

Case T-367/03

Yedaş Tarım ve Otomotiv Sanayi ve Ticaret AŞ

v

**Council of the European Union and
Commission of the European Communities**

(Action for damages — International agreements — EEC-Turkey Association Agreement — Customs Union between the European Community and Turkey — Compensatory financial aid)

Judgment of the Court of First Instance (Fifth Chamber), 30 March 2006 . . . II - 876

Summary of the Judgment

1. *International agreements — Agreements concluded by the Community — Direct effect (EEC-Turkey Association Agreement, Arts 2(1), 3(1), and 6)*
2. *Non-contractual liability — Conditions — Unlawfulness (Arts 226 EC and 288, second para., EC)*

3. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — One of the conditions not present*
 (Art. 288, second para., EC)

1. A provision of an agreement concluded by the Community with non-member States is to be regarded as having direct effect when, having regard to its terms and the subject-matter and nature of the agreement, it contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.

regard to Article 6 of that agreement, which is an institutional provision creating an Association Council.

(see paras 39, 42-44)

That is not the case of Article 2(1) of the Agreement establishing an Association between the European Economic Community and Turkey, which describes in general terms the purpose of that agreement. That provision is programmatic in nature. It is not sufficiently precise and unconditional and is of necessity subject, in its implementation or effects, to the adoption of subsequent measures, precluding its having direct effect on the situation of an economic operator. The same is true with regard to Article 3(1) of that agreement, the first subparagraph of which indicates in general terms the purpose of the preparatory stage of the association and the second subparagraph of which refers to the protocols annexed for the definition of the implementing rules of that stage. The same conclusion must also be reached with

2. With regard to the Community's non-contractual liability, the Community cannot be held liable for an alleged inadequacy of the financial support allocated to Turkey, since that deficit was the result of opposition from a Member State. Even if that opposition can be considered to constitute a failure on the part of that Member State to fulfil its obligations under the Treaty, the Commission was not obliged to bring an action for failure to fulfil obligations in accordance with Article 226 EC. Accordingly, the Commission's failure to bring such an action does not, in any event, constitute an unlawful act, so that it cannot involve the non-contractual liability of the Community.

(see paras 50, 51)

3. In order for the Community to incur non-contractual liability within the meaning of the second paragraph of Article 288 EC, a series of conditions must be met, namely the conduct of which the institutions are accused must have been unlawful, the damage must be real and a causal link must exist between the conduct and the damage complained of. If any one of those conditions is not

satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for that liability.

(see paras 34, 62)