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(Information)

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JUDGMENT OF THE COURT

of 14 December 1995

in Case C-312/93 (reference for a preliminary ruling from the Cour d'Appel, Brussels): Peterbroeck, Van Campenhout & Cie SCS v. Belgian State [1]

(Power of a national court to consider of its own motion the question whether national law is compatible with Community law)

(96/C 64/01)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-312/93: reference to the Court under Article 177 of the EC Treaty from the Cour d'Appel, Brussels for a preliminary ruling in the proceedings pending before that court between Peterbroeck, Van Campenhout & Cie SCS and Belgian State — on the interpretation of Community law concerning the power of a national court to consider of its own motion the question whether national law is compatible with Community law — the Court, composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G. F. Mancini (Rapporteur), F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann and H. Ragnemalm, Judges; F. G. Jacobs, Advocate-General; R. Grass, Registrar, and H. A. Rühl, Principal Administrator, has given a judgment on 14 December 1995, in which it rules:

Community law precludes application of a domestic procedural rule whose effect, in procedural circumstances such as those in question in the main proceedings, is to prevent the national court, seised of a matter falling within its jurisdiction, from considering of its own motion whether a measure of domestic law is compatible with a provision of Community law when the latter provision has not been invoked by the litigant within a certain period.

[1] OJ No C 189, 13. 7. 1993.

JUDGMENT OF THE COURT

of 14 December 1995

in Case C-317/93 (reference for a preliminary ruling from the Sozialgericht Hannover): Inge Nolte v. Landesversicherungsanstalt Hannover [1]

(Equal treatment for men and women in matters of social security — Article 4 (1) of Directive 79/7/EEC — Exclusion of minor employment from compulsory invalidity and old-age insurance)

(96/C 64/02)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-317/93: reference to the Court under Article 177 of the EC Treaty from the Sozialgericht (Social Court) Hannover, for a preliminary ruling in the proceedings pending before that court between Inge Nolte and Landesversicherungsanstalt Hannover — on the interpretation of Article 4 (1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ No L 6, 1979, p. 24) — the Court, composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris (Rapporteur), D. A. O. Edward and G. Hirsch (Presidents of Chambers), F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges; P. Léger, Advocate-General, D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a judgment on 14 December 1995, the operative part of which is as follows:

Article 4 (1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as not precluding national provisions under which employment regularly consisting of fewer than 15 hours' work a week and regularly attracting remuneration of up to one-seventh of the average monthly salary is excluded from the statutory old-age insurance scheme, even where they affect considerably more women than men, since the national legislature was reasonably entitled to consider that the legislation in question was necessary in order to achieve a social policy aim unrelated to any discrimination on grounds of sex.

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(1) OJ No C 205, 29. 7. 1993.

JUDGMENT OF THE COURT

of 14 December 1995

in Case C-387/93 (reference for a preliminary ruling made by the Pretura Circondariale di Genova): criminal proceedings against Giorgio Domingo Banchero (1)

(Articles 5, 30, 37, 85, 86, 90, 92 and 95 of the EC Treaty)

(96/C 64/03)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-387/93: reference to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Genova (District Magistrate's Court, Genoa) (Italy), for a preliminary ruling in the criminal proceedings before that court against Giorgio Domingo Banchero — on the interpretation of Articles 5, 30, 37, 85, 86, 90, 92 and 95 of the EC Treaty — the Court, composed of: G. C. Rodríguez Iglesias, President, D. A. O. Edward, J.-P. Puissochet (Rapporteur) and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, for the Registrar, has given a judgment on 14 December 1995, the operative part of which is as follows:

1. *Article 37 of the EC Treaty has no relevance with regard to national legislation, such as that in force in Italy, which reserves the retail sale of manufactured tobacco products to distributors authorized by the State, provided that the State does not intervene in the procurement choices of retailers;*

2. *national legislation, such as that in force in Italy, which reserves the retail sale of manufactured tobacco products, irrespective of their origin, to authorized distributors but does not thereby bar access to the national market for products from other Member States or does not impede such access more than it impedes access for domestic products within the distribution network, does not fall within the scope of Article 30 of the EC Treaty;*

3. *Articles 5, 90 and 86 of the EC Treaty do not preclude national legislation, such as that in force in Italy, from reserving the retail sale of manufactured tobacco products to distributors who have been authorized by the State;*

4. *Article 30 of the EC Treaty does not preclude national legislation, such as that in force in Italy, from penalizing as a smuggling offence the unlawful possession by a consumer of manufactured tobacco products from other Member States on which excise duty in accord with Community law has not been paid, where the retail sale of those products is, like the retail sale of identical domestic products, reserved to distributors authorized by the State.*

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(1) OJ No C 256, 21. 9. 1993.

JUDGMENT OF THE COURT

14 December 1995

in Case C-444/93(reference for a preliminary ruling from the Sozialgericht Speyer): Ursula Megner and Hildegard Scheffel v. Innungskrankenkasse Vorderpfalz, now Innungskrankenkasse Rheinhessen-Pfalz (1)

(Equal treatment for men and women in matters of social security — Article 4 (1) of Directive 79/7/EEC — Minor and short-term employment — Exclusion from compulsory old-age insurance and sickness insurance and from the obligation to pay unemployment insurance contributions)

(96/C 64/04)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-444/93: reference to the Court under Article 177 of the EC Treaty from the Sozialgericht (Social Court) Speyer (Germany) for a preliminary ruling in the proceedings pending before that court between Ursula Megner and Hildegard Scheffel and Innungskrankenkasse Vorderpfalz, now Innungskrankenkasse Rheinhessen-Pfalz, supported by Landesversicherungsanstalt Rheinland-Pfalz, Bundesanstalt für Arbeit and Firma G. F. Hehl & Co. — on the interpretation of Article 4 (1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ No L 6, 1979, p. 24) — the Court, composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris (Rapporteur), D. A. O. Edward and G. Hirsch (Presidents of Chambers), F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges; P. Léger,

Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 14 December 1995, in which it rules:

Article 4 (1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as meaning that national provisions under which employment regularly consisting of fewer than 15 hours a week and regularly attracting remuneration of up to one-seventh of the monthly reference amount is excluded from compulsory insurance under the statutory sickness and old-age insurance schemes, and national provisions under which employment which tends by its nature to be regularly limited to fewer than 18 hours a week or is so limited in advance by a contract of employment is excluded from the obligation to contribute to the statutory unemployment insurance scheme, do not constitute discrimination on grounds of sex, even where the relevant provisions affect considerably more women than men, since the national legislature was reasonably entitled to consider that the legislation in question was necessary in order to achieve a social policy aim unrelated to any discrimination on grounds of sex.

