

entitlement of the defendant to investigate cartel cases and to adopt prohibition Decisions, the rules on limitation in Regulation No. 2988/74⁽²⁾ should be considered applicable to declaratory prohibition decisions.

- The adoption of a prohibition decision is time-barred under general principles of Community Law. It is stated in this regard that where there is no doubt that the alleged conduct was terminated more than five years before an investigation was opened, there is no need and no justification for a declaratory decision, because there is no place for a cease and desist order, as contained in Article 2 of the contested Decision, or any other form of penalty to be imposed on the applicant by the defendant. Alternatively, the rationale for limitation periods in the European Union is that after a certain period of time it is in the interest of the proper functioning of the legal system that infringements of the law should no longer be investigated or lead to any form of 'punishment' of the party concerned.
- The defendant was not competent within the meaning of the second paragraph of Article 230 EC to adopt the contested Decision, as it thereby exceeded its powers under the Treaty and Regulation No. 17/62. The defendant is not empowered by Article 3 of Regulation No. 17, or by any other provision, to adopt a declaratory decision where the infringement has already been terminated outside the limitation period provided for in Article 1 of Regulation No. 2988/74.

⁽¹⁾ Notice not yet published in the OJ.

⁽²⁾ Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of actions under the rules of the European Economic Community relating to transport and competition (OJ L 319, 29.11.1974, p. 1).

Action brought on 7 February 2002 by Sumika Fine Chemicals Co. Ltd. against the Commission of the European Communities

(Case T-23/02)

(2002/C 109/102)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 February 2002 by Sumika Fine

Chemicals Co. Ltd., represented by Mr. Martin Klusmann and Ms Vanessa Turner of Freshfields Bruckhaus Deringer, Düsseldorf (Germany).

The applicant claims that the Court should:

- annul the Defendant's Decision C(2001)3695 final of 21 November 2001 in Case No. COMP/E-1/37.512 — Vitamins, so far as Sumika Fine Chemicals Co. Ltd. is concerned;
- order the Defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied upon in Case T-22/02 (Sumitomo Chemical/Commission, not yet published in the OJ).

Action brought on 7 February 2002 by Maddalena Lebedef-Caponi against the Commission of the European Communities

(Case T-24/02)

(2002/C 109/103)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 February 2002 by Maddalena Lebedef-Caponi, residing at Senningerberg (Grand Duchy of Luxembourg), represented by Gilles Bounéou, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the express decision No 40263 of 6 November 2001 by which the appointing authority replied to the applicant's complaint No 334/01 of 18 July 2001 by fixing the compensation for the non-material damage suffered by her in the sum of 1 500 euros;
- award the applicant the sum of BEF 800 000, assessed as amounting now to the sum of BEF 1 000 000, by way of compensation for the non-material damage suffered as a result of the lateness in drawing up her staff report (placed belatedly in her personal file) for the period 1993-1995 and the lateness in drawing up her staff reports for the periods 1995-1997 and 1997-1999;