaty, now Article 45 EC), so that the inspection and labelling of organically-farmed products are not activities excluded from the scope of the principle, enshrined in Article 49 EC, of freedom to provide services.

17 That conclusion is, moreover, supported by various factors which show that the activities of private bodies are not directly and specifically connected with the exercise of official authority within the meaning of the Court's case-law, the Commission referring, in that regard, to Case 2/74 *Reyners* [1974] ECR 631.

18 First, the legal relationship between the inspection body and the operator inspected, which culminates in the issuing or otherwise of a simple certificate of conformity, is governed exclusively by private law.

19 Second, a prohibition, addressed to an operator if an irregularity is found, on using indications of organic production methods, as well as the other measures provided for in Articles 9(9) and 10(3) of Regulation No 2092/91 may be imposed, in the last instance, only by the competent public or judicial authorities, and not by the private bodies themselves. In addition, the prohibition on using indications of organic production methods does not prevent the conventional marketing of the products concerned.

20 As regards the conformity of the contested administrative practice with the principle of freedom to provide services, the Commission admits that the Austrian authorities are free to satisfy themselves, by means, for example, of a simplified authorisation procedure, that private bodies are actually approved in their Member State of origin.

However, the requirement of a fixed establishment in Austria is, first, a restriction on the freedom to provide services as enshrined in Article 49 EC, since that requirement, because of the costs to which it gives rise, makes such provision less attractive for private bodies which already have an establishment in another Member State and, second, disregards the fact that such a body already satisfies the requirements of Regulation No 2092/91 in the Member State of approval. The approval given in the latter State guarantees that the private body concerned has the abilities, experience and means necessary to provide inspection services in Austria.

21 As for the need, relied upon by the Austrian Government, to be able, in order to protect consumers, to satisfy itself of the objectivity and effectiveness of the inspections by private bodies, the Commission points out that Regulation No 2092/91 prescribes specific penalties for non-compliance with the inspection criteria and that it is for the competent authorities of the Member State of approval alone to adopt the measures referred to in, among others, Article 9(5), (7) to (9) and (11) of that regulation.

22 For its part, the Republic of Austria does not dispute that the requirement imposed on private bodies established and approved in another Member State to maintain an establishment, in Austria, in order to be able to carry out their activities there is capable of interfering with the freedom to provide services guaranteed by Article 49 EC.

23 It contends however that the activities of private bodies as provided for by Regulation No 2092/91 are directly and specifically connected with the exercise of official authority, within the meaning of Article 55 EC read in conjunction with the first paragraph of Article 45 EC.

24 That point of view is based on various provisions of Regulation No 2092/91.

25 Thus, Article 10 of that regulation provides that private bodies are to issue certificates of conformity. Under Austrian administrative law, the issue of public documents is an act in the exercise of public powers and not a mere administrative service. The scope of a prohibition on using indications of organic production methods is also conclusive, since it could, in certain circumstances, be equivalent to a prohibition on marketing.

26 Moreover, the extensive powers of inspection conferred on private bodies by Article 9(3) of Regulation No 2092/91, read in conjunction with Annex III thereto, attest to a direct and specific connection with the exercise of official authority. In that regard, the facts that private bodies take responsibility for the administrative and technical aspects of inspections and that those bodies are linked to the operators they inspect by a contract governed by private law do not affect the classification of their activities, as is clear from the Court's case-law, in particular Case C-55/93 *van Schaik* [1994] ECR I-4837, paragraph 16).

27 The Republic of Austria submits, moreover, that Regulation No 2092/91 does not harmonise all aspects of the procedure of approval and supervision of private bodies, so that it is permissible for each Member State to subject those who wish to offer their services in its territory to requirements enabling the competent authorities to implement the measures provided for by that regulation for monitoring and supervising those bodies. Monitoring would be made difficult, or even impossible, should those bodies not maintain a fixed establishment in the Member State where the services are provided. Such a requirement is justified, in particular, in order to protect consumers of organically-farmed products.