(1) OJ No C 1, 4. 1. 1994.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 December 1995

in Case C-132/94: Commission of the European Communities v. Ireland (1)

(Failure to fulfil obligations — Directive 90/675/EEC — Veterinary checks — Failure to transpose)

(96/C 64/05)

(Language of the case: English)

In Case C-132/94: Commission of the European Communities (Agents: José Luis Iglesias Buhigues and James Macdonald Flett) v. Ireland (Agent: Michael A. Buckley) — application for a declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organization of veterinary checks on products entering the Community from third countries (OJ No L 373, 1990, p. 1) and/or by failing to inform the Commission forthwith thereof, Ireland has failed to fulfil its obligations under that Directive, in particular Article 32 thereof, and under the Treaty establishing the European Community — the Court (Fifth Chamber), composed of: D. A. O. Edward (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, L. Sevón and M. Wathelet, Judges; C. O. Lenz, Advocate-General; R. Grass, Registrar, has given a judgment on 14 December 1995, in which it:

1. *declares that, by failing to bring into force all the laws, regulations and administrative provisions necessary to comply with Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organization of veterinary checks on products entering the Community from third countries, Ireland has failed to fulfil its obligations under the first subparagraph of Article 32 (1) of that Directive;*

2. *orders Ireland to pay the costs.*

(1) OJ No C 174, 25. 6. 1994.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 December 1995

in Case C-138/94: Commission of the European Communities v. Ireland (1)

(Failure to fulfil obligations — Directive 91/496/EEC — Veterinary checks — Failure to transpose)

(96/C 64/06)

(Language of the case: English)

In Case C-138/94: Commission of the European Communities (Agents: José Luis Iglesias Buhigues and James Macdonald Flett) v. Ireland (Agent: Michael A. Buckley) — application for a declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ No L 268, 1991, p. 56) and/or in failing to inform the Commission forthwith thereof, Ireland has failed to fulfil its obligations under that Directive, in particular Article 30 thereof, and under the Treaty establishing the European Community — the Court (Fifth Chamber), composed of: D. A. O. Edward (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, L. Sevón and M. Wathelet, Judges; C. O. Lenz, Advocate-General; R. Grass, Registrar, has given a judgment on 14 December 1995, in which it:

1. *declares that, by failing to bring into force all the laws, regulations and administrative provisions necessary to comply with Council Directive 91/496/EEC of 15 July*

1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC, Ireland has failed to fulfil its obligations under Article 30 (1) of that Directive;

2. *orders Ireland to pay the costs.*

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(1) OJ No C 174, 25. 6. 1994.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 December 1995

in Case C-161/94: Commission of the European Communities v. Ireland (1)

(Failure to fulfil obligations — Directive 90/425/EEC — Veterinary checks — Failure to transpose)

(96/C 64/07)

(Language of the case: English)

In Case C-161/94: Commission of the European Communities (Agents: José Luis Iglesias Buhigues and James Macdonald Flett) v. Ireland (Agent: Michael A. Buckley) — application for a declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ No L 224, 1990, p. 29), Ireland has failed to fulfil its obligations under that Directive, in particular Article 26 thereof, and under the Treaty establishing the European Community — the Court (Fifth Chamber), composed of: D. A. O. Edward (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, L. Sevón and M. Wathelet, Judges; C. O. Lenz, Advocate-General; R. Grass, Registrar, has given a judgment on 14 December 1995, in which it:

1. *declares that, by failing to bring into force all the laws, regulations and administrative provisions necessary to comply with Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market, Ireland has failed to fulfil its obligations under Article 26 of that Directive;*

2. *orders Ireland to pay the costs.*

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(1) OJ No C 202, 23. 7. 1994.

JUDGMENT OF THE COURT

of 14 December 1995

in Joined Cases C-163/94, C-165/94 and C-250/94 (references for a preliminary ruling from the Juzgado Central de lo Penal de la Audiencia Nacional): criminal proceedings against Lucas Emilio Sanz de Lera and Others (1)

(Capital movements — Non-member countries — National authorization for the transfer of banknotes)

(96/C 64/08)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Joined Cases C-163/94, C-165/94 and C-250/94: references to the Court under Article 177 of the EC Treaty from the Juzgado Central de lo Penal de la Audiencia Nacional (High Court, Criminal Section), Spain, for a preliminary ruling in the criminal proceedings pending before that court against Lucas Emilio Sanz de Lera, Raimundo Díaz Jimenez and Figen Kapanoglu — on the interpretation of Articles 73b, 73c (1) and 73d (1)(b) of the EC Treaty — the Court, composed of G. C. Rodríguez Iglesias, President, C. N. Kakouris and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges; G. Tesauro, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a judgment on 14 December 1995, the operative part of which is as follows:

1. *Articles 73b (1) and 73d (1)(b) of the EC Treaty preclude rules which make the export of coins, banknotes or bearer cheques conditional on prior authorization but do not by contrast preclude a transaction of that nature being made conditional on a prior declaration. Such rules do not fall within the scope of Article 73c (1) of the Treaty;*

2. *Article 73b (1), in conjunction with Articles 73c and 73d (1)(b) of the Treaty, may be relied on before*

national courts and may render inapplicable national rules inconsistent therewith.

(1) OJ No C 218, 6. 8. 1994.
OJ No C 304, 29. 10. 1994.

