

previous activities in Germany. On the other hand the restriction which the transitional rule places on those applicants who have carried out previous activities in Germany during the reference period is disproportionate: the purpose of the rule, which is to limit the number of psychotherapists who are authorised to practise independently of need, is not jeopardised if comparable activities or activities of equal value, which the migrants have carried out in other Member States, are acknowledged as previous activities which are worthy of protection. On those grounds, this case concerns a restriction of the right of establishment which is not to be regarded as justified.

exceeded the powers it derives from that provision. In so far as there exists scientific uncertainty as to the health and environmental consequences of DecaBDE use, the Commission has committed a manifest error in assessing the scientific evidence and failed to respect the precautionary principle. By extending the exemption to all the polymeric applications of DecaBDE, without exception, it has breached the principle of proportionality. The Commission has failed to provide a proper statement of reasons for its decision to exempt DecaBDE.

(¹) Official Journal L 271 , 15/10/2005 P. 0048 - 0050

(²) Official Journal L 037 , 13/02/2003 P. 0019 - 0023

Action brought on 11 January 2006 by European Parliament against the Commission of the European Communities

(Case C-14/06)

(2006/C 86/18)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 11 January 2006 (lodged by fax on 6 January 2006) by the European Parliament, represented by Mr K. Bradley, Mr A. Neergaard and Mrs I. Klavina, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul Commission Decision 2005/717/EC of 13 October 2005 amending for the purpose of adapting to the technical progress the Annex to Directive 2002/95/EC of the European Parliament and of Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment;
2. order Commission of the European Communities to pay the costs.

Pleas in law and main arguments

Commission Decision 2005/717/EC of 13 October 2005 (¹) exempts decabromodiphenyl ether ('DecaBDE') from the marketing prohibition imposed by Article 4(1) of European Parliament and Council Directive 2002/95 (²) on the restriction of the use of certain hazardous substances in electrical and electronic equipment. The applicant submits that the Commission has failed to respect the conditions laid down for such exemptions by Article 5(1) of that Directive and has therefore

Reference for a preliminary ruling from the Finanzgericht München (Germany) By order of that court of 19 January 2006 in Juers Pharma Import-Export GmbH v Oberfinanzdirektion Nürnberg

(Case C-40/06)

(2006/C 86/19)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht München (Germany) of 19 January 2006, received at the Court Registry on 25 January 2006, for a preliminary ruling in the proceedings between Jules Pharma Import-Export GmbH and Oberfinanzdirektion Nürnberg on the following question:

Is the Combined Nomenclature ('the CN') as amended by Annex to Commission Regulation (EC) No 1789/2003 (OJ 2003 L 281, p.1) of 11 September 2003 (¹) amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical Nomenclature and on the Common Customs Tariff to be interpreted as meaning that Melatonin capsules, put up as dietary supplements in the absence of authorisation under the provisions on medical products, are to be classified under heading 3004?

(¹) OJ L 281, p.1