Findings of the Court

28 As a preliminary point, it should be noted that, in cases where Member States have opted for a system whereby the inspection of organically-farmed products is operated by approved private bodies, Regulation No 2092/91 lays down the procedure and requirements for approval of those bodies, the detailed rules of inspection which those bodies must apply and the procedure for supervision to which they are themselves subject in their Member State of approval. That regulation contains, however, no provision relating to the provision of inspection services by private bodies in a Member State other than that of their approval.

29 Whilst it is true that, in a sector which has not been subject to full harmonisation at Community level, Member States remain, in principle, competent to define the conditions for the pursuit of the activities in that sector, they must, when exercising their powers, respect the basic freedoms guaranteed by the EC Treaty (see Case C-514/03 *Commission* v *Spain* [2006] ECR I-963, paragraph 23, and Case C-257/05 *Commission* v *Austria* [2006] ECR I-134, paragraph 18).

30 In this case, the question arises of the conformity with Article 49 EC of the requirement to have an establishment in Austria imposed by the contested administrative practice on private bodies which are already approved and, therefore, already have an establishment in another Member State.

31 It is settled case-law that all measures which prohibit, impede or render less attractive the exercise of the freedom to provide services must be regarded as restrictions of that freedom (see Case C-452/04 *Fidium Finanz* [2006] ECR I-9521, paragraph 46 and the case-law cited).

32 Therefore, the establishment requirement under the contested administrative practice runs directly contrary to the freedom to provide services, since it renders impossible, in Austria, the provision of the services in question by private bodies established only in other Member States (see, by analogy, Case C-355/98 *Commission* v *Belgium* [2000] ECR I-1221, paragraph 27 and the case-law cited).

33 Consequently, it is necessary to determine whether the contested administrative practice can be justified by the derogations provided for by the Treaty or by overriding reasons in the public interest.

34 In that regard, the Republic of Austria, which does not dispute that that requirement constitutes a restriction on the freedom to provide services, argues, primarily, that the activities of private bodies are directly and specifically connected with the exercise of official authority, within the meaning of Article 55 EC read in conjunction with the first paragraph of Article 45 EC, and, in the alternative, that the contested administrative practice is justified by an objective of consumer protection.

35 As regards the primary argument, it must be remembered that, as a derogation from the fundamental rule of freedom to provide services, Article 55 EC, read in conjunction with the first paragraph of Article 45 EC, must be interpreted in a manner which limits its scope to what is strictly necessary to safeguard the interests which it allows the Member States to protect (see, to that effect, Case C-451/03 *Servizi Ausiliari Dottori Commercialisti* [2006] ECR I-2941, paragraph 45 and the case-law cited).

36 Thus, according to settled case-law, derogation under those articles must be restricted to activities which, in themselves, are directly and specifically connected with the exercise of official authority (see *Servizi Ausiliari Dottori Commercialisti*,

paragraph 46 and the case-law cited), which excludes from being regarded as connected with the exercise of official authority, within the meaning of that derogation, functions that are merely auxiliary and preparatory vis-à-vis an entity which effectively exercises official authority by taking the final decision (Case C-42/92 *Thijssen* [1993] ECR I-4047, paragraph 22).

37 It follows from Regulation No 2092/91 that the activities of private bodies and the detailed rules and procedures for carrying them out can be described as follows.

38 First, private bodies implement, in accordance with Article 9(3) of Regulation No 2092/91, the inspection measures and precautions mentioned in Annex III to that regulation.

39 Secondly, under Article 9(9)(a) and (b) of that regulation, those bodies effect the consequences of the inspections which they carry out by permitting or not indications relating to the organic production method for products marketed by the operators they inspect and, in cases of manifest infringement or infringement with prolonged effects, by prohibiting the marketing, with indications referring to the organic production method, of the products of the operator in question, for a period previously established with the competent public authority.