JUDGMENT OF THE COURT

of 14 December 1995

in Case C-267/94: French Republic v. Commission of the European Communities (1)

(Residues of starch manufacture — Corn gluten feed — Customs classification)

(96/C 64/09)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-267/94: French Republic (Agents: Catherine de Salins and Jean-Louis Falconi) v. Commission of the European Communities (Agents: Francisco de Sousa Fialho and Jean-Francis Pasquier) — application for the annulment of Commission Regulation (EC) No 1641/94 of 6 July 1994 amending Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 172, 1994, p. 12) — the Court, composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges; D. Ruiz-Jarabo Colomer, Advocate-General; H. von Holstein, Deputy Registrar, gave a judgment on 14 December 1995, in which it:

1. *annuls Commission Regulation (EC) No 1641/94 of 6 July 1994 amending Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff inasmuch as it provides that residues from the manufacture of starch from maize may contain residues resulting from the screening of maize used in the wet process in a proportion not exceeding 15 % by weight and residues of steep-water used in the manufacture of alcohol or other starch-derived products;*

2. *orders the Commission to pay the costs.*

(1) OJ No C 316, 12. 11. 1994.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 December 1995

in Case C-16/95: Commission of the European Communities v. Kingdom of Spain (1)

(Failure to fulfil obligations not contested — Delay in the refund of VAT to taxable persons not established in the territory of the country)

(96/C 64/10)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-16/95: Commission of the European Communities (Agents: Blanca Rodríguez Galindo and Enrico Traversa) v. Kingdom of Spain (Agents: Alberto Navarro González and Miguel Bravo-Ferrer Delgado) — application for a declaration that, by disregarding the six-month time limit for the refund of value added tax to taxable persons not established in the territory of the country, in accordance with Article 7 (4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ No L 331, 1979, p. 11), and by failing to comply with the duty of cooperation imposed on Member States by Article 5 of the EC Treaty, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty — the Court, composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, J. C. Moitinho de Almeida, P. Jann (Rapporteur) and M. Wathelet, Judges; N. Fennelly, Advocate-General; R. Grass, Registrar, gave a judgment on 14 December 1995, in which it:

1. *declares that, by disregarding the six-month time limit for the refund of value added to tax to taxable persons not established in the territory of the country, the Kingdom of Spain has failed to fulfil its obligations under Article 7 (4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country;*

2. *orders the Kingdom of Spain to pay the costs.*

(1) OJ No C 54, 4. 3. 1995.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 December 1995

in Case C-17/95: Commission of the European Communities v. French Republic [1]

(Failure of a Member State to fulfil its obligations — Directives 91/67/EEC, 91/628/EEC and 92/35/EEC — Failure to transpose)

(96/C 64/11)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-17/95: Commission of the European Communities (Agent: Gérard Rozet) v. French Republic (Agents: Edwige Belliard and Jean-Louis Falconi) — application for a declaration that, by failing to adopt and communicate, within the prescribed period, the laws, regulations and administrative provisions necessary in order to comply with Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ No L 46, 1991, p. 1), Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ No L 340, 1991, p. 17) and Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ No L 157, 1992, p. 19), the French Republic has failed to fulfil its obligations under the EC Treaty — the Court (Fifth Chamber), composed of: D. A. O. Edward, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur), P. Jann and L. Sevón, Judges; A. La Pergola, Advocate-General; R. Grass, Registrar, gave a judgment on 14 December 1995, in which it:

1. *declares that, by failing to adopt the laws, regulations and administrative provisions necessary in order the comply with:*

   — *Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC,*

   and

   — *Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness,*

   the French Republic has failed to fulfil its obligations under Article 21 (1) of Directive 91/628/EEC and Article 20 (1) of Directive 92/35/EEC, referred to above;

2. *orders the French Republic to pay the costs.*

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[1] OJ No C 54, 4. 3. 1995.

JUDGMENT OF THE COURT

of 15 December 1995

in Case C-415/93 (reference for a preliminary ruling from the Cour d'Appel, Liège): Union Royale Belge des Sociétés de Football Association ASBL and Others v. Jean-Marc Bosman and Others [1]

(Freedom of movement for workers — Competition rules applicable to undertakings — Professional footballers — Sporting rules on the transfer of players requiring the new club to pay a fee to the old club — Limitation of the number of players having the nationality of other Member States who may be fielded in a match)

(96/C 64/12)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-415/93: reference to the Court under Article 177 of the EC Treaty from the Cour d'Appel (Court of Appeal), Liège, Belgium, for a preliminary ruling in the proceedings pending before that court between Union Royale Belge des Sociétés de Football Association ASBL and Jean-Marc Bosman, between Royal Club Liégeois SA and Jean-Marc Bosman, SA d'Économie Mixte Sportive de l'Union Sportive du Littoral de Dunkerque, Union Royale Belge des Sociétés de Football Association ASBL and Union des Associations Européennes de Football (UEFA), and between Union des Associations Européennes de Football (UEFA) and Jean-Marc Bosman — on the interpretation of Articles 48, 85 and 86 of the EC Treaty — the Court, composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward and G. Hirsch (Presidents of Chambers), G. F. Mancini (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann and H. Ragnemalm, Judges; C. O. Lenz, Advocate-General; R. Grass, Registrar, and D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a judgement on 15 December 1995, the operative part of which is as follows:

1. *Article 48 of the EC Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee;*

2. *Article 48 of the EC Treaty precludes the application of rules laid down by sporting associations under which, in*

matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States;

3. *the direct effect of Article 48 of the EC Treaty cannot be relied upon in support of claims relating to a fee in respect of transfer, training or development which has already been paid on, or is still payable under an obligation which arose before, the date of this judgment, except by those who have brought court proceedings or raised an equivalent claim under the applicable national law before that date.*

(1) OJ No C 312, 18. 11. 1993.

ORDER OF THE COURT

(First Chamber)

of 14 December 1995

in Case C-173/95 P: Anne Hogan v. Court of Justice of the European Communities (1)

(Appeal clearly inadmissible and clearly unfounded)

(96/C 64/13)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-173/95 P, Anne Hogan, an official of the European Parliament, resident in Luxembourg, represented by Giancarlo Lattanzi, of the Massa-Carrara Bar, with address for service in Luxembourg at 33 Rue Godchaux, appellant, appeals against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 29 March 1995 in Case T-497/93 Hogan v. Court of Justice [1995] ECR-SC II-251, seeking to have that judgment set aside, the other party to the proceedings being: Court of Justice of the European Communities (Agents: Luigia Maggioni and Niels Lierow). The Court (First Chamber), composed of: D. A. O. Edward, President of the Chamber, P. Jann (Rapporteur) and M. Wathelet, Judges, Advocate-General: A. La Pergola, Registrar: R. Grass, has given a judgment on 14 December 1995, in which it:

1. *dismisses the appeal;*

2. *orders the appellant to pay the costs.*

(1) OJ No C 208, 12. 8. 1995.

