The applicant claims that the Court should:

— annul the Commission's decision of 18 June 1996 rejecting the applicant's request that it give consideration to the possible application of Article 31 (2) of the Staff Regulations,

— annul, in so far as may be necessary, the decision adopted by the Commission on 27 December 1996 expressly rejecting the applicant's complaint,

— order the defendant to pay all the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are the same as in Case T-16/97 [1].

[1] OJ No C 74, 8. 3. 1997, p. 27.

Action brought on 1 April 1997 by the Region of Tuscany against the Commission of the European Communities

(Case T-81/97)

(97/C 166/43)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 April 1997 by the Region of Tuscany, Florence, represented by Vito Vacchi and Lucia Bora, of the Florence Bar, with an address for service in Luxembourg at the Chambers of Paolo Benocci, 50 Rue de Vianden.

The applicant claims that the Court should:

— annul memorandum VI/040551 of the European Commission — Directorate General for Agriculture — of 21 November 1994,

— annul the act — never notified to the applicant region — by which the European Commission withdrew the Community assistance earmarked under the Integrated Mediterranean Programme (IMP) for project No 88.20.IT.006.0 (works for the supply of potable water in Tuscany),

— annul the European Commission's memorandum of 31 January 1997, received by the applicant on 7 February 1997, by which the Commission informed it that the assistance had been withdrawn.

Pleas in law and main arguments adduced in support:

In this case the Region of Tuscany challenges the defendant's act withdrawing the financial assistance earmarked under the Integrated Mediterranean Programme (IMP) for a project for the supply of potable water in Tuscany amounting in total to approximately ECU 900 000.

The corresponding request for payment in full was made by letter of 31 March 1995 from the Assessore Regionale all'Agricoltura, which was never answered by the Commission. Consequently, in November 1996, since the applicant region had not received the payment requested, it sent a request for payment to the Commission, which stated in response that, as the request for payment in full in respect of the project in question should have reached it by 31 March 1995, whereas it had only arrived four days later, the Community assistance had to be withdrawn pursuant to Article 10 of Regulation (EEC) No 4256/88 [1].

The applicant claims in the first place that Article 10 of Regulation (EEC) No 4256/88 has been infringed in so far as that provision does not provide that requests for payment must be received by the Commission by 31 March, but only that they must have been 'the subject of a request for final payment by 31 March 1995'. Consequently, the letter from the Region of Tuscany correctly complies with the provision of the Regulation in question, which lays down the deadline for sending the request and not for its receipt.

The application also claims that there has been a failure to comply with the principle of proportionality. In the applicant's view, even it is accepted that the region did not correctly comply with the provision — which it denies —, the economic burden is excessive by comparison with the aim pursued, that is to say, the automatic sanction of forfeiture of the security laid down for a markedly less serious infringement than failure to fulfil the principal obligation which the security itself is intended to guarantee.

Lastly, the applicant claims that there has been a further infringement of Community law in the shape of a breach of the principle of protection of legitimate expectations. It points in this connection to the complete lack of reaction on the part of the Commission between May 1995 and November 1996. That lack of reaction created a legitimate expectation in the region that it would receive the funding already earmarked for the works in question, given that it had been established that the works had been properly completed.

[1] Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (OJ No L 374, 1988, p. 25), as amended by Regulation (EEC) No 2085/93 of 20 July 1993 (OJ No L 193, 1993, p. 44).

Action brought on 28 March 1997 by Patrick Rousseaux against the Commission of the European Communities

(Case T-82/97)

(97/C 166/44)

(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 28 March 1997 by Patrick Rousseaux, residing in Brussels, represented by Nicolas Lhoëst, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson Sarl, 30 Rue de Cessange.

The applicant claims that the Court should:

— annul the Commission's decision of 18 June 1996 rejecting the applicant's request that it give consideration to the possible application of Article 31 (2) of the Staff Regulations,

— annul, in so far as may be necessary, the decision adopted by the Commission on 27 December 1996 expressly rejecting the applicant's complaint,

— order the defendant to pay all the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are the same as in Case T-16/97 (1).

(1) OJ No C 74, 8. 3. 1997, p. 27.

Action brought on 1 April 1997 by Société Anonyme de Traverses en Beton Armé (Sateba) against Commission of the European Communities

(Case T-83/97)

(97/C 166/45)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance on 1 April 1997 by Société Anonyme de Traverses en Beton Armé (Sateba), whose registered office is in Paris, represented by Jacques Manseau, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt.

The applicant claims that the Court of First Instance should:

— annul Commission Decision of 20 January 1997, Reference No XV/B3/MM/(96) D/2312,

— order the defendant to pay the costs.

Pleas in law and main arguments adduced in support:

The applicant, a French company operating in the railway infrastructure sector, contests the Commission decision closing the file on the complaint it lodged against Société Nationale des Chemins de Fer Belges (SNCB). That complaint concerned the conditions under which a public works contract was awarded for the supply of monobloc concrete sleepers on the basis of a qualification procedure devised by the SNCB. One of the grounds of the applicant's complaint is the fact that the rejection of its tender, for failure to meet technical requirements, was based on the misconception that the monobloc sleepers decided on by the SNCB and the duo-bloc sleepers offered by the applicant are not perfectly substitutable. According to the applicant company, the contested decision closing the file endorsed that incorrect technical assessment.

The Commission based its decision not to proceed on the lack of any Community interest in bringing an action against the Belgian State for failure to fulfil its obligations.

In support of its contentions, the applicant alleges a breach of essential procedural requirements, in that, first, the Commission did not hear its views at any stage and, second, it did not specify the legislative basis for its decision not to proceed with an investigation. Specifically, in giving a decision on the contract in question, the Commission cannot rely *in abstracto* on Community law relating to public works contracts without taking account of the rules governing competition. In that regard, the contested decision should be declared unlawful under Article 86 of the Treaty, in conjunction with Article 90 (2) thereof. The applicant stresses that the SNCB enjoys a monopoly for operation of the Belgian railway system, that it has been granted authority for type-approval of the equipment used in its network and that the technical specifications at issue in these proceedings are unfavourable only to imported products.

Finally, the applicant alleges an incorrect assessment of the facts and a misuse of powers. It states in that connection that, in the field of competition, where circumstances constituting an infringement exist, the Commission may impose a sanction of an economic nature on the undertakings concerned. In its view, it was only in order to evade the application of Community law in this area that the Commission adopted a decision not to proceed in respect of acts imputable to the SNCB, at the same time concluding that there was no Community interest in taking proceedings against the Belgian State. However, by referring to the Belgian State rather than to the SNCB, the defendant is endeavouring to make its decision unchallengeable by virtue of the settled case-law concerning the application of Article 169 of the Treaty.

Action brought on 3 April 1997 by Horeca-Wallonie against the Commission of the European Communities

(Case T-85/97)

(97/C 166/46)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First