

The contested decision is also in breach of Article 176 EC since the Commission is not entitled to debar the Member States from making an additional contribution to climate protection by withdrawing allocated emission certificates where they have failed to fulfil their purpose.

Finally, the Commission overlooked the fact that new market participants cannot be placed at an 'unjustifiable advantage' because ex-post adjustments can be made only downwards. To that extent the contested decision is vitiated by a manifest error of assessment.

(<sup>1</sup>) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 established a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 1996 L 275, p. 32).

**Action brought on 17 September 2004 by Polyelectrolyte Producers Group against the Council of the European Union and the Commission of the European Communities**

(Case T-376/04)

(2004/C 284/51)

(Language of the case: English)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 17 September 2004 by Polyelectrolyte Producers Group, Brussels (Belgium) represented by K. Van Maldegem and C. Mereu, lawyers.

The applicant claims that the Court should:

- Order the annulment of the defendant's decision to allow Norway to apply more stringent concentration limits for the chemical substance acrylamide than those applicable in the Community, embodied in Decision of the EEA Joint Committee No 59/2004 of 26 April 2004 (<sup>1</sup>) amending Annex II (Technical regulations, testing and certification) to the EEA Agreement and the annulment of the Community's position for the adoption of that decision;
- Declare the illegality and the inapplicability vis-à-vis the applicant of the EEA Joint Committee joint statement concerning the EEA Agreement — Annex II, Chapter XV — regarding the review clauses in the field of dangerous substances of 26 March 1999 (<sup>2</sup>), in so far as it allows Norway to apply concentration limits for the chemical substance acrylamide that are more stringent than those that apply in the Community;
- Order the defendant to compensate the applicant in the provisional amount of one Euro for damages suffered as a

result of the adoption of the contested acts, as well as any applicable interests, pending the exact calculation and determination of the exact amount;

- Order defendant to pay all costs and expenses in these proceedings.

*Pleas in law and main arguments:*

In support of its application the applicant submits that, in the absence of new Community legislation there was no power under Article 102 EEA Agreement to adopt the contested measures. The applicant further considers that the contested measures restrict the free movement of goods and thus infringe Articles 1, 3 and 97 of the EEA Agreement. It also claims that they infringe Articles 30 and 31 of Directive 67/548 (<sup>3</sup>). The applicant also invokes infringements of general principles of Community law, namely the principles of legal certainty and legitimate expectations, proportionality and of non-discrimination as well as of essential procedural requirements, namely the need to consult the European Parliament and the duty to state reasons.

Regarding its action for damages the applicant submits that because of the contested measures it has suffered both material damage, due to the need to label the polyacrylamide sold in Norway with a more restrictive label and danger warnings incurring additional costs, as well as non-material damage since, in the applicant's opinion, the Norwegian measures allowed by the defendant shed a bad light over the classification of polyacrylamide beyond Norwegian boundaries.

(<sup>1</sup>) OJ L 277, p. 30.

(<sup>2</sup>) OJ C185, p. 6.

(<sup>3</sup>) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances OJ English special edition: Series I Chapter 1967 p. 234.

**Action brought on 16 September 2004 by Bart Nijs against the Court of Auditors of the European Communities**

(Case T-377/04)

(2004/C 284/52)

(Language of the case: French)

An action against the Court of Auditors of the European Communities was brought before the Court of First Instance of the European Communities on 16 September 2004 by Bart Nijs, residing in Bereldange (Luxembourg), represented by Fränk Röllinger, lawyer, with an address for service in Luxembourg.