OPINION 3/94 OF THE COURT

of 13 December 1995 (1)

(GATT — WTO — Framework Agreement on Bananas)

(96/C 64/14)

Request made to the Court on 25 July 1994 under Article 228 (6) of the EC Treaty by the Federal Republic of Germany for an opinion on the compatibility with the Treaty of the Framework Agreement on Bananas between the European Community and Colombia, Costa Rica, Nicaragua and Venezuela and asking:

(a) was the Framework Agreement on Bananas which was signed by the Commission on 28 and 29 March 1994 duly negotiated from the point of view of procedural law, that is to say,

— on the basis of a sufficient negotiating mandate from the Council, and

— in compliance with the relevant negotiating directives laid down by the Council?

(b) is the Framework Agreement on Bananas compatible with the Treaty from the point of view of the substantive law?

The Court, composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann. H. Ragnemalm and L. Sevón, Judges, after hearing G. Tesauro, First Advocate-General, C. O. Lenz, F. G. Jacobs, A. M. La Pergola, G. Cosmas, P. Léger, M. B. Elmer, N. Fennelly and D. Ruiz-Jarabo Colomer, Advocates-General, finds:

there is no need to respond to the request for an opinion.

(1) OJ No C 275, 1. 10. 1994.

Action brought on 18 December 1995 by the Federal Republic of Germany against the Commission of the European Communities

(Case C-396/95)

(96/C 64/15)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 December 1995 by the Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economics, D-53107 Bonn.

The applicant claims that the Court should:

— annul Articles 1 (2) and 2 to 5 of Commission Regulation (EC) No 2358/95 of 6 October 1995 (OJ No L 241 of 10 October 1995, p. 5),

— order the Commission to pay the costs.

The *pleas in law and main arguments* are the same as those in Case C-23/95 [1]. The applicant additionally pleads breach of the principle of non-discrimination, since, contrary to the declared objective of achieving a single market, the contested rules will consolidate the traditional division of the banana market if — as here — the traditional relations between certain traders and certain producers are furthered.

(1) OJ No C 74, 25. 3. 1995, p. 6.

Appeal brought on 27 December 1995 by Dieter Obst against the judgment delivered on 19 October 1995 by the Second Chamber of the Court of First Instance of the European Communities in Case T-562/93 between Dieter Obst and the Commission of the European Communities

(Case C-403/95 P)

(96/C 64/16)

An appeal against the judgment delivered on 19 October 1995 by the Second Chamber of the Court of First Instance of the European Communities in Case T-562/93 between Dieter Obst and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 27 December 1995 by Dieter Obst, represented by Lothar Mahlberg, Rechtsanwalt, with an address for service in Luxembourg care of Marianne Moritz, 25a Rue de Schönfels, Bridel.

The appellant claims that the Court should:

— set aside the judgment of the Second Chamber of the Court of First Instance of 19 October 1995 in Case T-562/93 [1] in so far as it dismisses the application and orders the appellant to bear his own costs,

— annul the respondent's order rejecting the appellant's application for the post in issue, of which he was notified by a communication of 22 March 1993,

— declare that the rejection of the appellant's application for the abovementioned permanent position is unlawful,

— declare that the respondent is liable to compensate the appellant for all consequential material damage which he may suffer in the future,

— award the appellant compensation on an equitable basis for the non-material damage suffered by him, in a reasonable sum exceeding ECU 2 000,

— in the alternative, remit the case to the Court of First Instance for a re-hearing, a fresh taking of evidence and the delivery of a new decision,

— order the respondent to pay all the costs of the proceedings, including the costs incurred in the preliminary proceedings and the costs of the appeal proceedings,

— alternatively in that regard: reserve its decision on costs.

Pleas in law and main arguments adduced in support:

Infringement of Community law: to the extent to which the appellant maintains the content of his original applications [2], he adopts the grounds of action therein as his pleas in law in the appeal.

(1) OJ No C 351, 30. 12. 1995, p. 11.
(2) OJ No C 338, 15. 12. 1993, p. 16.

Reference for a preliminary ruling by the High Court of Justice in Northern Ireland, Queen's Bench Division, by order of that court of 13 October 1995, in the case of Northern Ireland Fish Producers' Organisation Ltd and others against Department of Agriculture for Northern Ireland

(Case C-4/96)

(96/C 64/17)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice in Northern Ireland, Queen's Bench Division, of 13 October 1995, which was received at the Court Registry on 11 January 1996, for a preliminary ruling in the case of Northern Ireland Fish Producers' Organisation Ltd and others against Department of Agriculture for Northern Ireland, on the following questions:

1. Is the validity of the allocation to the United Kingdom of its cod and whiting quotas in Area VIIa pursuant to Article 3 of Council Regulation (EC) No 3362/94 of 20 December 1994 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished [1] dependent on whether Annex VII to the Council resolution of 3 November 1976 was properly adopted?

2. If the answer to question 1 is in the affirmative, was Annex VII properly adopted?

3. Are the answers to questions 1 or 2 affected by the fact that Annex VII is a document which is classified as secret

and which has not been published or otherwise made available to the parties?

4. Having regard to all other circumstances was the fixing of the said quotas by the Council compatible with:

   (i) the common fisheries policy, and in particular Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture [2]?

   (ii) The principle of proportionality?

5. If the fixing of the said quotas by Regulation (EC) No 3362/94 is invalid are the applicants entitled to claim damages against the respondent and if so what are the conditions for liability?

[1] OJ No L 363, 31. 12. 1994, p. 1.
[2] OJ No L 389, 31. 12. 1992, p. 1.

