

The applicant claims that the Court should:

- annul the decision of 17 May 2002 of OLAF or its Director removing one of the investigators from the Office's investigation into the IRELA owing to a conflict of interests on his part, in that it left standing measures adopted by that investigator to which he contributed;
- annul the decision of 29 November 2002 of OLAF or its Director rejecting by implication the applicant's administrative complaint of 29 July 2002 against that decision;
- annul the report of 17 October 2002 closing the investigation in to IRELA or the decision of its Director adopting that report or its conclusions;
- annul the decision of 28 May 2003 of the Director of OLAF rejecting the applicant's administrative complaint of 4 February 2003 against that report;
- order the Commission to pay the applicant compensation, evaluated provisionally and *ex aequo et bono* at EUR 10 000, for the non-pecuniary harm sustained;
- order the Commission to pay the applicant a provisional sum of EUR 1 by way of compensation for the harm to his career;
- order the Commission to reimburse the fees which he has incurred in his defence in the investigation and the administrative complaints against the contested decision and report;
- order the Commission to pay the costs.

#### *Pleas in law and main arguments*

The applicant, an official with the defendant, has already brought an action before the Court (T-96/03)<sup>(1)</sup> also seeking annulment of the OLAF's decision of 12 May 2002 and claiming damages. By the present action, the applicant repeats the forms of order already submitted in his first action, but also attacks the report closing the inquiry. In support of the present action, he relies first of all on the pleas already raised in Case T-96/03.

He then relies on two further pleas. The first alleges breach of the principles of the rights of the defence, legitimate expectations and proper administration, and also of Commission Decision 396/96 on the terms and conditions for internal investigations. The second plea alleges breach of Articles 6 and 9 of Regulation No 1073/1999<sup>(2)</sup>, and also the principle of

the objectivity of OLAF investigations, in that the contested report was drawn up without the assistance of the sole investigator who remained authorised.

<sup>(1)</sup> Communicated in OJ C 112, 10.5.2003, p. 44.

<sup>(2)</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), published in OJ L 136 of 31.05.1999, pp. 1-7.

### **Action brought on 12 September 2003 by Nürburgring GmbH against the European Parliament and the Council of the European Union**

**(Case T-311/03)**

(2003/C 275/81)

*(Language of the case: German)*

An action against the European Parliament and the Council of the European Union was brought before the Court of Justice of the European Communities on 12 September 2003 by Nürburgring GmbH, represented by Dr H.-J. Rabe, and Dr M.A. Dausés.

The applicant claims that the Court should:

- declare Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, and Article 5(1) thereof in particular, void;
- order the defendant to bear the costs.

#### *Pleas in law and main arguments*

The applicant organises Formula 1 car racing at the Nürburgring. Tobacco companies make substantial contributions to support such racing events. The applicant submits that, because of the prohibition in Article 5(1) of the directive, there is a danger that Formula 1 racing will no longer be held at the Nürburgring.

The applicant claims that there was a procedural defect in the adoption of the directive. The version of the directive adopted by the Council differs on several points from the version adopted by the European Parliament. That constitutes a breach of Article 251 EC. Furthermore, it submits that Article 95 EC does not constitute a sufficient legal basis. Despite its apparent limitation to cross-border sponsorship, Article 5(1) entails a general prohibition on sponsoring for tobacco products. However, according to the judgment of the Court of Justice in Case C-376/98 <sup>(1)</sup> Article 95 EC does not justify a general ban on sponsoring.

The applicant argues further that the selection of Article 95 EC as the legal basis allowed the prohibition on harmonisation in Article 152(4) to be circumvented. The applicant also claims that the vague wording of the sponsorship ban breaches the requirement of clarity which is the expression of the principle of legal certainty fundamental to Community law.

Finally, the applicant points out that Article 5(1) of the directive is a disproportionate measure, in view both of the purported internal market objectives of the Community legislature and of the health protection aims actually pursued and thus breaches a founding principle of the European Union. Moreover, the ban infringes the fundamental property rights of the applicant.

<sup>(1)</sup> Case C-376/98 Germany v Parliament and Council [2000] ECR I-8419.

**Action brought on 11 September 2003 by Annelies Keyman against the Commission of the European Communities**

**(Case T-313/03)**

(2003/C 275/82)

*(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 11 September 2003 by Annelies Keyman, residing in Overijse (Belgium), represented by Carlos Mourato, avocat.

The applicant claims that the Court should:

- Annul the decisions of 11 December 2002 and 11 June 2003 approving the applicant's staff report for 1999-2001;
- Order the defendant to pay the costs of the proceedings, pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance, together with the expenses necessarily incurred for the purpose of the proceedings and, in particular, the expenses relating to the address for service, travel and subsistence expenses and the remuneration of lawyers, pursuant to Article 91(b) of those rules.

*Pleas in law and main arguments*

In support of her application the applicant alleges breach of Article 43 of the Staff Regulations and a manifest error of assessment. The applicant further alleges abuse of power.

**Action brought on 15 September 2003 by Société Musée Grévin against the Commission of the European Communities**

**(Case T-314/03)**

(2003/C 275/83)

*(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 15 September 2003 by Société Musée Grévin, having its registered office in Paris, represented by Bernard Geneste and Olivia Davidson, avocats.

The applicant claims that the Court should:

- annul the Commission's decision of 8 July 2003 requiring Société Musée Grévin to reimburse the amounts allegedly overpaid to it;
- order the Commission to pay all of the costs.