The applicant claims that the Court should:

— principally, annul pursuant to Article 230 EC the decision of the Commission of the European Communities of 17 December 2002 C(2002) 5087 final, by which the applicant was ordered to pay a fine of EUR 3 750 000,00 at the end of a proceeding pursuant to Article 65 of the ECSC Treaty (Case COMP/37.956 — Round bar steel for reinforced concrete);

— failing that, annul in part Decision C(2002) 5087 final, with a consequential reduction of the fine,

— in any event, order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

This action is directed against the same decision as that challenged in Case T-27/03 (S.P. v Commission). The pleas in law and main arguments are similar to those put forward in that case. In addition to breach of rights of the defence, in that the communication of the Commission's complaints did not take into consideration whether there was any effect on intra-Community trade, the applicant alleges that the Commission made an incorrect assessment of the length of its participation in the agreement, decision or concerted practice, and of the base prices, the prices of the 'extra' in terms of dimension and the limitation of production and/or sales.

Action brought on 8 March 2003 by the Asociación de Empresarios de Estaciones de Servicio de la Comunidad Autónoma de Madrid and the Federación Catalana de Estaciones de Servicio against the Commission of the European Communities

(Case T-95/03)

(2003/C 112/81)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 March 2003 by the Asociación de Empresarios de Estaciones de Servicio de la Comunidad Autónoma de Madrid and the Federación Catalana de Estaciones de Servicio, both established in Madrid, represented by José María Jiménez Laiglesia and Marta Delgado Echevarría.

The applicant claims that the Court should:

— annul the Commission Decision of 13 November 2002 in which it was decided not to raise any objections to the Disposición Transitoria Primera (First Transitional Provision) of Real Decreto Ley 6/2000 de Medidas Urgentes de Intensificación de la Competencia en Mercados de Bienes y Servicios (Royal Decree Law on Emergency Measures to Promote Competition in Markets for Goods and Services);

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants in the present action, which represent almost all the existing service stations in Spain, are challenging the Commission's failure to take action in respect of the exemption of certain hypermarkets from the requirement to obtain permission from the authorities to vary the planning restrictions on building and usage, an exemption introduced into Spanish law by the First Transitional Provision of Royal Decree Law No 6/2000 of 23 June on Emergency Measures to Promote Competition in Markets for Goods and Services. The stated objective of that exemption, which the applicants consider amounts to aid, was to facilitate the establishment of service stations on the premises of those hypermarkets, thereby promoting increased competition in the market for the retail supply of petroleum products in Spain.

The Decision at issue in this action confirms that the disputed measure does not amount to State aid, since it does not entail a transfer of State resources.

In support of their claims, the applicants submit:

— that the measure at issue increases the value of the beneficiaries' property is immediately and without their providing consideration and entails an exceptional reclassification of the land on which the hypermarkets are located, abolishes the charges, costs and administrative procedures which are necessary under normal circumstances if a service station is to be opened and also entails the State's surrender of its right to receive the consideration in money or money's worth which would normally be applicable.

— Manifest error of assessment on the Commission's part in that it carried out an incomplete and incorrect analysis of the national planning legislation, which vitiates the Decision as regards the transfer of State resources and the ensuing interpretation of Article 87(1) EC.

— Manifest error of assessment as regards the Community case-law and rules on the requirement laid down in Article 87(1) of the Treaty that aid should be granted by the State or through State resources. It is asserted in this respect that nothing in Community case-law or in the legislation on State aid suggests that it is necessary that the resources to which the domestic authorities waive their right should be formally recognised in the State budget.

— Breach of the principle of sound administration, since the Commission did not raise objections to the disputed measure or initiate the formal investigation procedure laid down in Article 88(2) EC.

The applicants also allege that the Commission failed to comply with the obligation to state reasons.

Action brought on 10 March 2003 by Manel Camós Grau against the Commission of the European Communities

(Case T-96/03)

(2003/C 112/82)

(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 10 March 2003 by Manel Camós Grau, residing in Brussels, represented by Marc-Albert Lucas, lawyer.

The applicant claims that the Court should:

— annul the OLAF decision of 17 May 2002 removing one of the investigators from the inquiry by the Office into the IRELA inasmuch as it leaves standing investigative measures and decisions on its conduct adopted by the investigator or to which he contributed, without re-examining or annulling them or requiring new inquiries;

— annul the OLAF decision of 29 November 2002 implicitly rejecting the applicant's administrative complaint of 29 July 2002 against the decision of 17 May 2002;

— order the Commission to pay him by way of compensation for non-material damage provisionally assessed, ex aequo et bono, at EUR 10 000;

— order the Commission to pay the applicant compensation for damage to his career, provisionally, of EUR 1;

— order the Commission to reimburse the expenses incurred by the applicant in preparing his defence in the context of the inquiry and his administrative complaint against the decision of 17 May 2002;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is an official of the Commission of the European Communities. Between 1993 and 1997, he assisted his immediate superior who was a member of the Executive Committee of the Institute for European-Latin American Relations (IRELA). When an internal inquiry was opened by the European Anti-fraud Office (OLAF) into the IRELA, the applicant was informed that it was possible that he too was implicated in financial irregularities. The applicant asked the director of OLAF to find out as soon as possible whether there was any possible conflict of interest with regard to one of the investigators and if appropriate to take the necessary steps to guarantee the objectivity of the inquiry. By the contested decision, the director of OLAF decided to remove from the inquiry the investigator concerned but left standing investigative measures and decisions proposed and adopted by him or to which he contributed.

In support of his claims, the applicant relies on four pleas in law:

— Infringement of Article 25(2) of the Staff Regulations inasmuch as the contested decision was not notified to him and provides an inadequate statement of reasons;

— Breach of the duty to provide evidence of the proper conduct of the inquiry;

— Manifest error of assessment in that the reason for the contested decision appears to be that the investigator concerned did not participate either in the monitoring or the handling of the case in question;

— Breach of the principle that inquiries should be fair and impartial.