Reference for a preliminary ruling by the Pretura Circondariale di Roma — Sezione Distaccata di Tivoli by orders of that court of 22 November 1995 in criminal proceedings against Sandro Gallotti and Francesco Palermo

(Case C-6/96 and 7/96)

(96/C 64/18)

Reference has been made to the Court of Justice of the European Communities by orders of the Pretura Circondariale di Roma — Sezione Distaccata di Tivoli (Rome District Magistrate's Court, Tivoli Division) of 22 November 1995, which were received at the Court Registry on 11 January 1996, for a preliminary ruling in criminal proceedings against Sandro Gallotti and Francesco Palermo. The questions referred by the Pretura Circondariale di Roma — Sezione Distaccata di Tivoli to the Court of Justice for a preliminary ruling are identical with those in Case C-58/95 [1].

[1] OJ No C 119, 13. 5. 1995, p. 6.

Reference for a preliminary ruling from the Tribunal de Grande Instance (First Chamber), Tours, by judgment of that court of 4 January 1996 in the case of Locamion SA v. Directeur des Services Fiscaux d'Indre et Loire

(Case C-8/96)

(96/C 64/19)

Reference has been made to the Court of Justice of the European Communities by order of the First Chamber of the Tribunal de Grande Instance (Regional Court), Tours, of 4 January 1996, received at the Court Registry on 15 January 1996, for a preliminary ruling in the case of Locamion SA v. Directeur des Services Fiscaux d'Indre et Loire on the following questions:

— must Articles 4 and 7 of Council Directive 69/355/EEC of 17 July 1969 [1] be interpreted as meaning that the Directive applies to the merger/take-over transactions defined by Articles 371 to 372-2 of Law No 66.537 of 24 July 1966 on commercial companies?

— Is the charging by the French State of a proportional tax for the drawing-up of registration certificates following a merger/take-over transaction compatible with the prohibition laid down by Article 10 of the Directive and, if it is not, is it covered by the provisions of Article 12?

[1] OJ, English Special Edition 1969 (II), p. 412.

Reference for a preliminary ruling by order of the Conseil d'Etat of the Kingdom of Belgium, Administrative Division, in the proceedings pending before that court in the case of Ligue Royale Belge pour la Protection des Oiseaux and Société d'Etudes Ornithologiques AVES against the Walloon Region, intervener: Fédération Royale Ornithologique Belge

(Case C-10/96)

(96/C 64/20)

Reference has been made to the Court of Justice of the European Communities by judgment of the Conseil d'Etat (Council of State) of the Kingdom of Belgium, Administrative Division, of 10 November 1995, which was received at the Court Registry on 17 January 1996, for a preliminary ruling in the proceedings pending before that court in the case of Ligue Royale Belge pour la Protection des Oiseaux and Société d'Etudes Ornithologiques AVES against the Walloon Region, intervener: Fédération Royale Ornithologique Belge, on the following questions:

1. Do Articles 5, 9 and 18 of Directive 79/409/EEC [1] of 2 April 1979 on the conservation of wild birds allow a Member State to take account, on a decreasing basis and over a specified period, of the fact that the prohibition of capturing birds for recreational purposes would compel numerous fanciers to alter their installations and to abandon certain habitats where that State recognizes that breeding is possible but is not yet feasible on a large scale for that reason?

2. Do Articles 5, 9 and 18 of Directive 79/409/EEC allow Member States, and if so to what extent, to authorize the capture of birds living naturally in the wild state within European territory with a view to obviating, in bird breeding for recreational purposes, the problems of consanguinity which would result from too many endogenous crossings?

[1] OJ No L 103, p. 1.

Reference for a preliminary ruling by the Conseil d'Etat du Royaume de Belgique by judgment of that court of 4 December 1995 in the case of Bic Benelux SA v. Belgian State in the person of the Finance Minister

(Case C-13/96)

(96/C 64/21)

Reference has been made to the Court of Justice of the European Communities by judgment of the Conseil d'Etat (Council of State) of the Kingdom of Belgium of 4 December 1995, which was received at the Court Registry on 19 January 1996, for a preliminary ruling in the case of Bic Benelux SA against Belgian State in the person of the Finance Minister on the following question:

'Do the obligation to affix a particular distinctive sign on products subject to a tax payable by reason of the ecological damage they are deemed to cause, prior to the release of such products on to the market, and the obligation to affix another distinctive sign on products of the same type if they are exempt from that tax by virtue of diplomatic privilege, constitute "technical specifications" within the meaning of Article 1 (1) of Council Directive 83/189/EEC of 28 March 1983 [1] laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Council Directive 88/182/EEC of 22 March 1988 [2], or "technical regulations" within the meaning of Article 1 (5) of that Directive?'

[1] OJ No L 109, p. 8.
[2] OJ No L 81, p. 75.

Reference for a preliminary ruling from the Tribunal de Première Instance de Bruxelles by judgment of that court of 16 January 1996 in the criminal case of Procurateur du Roi, civil party: the Belgian State, in the persons of the Deputy Prime Minister and the Minister for Communications and Public Undertakings and the Minister for Scientific Policy v. Paul Denuit

(Case C-14/96)

(96/C 64/22)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Première Instance de Bruxelles (Court of First Instance, Brussels) of 16 January 1996, received at the Court Registry on 19 January 1996, for a preliminary ruling in the criminal case of Procurateur du Roi, civil party: the Belgian State, in the persons of the Deputy Prime Minister and the Minister for Communications and Public Undertakings and the Minister for Scientific Policy v. Paul Denuit on the following questions:

1. What conditions have to be met for a television broadcaster to be regarded as coming under the jurisdiction of a Member State within the meaning of Article 2 (1) of Council Directive 89/552/EEC [1] of 3 October 1989? To what extent is it relevant that a large, but variable, proportion of the material which it broadcasts is of non-European origin if the national court also finds that the body in question is based in the territory of the Member State in question and that the actual activities of programme management, composition and assembly are carried out there?

2. Assuming that broadcasts emanating from a television broadcaster authorized by a Member State are not to be regarded as broadcasts transmitted by a broadcaster under the jurisdiction of a Member State within the meaning of Directive 89/552/EEC, is another Member State entitled — and, if so, on what conditions, regard being had in particular to Article 59 *et seq.* of the Treaty — to prohibit or restrict their retransmission in a particular area?