40 Thirdly, under Article 9(6)(c) and (8)(a) and (b) of Regulation No 2092/91, those bodies must give an account of their activities to the authority responsible for their approval and for their supervision, respectively, by informing it of the irregularities and infringements found and penalties applied, by giving it all necessary information and by sending it, each year, a list of the operators subject to their inspection as well as a report on their activities. In addition, the said Article 9(8)(a) provides that private bodies are to give the competent authority to which they are subject access,

for inspection purposes, to their offices and facilities, together with any information and assistance deemed necessary by that authority for the fulfilment of its obligations.

41 Whilst it follows that the activities of private bodies are not limited to the organisation of mere inspections of the conformity of organically-farmed products, but also include the exercise of powers as to the consequences to be drawn from those inspections, it must none the less be pointed out that Regulation No 2092/91 provides for the oversight of those bodies by the competent public authority. Thus, Article 9(4) thereof subjects those bodies to the supervision of that authority. Among other provisions, Article 9(6) sets out the detailed rules and procedures for the exercise of that supervision, providing, in particular, that the authority, apart from its powers of issue and withdrawal of approval, is to ensure the objectivity and verify the effectiveness of the inspections carried out by private bodies. In addition, Article 9(8)(a) requires those bodies to give the competent authority access, for inspection purposes, to their offices and facilities.

42 It is therefore apparent that private bodies carry out their activities under the active supervision of the competent public authority which, in the final analysis, is responsible for the inspections and decisions of those bodies, as is demonstrated by that authority's obligations noted in the preceding paragraph of the present judgment. That conclusion is also supported by the system of supervision of private bodies put in place by the Law of 1975 on Foodstuffs, which provides that it is the Landeshauptmänner, as the supervisory authorities, who adopt the measures referred to in Article 9(9)(b) of Regulation No 2092/91, since private bodies have, in that field, only the power to propose such measures. It follows that the auxiliary and preparatory role devolved on private bodies by that regulation vis-à-vis the supervisory authority cannot be regarded as being directly and specifically connected with the exercise of official authority, within the meaning of Article 55 EC, read in conjunction with the first paragraph of Article 45 EC.

43 The Republic of Austria submits, however, that the issue of certificates of conformity by private bodies corresponds, under Austrian administrative law, to an act in the exercise of public powers. Moreover, such bodies have rights and powers derogating from the generally applicable rules of law in order to fulfil their function, particularly so far as concerns the powers of inspection and imposing penalties conferred upon them.

44 In that regard, it must be pointed out, first, that, as recalled in paragraph 35 of the present judgment, the derogation provided for by Article 55 EC, read in conjunction with the first paragraph of Article 45 EC, must be interpreted in a manner which limits its scope to what is strictly necessary to safeguard the interests which it allows the Member States to protect.

45 Secondly, while Regulation No 2092/91 does not preclude the Member States from conferring on private bodies rights and powers of public authority to carry out their inspection activities, or even from entrusting to them other activities which, taken in themselves, are directly and specifically connected with the exercise of official authority, it is however clear from the Court's case-law that the extension of the exception allowed by Articles 45 EC and 55 EC to an entire profession is not possible when the activities connected with the exercise of official authority are separable from the professional activity in question taken as a whole (see, as regards Article 45 EC, *Reyners*, paragraph 47).

46 It must be recalled that, as has been held in paragraph 42 of the present judgment, the activities of private bodies as defined by Regulation No 2092/91 are not, in themselves, activities directly and specifically connected with the exercise of official authority, with the result that any other additional activity so connected is necessarily separable from them.

47 Finally, it must be noted that the inspection system put in place by Regulation No 2092/91 is to be distinguished from the system of tests established by Council Directive 77/143/EEC of 29 December 1976 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers (OJ 1977 L 47, p. 47), which was at issue in the case which gave rise to the judgment in *van Schaik*, on which the Republic of Austria relies in support of its argument.

