

the applicant is the result of numerous errors on the part of the defendant concerning the determination and assessment of the facts for the purposes of calculating the fine. In addition, the defendant infringed numerous fundamental principles of Community law.

The applicant claims that the Guidelines<sup>(1)</sup> infringe Article 15(2) of Regulation No 17/62. Its complaint basically concerns the flat-rate determination of the amount of fines resulting from the introduction of the Guidelines. In the applicant's view, the amount of fines should be calculated only in proportion to turnover, and the flat-rate determination provided for in the Guidelines in respect of smaller undertakings chiefly results in fines which are unreasonable and disproportionate. Consequently, Article 3(b) of the contested decision is likewise unlawful.

In addition, the applicant maintains that, even assuming that the Guidelines are lawful, the defendant misapplied them. In particular, the defendant misjudged the constituent element of the contravention which is the seriousness of the act. It should have had regard to the fact that the contravention was only moderately serious and had little effect on the market, and to the fact that the undertakings concerned did not adhere to the price agreements. The fact that only a very small proportion of the applicant's total turnover was affected by the contravention constitutes an infringement of Article 15(2) of Regulation No 17/62, and, in addition, the limited economic efficiency of the applicant was wrongly left out of account.

The applicant argues that, in any event, the amount of the fine is contrary to the general principles of proportionality and reasonableness, and that the failure to take into account the small product turnover of the applicant as compared with the total turnover resulted in an infringement of the principle of equal treatment. Quite different fines were imposed on undertakings having a totally similar strength in the market.

Lastly, the applicant maintains that the calculation of the penalty by the defendant infringes Article 7 of the ECHR, inasmuch as the financial penalty imposed on the applicant reflects a range of penalisation which has twice been decisively extended since the termination of the contravention. The systematic alteration of the practice followed by the defendant, resulting from the introduction of the Guidelines and the change in the method of determining fines at the end of 2001, constitutes an extension of the range of penalisation which cannot be applied to conduct which occurred before that extension took place.

<sup>(1)</sup> Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

**Action brought on 11 March 2002 by Griffin Europe Headquarter N.V. against the European Parliament and the Council for the European Union**

(Case T-70/02)

(2002/C 144/101)

(Language of the case: English)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance of the European Communities on 11 March 2002 by Griffin Europe Headquarter N.V., represented by Mr Koen Van Maldegem and Mr Claudio Mereu of McKenna & Cuneo, LLP, Brussels (Belgium).

The applicant claims that the Court should:

- order the partial annulment of Decision 2455/2001/EC of the European Parliament and of the Council dated 20 November 2001 establishing a list of priority substances in the field of water policy and amending Directive 2000/60/EC, so as to remove diuron and isoproturon from the measure;
- order the Defendants to pay all costs and expenses in these proceedings.

*Pleas in law and main arguments*

The applicant in this case produces pesticides (plant protection products). The applicant contests the inclusion of certain of its products' active substances, diuron and isoproturon, in the list of priority substances in the field of water policy. This list is established by the defendants in execution of Directive 2000/60/EC<sup>(1)</sup>. The products listed are considered to present a risk to or via the aquatic environment and their emissions must be reduced. Furthermore, the contested decision indicates some of the applicant's products as priority substances 'under review', which will lead, according to the applicant, to a classification as priority hazardous substances. These substances pose a higher risk for the aquatic environment and their emissions must be eliminated.

The applicant objects to the procedure and the methodology used by the defendants when adopting the contested Decision. To establish the contested list, the defendants used a summary procedure as laid down in Article 16 (2), second paragraph, of Directive 2000/60.

The pleas and arguments invoked in the present case are largely similar to those raised in case T-45/02, DOW AgroSciences and DOW AgroSciences -v- European Parliament and Council of the European Union (not yet published in the OJ).

(<sup>1</sup>) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1)

**Action brought on 19 March 2002 by Stephan-Harald Voigt against the European Central Bank**

(Case T-78/02)

(2002/C 144/102)

(Language of the case: German)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 19 March 2002 by Stephan-Harald Voigt, residing in Langensfeld (Germany), represented by N. Pflüger, lawyer.

The applicant claims that the Court should:

- annul the written reprimand issued to the applicant by the defendant pursuant to Article 43(i) of the Conditions of Employment by letter of 1 March 2002;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

In support of his application, the applicant claims that the written reprimand is invalid on the ground that general procedural principles were not respected. The reprimand is based on incorrect assumptions and the applicant was, *inter alia*, not granted an adequate hearing in the procedure. Moreover, the defendant's conduct infringes European data-protection rules.

The applicant also disputes that the Vice-President of the defendant had been granted the general authority to decide on

written reprimands within the meaning of Article 43(i) of the Conditions of Employment by a valid decision of the Executive Board.

**Action brought on 23 March 2002 by Pedro Diaz S.A. against the Office for Harmonisation in the Internal Market**

(Case T-85/02)

(2002/C 144/103)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 23 March 2002 by Pedro Diaz S.A. of Carretera de Cartagena-La Palma, Km 2,4, Cartagena (Spain), represented by Patricia Koch Moreno.

The applicant claims that the Court should:

- annul the decision of 16 January 2002 of the Third Board of Appeal rejecting application number 199 265 for registration of a Community trade mark CASTILLO to describe 'cheeses' falling within Class 29;
- declare that application number 199 265 for registration of a Community trade mark CASTILLO to describe 'cheeses' falling within Class 29 should be allowed;
- order the defendant and, where appropriate, the intervener, to pay the costs of the proceedings.

*Pleas in law and main arguments*

Applicant for the Community trade mark	Pedro Diaz S.A.
Community trade mark applied for Word mark:	CASTILLO — application no 199 265 for products falling within Classes 29 and 30
Proprietor of the trade mark or sign invoked in the opposition procedure:	Granja Castello S.A.
Trade mark or sign being opposed:	Word mark with graphic elements 'EL CASTILLO' registered for products in Class 29 and word mark with graphic elements 'EL CASTILLO NADO 1' for products in Class 30