3. Should Article 2 of that Directive be interpreted as meaning that, if a television broadcaster comes under the jurisdiction of a Member State, another Member State is not entitled to oppose the retransmission in its territory of television broadcasts transmitted by that broadcaster even in the event that the rules laid down in Articles 4 and 5 of the Directive are not complied with?

[1] OJ No L 298, p. 23.

Reference for a preliminary ruling from the Arbeitsgericht Hamburg by order of that court of 1 December 1995 in the case of Dr Kalliope Schöning-Kougebetopoulou v. Freie und Hansestadt Hamburg

(Case C-15/96)

(96/C 64/23)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht (Labour Court) Hamburg — Third Chamber — of 1 December 1995, received at the Court Registry on 19 January 1996, for a preliminary ruling in the case of Dr Kalliope Schöning-Kougebetopoulou v. Freie und Hansestadt Hamburg on the following questions:

1. is there an infringement of Article 48 of the EC Treaty and Article 7 (1) and (4) of Regulation (EEC) No 1612/68 of the Council on freedom of movement for workers within the Community [1] where a collective agreement for the public service provides for promotion on grounds of seniority after eight years' service only in a particular salary bracket provided for by the collective wage agreement in force for all employees in the public service of the Federal Republic of Germany ('the BAT') and therefore does not take account of comparable activities carried out in the public service of another Member State of the EC?

2. If the reply to question 1 is in the affirmative:

   does Article 48 together with Regulation (EEC) No 1612/68 of the Council on freedom of movement for

workers within the Community require that, where doctors have worked as such in the public service of another Member State of the EC, the time spent in such employment should likewise be taken into account for the purposes of promotion on grounds of seniority as provided for in the BAT or should the court instead take no such decision and leave this matter to the parties to the collective agreement, having regard to their freedom to agree terms?

(1) OJ, English Special Edition 1968 (II), p. 475.

Reference for a preliminary ruling from the Bundessozialgericht by order of that court of 29 November 1995 in the case of Karin Mille-Wilsmann v. Land Nordrhein-Westfalen

(Case C-16/96)

(96/C 64/24)

Reference has been made to the Court of Justice of the European Communities by an order of the Bundessozialgericht (Federal Social Court) — 14th Chamber — of 29 November 1995, which was received at the Court Registry on 19 January 1996, for a preliminary ruling in the case of Karin Mille-Wilsmann v. Land Nordrhein-Westfalen on the following questions:

1. Is a cash benefit financed from tax revenue a family benefit within the meaning of Article 1 (u) (i) of Regulation (EEC) No 1408/71 (1), if a condition for entitlement is that one parent brings up the child her or himself during the first stage of its life and refrains from pursuing a full-time paid occupation,

   if the cash benefit, which is a fixed amount, is paid only if the income does not exceed certain limits graduated according to the number of members of the family,

   and if, although the cash benefit, as a family-policy social benefit, is intended as recompense for bringing up the child and to compensate for the absence of income from a full-time occupation and the other burdens of caring for and bringing up the child, its primary purpose is to act as an incentive to foster an attachment to the child?

2. If the answer to Question 1 is in the affirmative, is the cash benefit in relation to a migrant worker within the meaning of Article 73 of Regulation (EEC) No 1408/71 a family benefit even if it is not the worker himself who is bringing up the child and is therefore entitled, but his wife?

3. Do national rules which in a Member State provide, in favour of its nationals residing there, for an entitlement to a cash benefit for one parent who her or himself brings up her or his child during the first stage of its life and refrains from pursuing a full-time paid occupation, also apply, under EC law, such as Article 7 (2) of Regulation (EEC) No 1612/68 (2), to the spouse of a worker who works in that State for the purpose of Regulation (EEC) No 1408/71 and who lives with his spouse in another Member State (frontier worker)?

(1) OJ English Special Edition 1971 (II), p. 416.
(2) OJ English Special Edition 1968 (II), p. 475.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 January 1996

in Case T-108/94: Elena Candiotte v. Council of the European Union (1)

(Artists' competition — Rules of the competition — Lawfulness of the selection procedure — Powers of the Selection Committee)

(96/C 64/25)

(Language of the case: French)

In Case T-108/94: Elena Candiotte, self-employed artist, residing in Jambes (Belgium), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener v. Council of the European Union (Agents: Yves Crétien and Diego Canga Fano) — application for (i) annulment of — firstly, the decision of the Selection Committee for Artists' Competition No 93/S 21-3373/FR, taken on behalf of the Council and notified to the applicant by letter of 14 January 1994, not to admit her to the second stage of that competition, — secondly, that Committee's decision to delegate to each national working party the initial selection of applications from artists established in its national territory, — thirdly, its decision to fix the number of artists to be selected at three per Member State, and — fourthly, its decision to draw up without further examination the list of artists admitted to the second stage of the competition; and (ii) an order requiring the Council to pay a symbolic ecu as compensation for the damage which the applicant claims to have suffered as a result of the Selection Committee's decisions, in particular the decision rejecting her application — the Court of First Instance (Fifth Chamber), composed of: R. Schintgen, President, R. García-Valdecasas and J. Azizi, Judges; H. Jung, Registrar, has given a judgment on 16 January 1996, in which it:

1. *dismisses the application;*

2. *orders the applicant to pay the whole of the costs, including those relating to the proceedings for the adoption of interim measures.*

(1) OJ No C 120, 30. 4. 1994.

ORDER OF THE COURT OF FIRST INSTANCE

(Second Chamber)

of 14 December 1995

in Case T-90/94: Erik Dan Frederiksen v. European Parliament (1)

(No need to give a decision)

(96/C 64/26)

(Language of the case: French)

In Case T-90/94: Erik Dan Frederiksen, an official of the European Parliament, residing in Howald (Luxembourg), represented by Georges Vandersanden and Laure Levi, both of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 1 Rue Glesener, against European Parliament (Agents: Didier Petersheim and Ezio Perillo) — application for annulment of Vacancy Notice No 7346 inviting applications for the post of Language Adviser (Grade LA 3) in the Danish Translation Division — the Court of First Instance (Second Chamber), composed of B. Vesterdorf, President, D. Barrington and P. Lindh, Judges; H. Jung, Registrar, made an order on 14 December 1995, the operative part of which is as follows:

1. *there is no need to give a decision;*

2. *the European Parliament is to pay the costs.*

(1) OJ No C 103, 11. 4. 1994.