48 Although the Court held in paragraph 22 of that judgment that, as a result of the incomplete harmonisation of the criteria for testing, Directive 77/143 did not, in view of the large number of verification processes and procedures, require each Member State to recognise, for the vehicles registered on its territory, test certificates issued in other Member States, it must be pointed out that Regulation No 2092/91 is, as is clear from the 13th recital in its preamble, intended to put in place a system of inspection of organically-farmed products which meets minimum Community requirements, compliance with which confers entitlement to use a Community indication of conformity.

49 Therefore, since Regulation No 2092/91 does harmonise the indication of conformity of the agricultural products concerned, the Republic of Austria cannot usefully rely on the judgment in *van Schaik*.

50 Since Article 55 EC cannot properly be invoked by the Republic of Austria in this case, its alternative argument must be examined, relating to the justification of the contested administrative practice on grounds of consumer protection.

51 The Republic of Austria submits, in particular, that the requirement to maintain an establishment or permanent infrastructure in Austria is indispensable in order that

the Austrian authorities, first, may satisfy themselves that private bodies which provide inspection services there have the necessary infrastructure and staff and, second, can carry out the inspections on site required by Regulation No 2092/91.

52 In that regard, is it is to be noted that, in accordance with settled case-law, consumer protection can justify interference with the freedom to provide services (see, to that effect, Joined Cases C-34/95 to C-36/95 *De Agostini and TV-Shop* [1997] ECR I-3843, paragraph 53; Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, paragraph 67; and Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 46).

53 However, it is important to check that the measures taken for that purpose do not exceed what is objectively necessary (see, to that effect, Case C-496/01 *Commission* v *France* [2004] ECR I-2351, paragraph 68).

54 The requirement imposed on private bodies approved in another Member State to maintain an establishment in Austria in order to be able to carry out their activities there goes beyond what is objectively necessary to attain the objective of consumer protection.

55 It must be recalled that Regulation No 2092/91 lays down the minimum criteria in respect of the supervision of those bodies. Those criteria are applicable throughout the Member States, with the result that it is guaranteed that such a body which is approved in a Member State and provides inspection services in Austria meets, in particular, the various criteria set by that regulation and, consequently, that the protection of consumers is ensured.

56 Therefore, by requiring of private bodies approved in another Member State that they maintain an establishment in Austria in order that the Austrian authorities can supervise their activities, the contested administrative practice precludes the obligations and monitoring measures to which those bodies are already subject in their Member State of approval from being taken into account.

57 It would be possible for the Austrian authorities to obtain the guarantees required by Regulation No 2092/91 and consumer protection by less restrictive measures.

58 First, for example, those authorities could, prior to any provision of services, require of a private body approved in another Member State proof that it actually has, in its Member State of establishment, approval and the infrastructure and staff required to provide the services it wishes in Austria. Those matters could be corroborated by the competent authorities of the Member State of establishment which are responsible for supervising the activities of the body concerned.

59 Second, should any irregularity be found in the inspections carried out in Austria by that body, Article 10a of Regulation No 2092/91 provides for a system of exchange of information between the Member States which would permit the Austrian authorities to inform the authorities supervising that body of the irregularity, in order that they might adopt the requisite measures, namely, for example, the inspection of that body's premises, and, if necessary, withdraw its approval.

60 Therefore, it must be held that the requirement resulting from the contested administrative practice is not proportionate to the objective of consumer protection invoked by the Republic of Austria.

61 Accordingly, it follows from the foregoing that, by requiring of private bodies approved in another Member State that they maintain an establishment in Austria in order to be able to provide inspection services there, the Republic of Austria has failed to fulfil its obligations under Article 49 EC.

Costs

62 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Republic of Austria has been unsuccessful in its submissions, the latter must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. **Declares that, by requiring of private inspection bodies of organically-farmed products approved in another Member State that they maintain an establishment in Austria in order to be able to provide inspection services there, the Republic of Austria has failed to fulfil its obligations under Article 49 EC;**

2. **Orders the Republic of Austria to pay the costs.**

[Signatures]