Caroline Bradley   **Spring 2009**
EUROPEAN COMMUNITY LAW

PAPER ASSIGNMENT
The paper should be typed and no more than 4 pages in length (at approximately 250 words per page).

In *Alliance for Natural Health* v *Secretary of State for Health* (Case C-154/04) Advocate General Geelhoed stated that:

68.   In its present form, Directive 2002/46 is seriously deficient in three respects.
–   There is **no mention, in the text of the Directive itself, of the substantive norm** which the Commission must follow as a guiding principle in exercising its powers under Articles 4(5) and 13 of the Directive. The Directive thus contains **no standard** for assessing whether the Commission has, in taking decisions concerning modifications of the positive list, remained within the limits of its legal powers;
–   It is **not clear whether the Directive allows private parties to submit** substances for evaluation with a view to having them included in the positive lists. Recital 10 in the preamble to the Directive refers unambiguously to this possibility, yet Article 4(6)(b) of the Directive would seem to suggest the contrary;
–   On the supposition that private parties are indeed able to submit substances for an evaluation with a view to inclusion in the positive lists, there is **no clear procedure** for this purpose **which provides minimum guarantees for protecting those parties' interests**.

The ECJ disagreed with the Advocate General.

EXPLAIN:
1. the **differences** between the Advocate General's and the ECJ's approaches to this issue;
2. **giving reasons for your answer**, whether you think that the Advocate General's approach or the ECJ's approach to the issue is preferable.

Before writing your essay you should read Decision1999/468 (the Comitology Decision).[1]

---

[1]   http://eur-lex.europa.eu/LexUriServ/site/en/oj/1999/l_184/l_18419990717en00230026.pdf . This Decision was amended in 2006, introducing a new regulatory procedure with scrutiny by the European Parliament, and you can find the amendment here:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:200:0011:0013:EN:PDF.And there is a consolidated version here:
http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1999/D/01999D0468-20060723-en.pdf .