Action brought on 16 May 1997 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-192/97)

(97/C 212/34)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 16 May 1997 by the Commission of the European Communities, represented by Götz zur Hausen, of its Legal Service, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Commission's Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare the Federal Republic of Germany in breach of its obligations under Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities [1], and in particular of Article 1 thereof in conjunction with Annexes I and III thereto, in that:

   — it failed fully to adopt the concept of 'major accidents' in national law, since persons who are under a duty to prevent occurrences or to deal with their consequences are excluded from the category of persons affected by a serious danger,

   — it failed fully to adopt the concept of 'industrial activity' in national law, since the handling of chemicals is covered only if a chemical transformation takes place,

   — in relation to nitrous oxide, it set a threshold level incompatible with Annex III to the Directive,

   — it failed to include the substance referred to in No 175 of Annex III to the Directive within the scope of the national provisions;

2. order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are identical with those in Case C-186/97 [2]. The period for implementation expired on 8 January 1984.

[1] OJ No L 230, 5. 8. 1982, p. 1, as last amended by Directive 91/692/EEC (OJ No L 377, 31. 12. 1991, p. 48).

[2] See page 16 of this Official Journal.

References for a preliminary ruling made by the Tribunal Administratif du Grand-Duché de Luxembourg (First Chamber) by judgments of that court of 7 May 1997 in the cases of Manuel de Castro Freitas and Raymond Escallier against the Minister for Small Businesses and Tourism

(Cases C-193/97 and C-194/97)

(97/C 212/35)

Reference has been made to the Court of Justice of the European Communities by judgments of the Tribunal Administratif du Grand-Duché de Luxembourg (First Chamber) (Administrative Tribunal of the Grand Duchy of Luxembourg (First Chamber)) of 7 May 1997, received at the Court Registry on 21 May 1997, for preliminary rulings in the cases of Manuel de Castro Freitas and Raymond Escallier against the Minister for Small Businesses and Tourism on the following questions:

1. Does the first paragraph of Article 3 of Council Directive 64/427/EEC of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23 to 40 (Industry and small craft industries) [1], which refers to the taking up 'or pursuit of any activity referred to in Article 1 (2)' ('l'une des activités mentionnées à l'article premier paragraphe 2, ou l'exercice de celles-ci') and to 'the fact that the activity in question has been pursued' ('l'exercice effectif... de l'activité considérée'), cover the situation where a Community national has pursued simultaneously in the Member State whence he comes more than one activity falling within the scope of this Directive and applies to establish his business in another Member State, continuing the simultaneous pursuit of those activities (Case C-193/97) or trades (Case C-194/97), having regard, in particular, to the principle of the freedom of establishment laid down in Article 52 of the Treaty, now amended, of 17 April 1957 establishing the European Economic Community?

2. If so, is the period of experience required by Article 3 (a) altered in respect of all or some of the activities concerned owing to the fact that they were pursued simultaneously?

3. Does the fact that the activities in question are closely connected, or even unconnected, have any relevance?

[1] Official Journal, English Special Edition 1963—64, p. 148.

Action brought on 20 May 1997 by the Commission of the European Communities against the Italian Republic

(Case C-195/97)

(97/C 212/36)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 20 May 1997 by the Commission of the European

Communities, represented by Paolo Stancanelli, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to adopt and notify within the prescribed period the provisions necessary to transpose into its domestic legal system Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources [1], and in particular by failing to comply with the obligation laid down in Article 3 (2) of that Directive, the Italian Republic has failed to fulfil its obligations under Community law,

— order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments adduced in support:

Article 189 of the EC Treaty, which provides that a Directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, implies an obligation on Member States to respect the time limits for transposition laid down in Directives. That time limit passed without the Italian Republic having adopted the measures necessary to comply with the Directive referred to in the form of order sought by the Commission.

[1] OJ No L 375, 31. 12. 1991, p. 1.

Appeal brought on 21 May 1997 by Intertronic F. Cornelis GmbH against the order made on 19 February 1997 by the Third Chamber of the Court of First Instance of the European Communities in Case T-117/96 between Intertronic F. Cornelis GmbH and the Commission of the European Communities

(Case C-196/97 P)

(97/C 212/37)

An appeal against the order made on 19 February 1997 by the Third Chamber of the Court of First Instance of the European Communities in Case T-117/96 between Intertronic F. Cornelis GmbH and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 May 1997 by Intertronic F. Cornelis GmbH, Emden (Germany), represented by Detlef Schumacher and Wilhelm Wiltfang, Rechtsanwälte, Bremen.

The appellant claims that the Court should:

1. set aside the order of the Court of First Instance (Third Chamber) of 19 February 1997;

2. declare the action admissible;

3. refer the action back to the Court of First Instance for determination on the merits;

4. order the Commission to pay the costs of the interlocutory dispute.

Pleas in law and main arguments adduced in support:

The contested order states, contrary to the appellant's express intention, that the real object of the appellant's action was a declaration that the Federal Republic of Germany has infringed the Treaty through the case-law of its courts, and that the appellant has thereby suffered loss. That reinterpretation is factually unjustified and procedurally inadmissible.

Reference for a preliminary ruling by the Liverpool Industrial Tribunal, by order of that court of 28 April 1997, in the case of Donna Marie Davies against Girobank plc

(Case C-197/97)

(97/C 212/38)

Reference has been made to the Court of Justice of the European Communities by an order of the Liverpool Industrial Tribunal of 28 April 1997, which was received at the Court Registry on 23 May 1997, for a preliminary ruling in the case of Donna Marie Davies against Girobank plc, on the following questions:

1. Are all or any of the following contractual provisions contrary to the principle of equal pay for equal work under Article 119 of the EC Treaty so far as they affect a woman who has returned to work after taking maternity leave to which she was entitled:

   (a) a provision whereby entitlement to a pension (under a final salary pension scheme) is calculated according to a formula which includes a factor representing pensionable service, where that pensionable service does not accrue during any period of unpaid leave (which term includes a period of unpaid maternity leave when the woman is no longer in receipt of the contractual or statutory maternity pay) when the employee does not pay contributions into the employer's contributory pension scheme;

   (b) a practice whereby entitlement to a pension (under a final salary pension scheme) is calculated according to a formula which includes a factor representing final pensionable salary, which means whichever is the greater of (i) the amount of the employee's pensionable salary paid during the period of 12 months ending on the last day of her employment, and (ii) the highest amount of pensionable salary received by the employee during any one of the last five complete tax years before