ORDER OF THE COURT OF FIRST INSTANCE

of 15 December 1995

in Case T-131/95: Nicolaos Progoulis v. Commission of the European Communities (1)

(Confirmatory act — New and material fact — Inadmissibility — Costs — Costs unreasonably caused)

(96/C 64/27)

(Language of the case: French)

In Case T-131/95: Nicolaos Progoulis, an official of the Commission of the European Communities, represented by Vassilios Akritidis, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 22 Rue Marie-Adélaïde, v. Commission of the European Communities (Agents: Ana Maria Alves Vieira and Bertrand Wägenbaur) — application, first, for annulment of the decision of the Commission, addressed to the applicant by letter of 20 March 1995, rejecting his application for regrading in grade B1, step 2, with retroactive effect from 1 March 1983, and, second, for an order requiring the Commission to bear the pecuniary effects of such regrading, together with interest thereon — the Court of First Instance (Fifth Chamber), composed of R. Schintgen, President, and R. García-Valdecasas and J. Azizi, Judges; H. Jung, Registrar, made an order on 15 December 1995, the operative part of which is as follows:

1. *the action is dismissed as inadmissible;*

2. *the applicant is ordered to pay all of the costs.*

(1) OJ No C 229, 2. 9. 1995.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 22 December 1995

in Case T-219/95 R, Marie-Thérèse Danielsson and Others v. Commission of the European Communities

(96/C 64/28)

(Language of the case: English)

In Case T-219/95 R: Marie-Thérèse Danielsson, Pierre Largenteau and Edwin Haoa, all residing in Tahiti, French Polynesia, represented by Phon van den Biesen, of the Amsterdam Bar, and Denis Waelbroeck, of the Brussels Bar, assisted during the written procedure by Gerrit Betlem and Seven Deimann, with an address for service in Luxembourg at the office of Déi Gréng, 31 Grand-Rue, v. Commission of the European Communities (Agents: Richard Wainwright and Thomas Cusack), supported by French Republic (Agents: Catherine de Salins, Marc Fonbaustier and Jean-François Dobelle) — application for suspension of the operation of the decision of the Commission of the European Communities of 23 October 1995 regarding French nuclear tests and for an order that the Commission take all measures necessary to preserve and protect the applicants' rights under the EAEC Treaty — the President of the Court of First Instance made an order on 22 December 1995, the operative part of which is as follows:

1. *the French Republic is granted leave to intervene in support of the form of order sought by the Commission;*

2. *the application for interim measures is dismissed;*

3. *costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 21 December 1995

in Case T-220/95 R: Christophe Gimenez v. Committee of the Regions of the European Union

(96/C 64/29)

(Language of the case: French)

In Case T-220/95 R: Christophe Gimenez, a member of the temporary staff of the Economic and Social Committee of the European Communities, residing in Brussels, represented by Eric Boigelot, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim, supported by Union Syndicale-Bruxelles, established in Brussels, represented by Véronique Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim, and Economic and Social Committee of the European Communities (Agent: Moisés Bermejo Garde), v. Committee of the Regions of the European Union, represented by Dominique Lagasse, of the Brussels Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service of the Commission of the European Communities, Wagner Centre, Kirchberg — application for suspension of the procedure in competition CdR A/03/95, organized by the Committee of the Regions, alternatively of the appointment procedures anticipated in consequence of that competition — the President of the Court of First Instance made an order on 21 December 1995, the operative part of which is as follows:

1. *the Union Syndicale-Bruxelles and the Economic and Social Committee are granted leave to intervene in support of the form of order sought by the applicant;*

2. *the application for interim measures is dismissed;*

3. *the costs are reserved.*

Action brought on 23 November 1995 by Asociación de Fabricantes de Cemento de España (Oficemen) against the Commission of the European Communities

(Case T-212/95)

(96/C 64/30)

(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 23 November 1995 by Fabricantes de Cemento de España (Oficemen), whose registered office is in Madrid, represented by Jaime Folguera Crespo and Edurne Navarro Varona, of the Barcelona Bar, with an address for service in Luxembourg at the Chambers of Luc Frieden, 62 Avenue Guillaume.

The applicant claims that the Court should:

— annul, pursuant to Articles 173 and 174 of the EC Treaty, the decision of the Commission of February 1994 whereby it gives definite effect to its proposal to refuse to adopt protective measures against imports of cement from Turkey, Romania and Tunisia,

— declare, pursuant to Article 175 of the EC Treaty, that, by not adopting within a reasonable period a decision bringing to a conclusion anti-dumping proceedings, the Commission has infringed Article 7 (9) (a) of the basic Regulation, and

— order the Commission to pay the costs incurred by Oficemen in these proceedings.

Pleas in law and main arguments adduced in support:

The applicant, an association whose object is, *inter alia,* to defend and promote the interests of the Spanish cement sector, challenges the decision of the defendant institution not to proceed with the anti-dumping proceedings against imports into Spain of cement from Turkey, Tunisia and Romania, which was initiated by the complaint lodged by it with the Commission. The contested decision is based on the finding that the protective measures sought were unnecessary since production and volume of sales remained stable, market share and the profitability of the sector remained significant and since costs had risen as a result of excessive overcapacity.

The applicant claims, first, that Article 4 of Regulation (EEC) No 2423/88 was infringed as a result of the manifest error of assessment and the breach of the principle that due care must be exercised and of the principle of good administration on which the decision to shelve the proceeding is based. The applicant points out in this regard that, contrary to the contention of the Commission, Spanish producers have suffered a significant loss of their share of the market and have been forced to reduce their prices as a result of the dumped imports. Moreover, the fall in profits in the sector cannot be attributed to any alleged overcapacity, but to the fact that it is impossible to increase prices in order to reflect the increase in production costs.

Secondly, the decision which forms the subject-matter of the dispute infringes Article 9 of the basic Regulation, referred to above, inasmuch as the Commission is not competent to conclude anti-dumping proceedings without adopting protective measures, contrary to the position adopted by the Council.

Finally, the applicant pleads infringement of Article 190 of the Treaty on the ground that the statement of reasons is inadequate.

The applicant also relies on Article 175 of the Treaty against the conduct of the Commission. The applicant explains in this regard that the Commission has not defined its position as requested by the applicant, has not adopted any decision entailing the formal conclusion of the anti-dumping proceeding and it has not taken within a reasonable period any of the steps required by the basic Regulation in the event that a proposal to conclude anti-dumping proceedings without imposing measures is rejected by the Council.

Action brought on 4 December 1995 by Endemol Entertainment Holding BV, Veronica Omroep Organisatie, Compagnie Luxembourgeoise de Télédiffusion SA, NV Verenigd Bezit VNU and RTL4 SA against the Commission of the European Communities

(Case T-221/95)

(96/C 64/31)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 December 1995 by Endemol Entertainment Holding BV, and Veronic Omroep Organisatie, represented by Onno W. Brouwer and Peter Wytinck, Stibbe Simont Monahan Duhot, and by Compagnie Luxembourgoise de Télédiffusion SA, NV Verenigd Bezit VNU and RLT4 SA, represented by Mark B. W. Biesheuvel and T. Martijn Snoep, De Brauw Blackstone Westbroek, all with an address for service in Luxembourg at the Chambers of M. Loesch, Rue Goethe 11.

The applicant claims that the Court should:

— annul the Commission's Decision of 20 September 1995 relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89 (IV/M.553-RTL/Veronica/-Endemol), and

— order the Commission to pay the applicants' costs pursuant to Article 87 of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments adduced in support:

Firstly, the applicants claim that the Decision must be annulled on grounds of lack of competence, misuse of power and infringement of Article 22 (3) of Regulation 4064/89 and Article 3b of the EC Treaty. The applicants submit that the text and the content of a request from a Member State under Article 22 (3) of Regulation (EEC) No 4064/89 directly define and restrict the scope of the Commission's competence to investigate a concentration.

As the Commission was, in the present case, requested by the Netherlands Government to examine the concentration only in light of the TV advertising market, the Commission could not expand the scope of the inquiry which it was requested to carry out, so as to cover other markets.

Secondly, the Decision must be annulled because the Commission has infringed the applicants' rights of defence. The Commission has seriously failed in its obligation to grant the applicants access to the file and to documents relevant for the conduct of their defence. This infringement of the rights of defence concerns not only the way in which the Commission granted 'access to the file' but also the Commission's refusal of access to essential documents obtained by the Commission after the date of the 'access to the file'. There are serious indications that the Commission thus withheld from the applicants documents which supported their view and arguments.

Thirdly, the Decision must be annulled because the Commission has infringed essential procedural rules and the applicants' rights of defence by not submitting a report of the hearing to the Advisory Committee, the Commissioners and the applicants themselves.

Fourthly, the Decision must be annulled because the Commission was wrong in concluding that Endemol's participation in HMG would strengthen an alleged dominant position of Endemol in an alleged market of independent Dutch TV production.

Fifthly, HMG does not have a dominant position on the TV broadcasting and TV advertising market. The applicants are, in particular, unable to agree with the Commission's analysis of the position of the public broadcasters in the Netherlands. The Commission has limited itself to taking over and accepting on face value arguments and facts which the Dutch public broadcasters have presented to the Commission, in their capacity as complainants (SBS, a direct competitor of HMG, and the Dutch public broadcasters have done their utmost to oppose and frustrate the creation of HMG).

Sixthly, the Decision must be annulled because the Commission has incorrectly held that Endemol has a dominant position. The Commission has defined the production market incorrectly. Furthermore, even in this narrowly defined market, Endemol does not have a dominant position. The Commission has incorrectly calculated Endemol's market share and relied on other incorrect facts in assessing Endemol's position.

Seventhly, the concentration will in any event not lead to a significant change in effective competition on the production market.

Action brought by Antonio Angelini against the Commission of the European Communities on 5 December 1995

(Case T-222/95)

(96/C 64/32)

(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 5 December 1995 by Antonio Angelini, a former official of the Commission of the European Communities, resident at Ranco (Varese), represented by Giuseppe Marchesini, Advocate with the right of audience before the Court of Cassation of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt.

The applicant claims that the Court should:

— annul the measure whereby he was refused a resettlement allowance on resuming his duties at Ispra,

— order the Commission to pay him the sums due under Article 5 (2) of Annex VII to the Staff Regulations or those resulting from a fresh settlement of the amounts due to him under Article 38 of the Staff Regulations,

— order interest at 8 % to be paid from the date of the claim until the date of settlement,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

The applicant, a scientific and technical official of the Commission at the Ispra establishment of the Joint Research Centre, maintains that the refusal to pay him a resettlement allowance on his return from a period of service abroad in the Iter Home Central Team of Garching was unlawful. The contested decision assumes that he neither encountered any particular difficulties in resettling in his place of origin, nor needed to carry out a fresh removal, having returned to his own home in Italy.

The applicant first stresses the contradiction in the fact that, although he had changed his residence twice, he was paid the daily allowance on his return to Ispra but not the corresponding resettlement allowance in addition.

Moreover, the provisions of the Staff Regulations concerning the installation allowance refer exclusively to the objective fact of the person concerned being obliged to transfer his residence elsewhere in order to comply with Article 20 of the Staff Regulations. The latter does not impose any further requirement or take any other factor into consideration.

In the applicant's submission, whilst the case-law has indeed clarified the scope of the provisions of the Staff Regulations, it has done so in situations where legal requirements were not met (failure to transfer residence or family property, transfer at the official's own request and in his personal interest, etc.) or in situations involving fraud. That is far removed from the present case, in which there were no irregularities regarding the transfer of the applicant and his family to another State, the renting of a home in Germany and the automatic return to Italy.

Finally, the applicant accuses the Commission of failing to take the judgment in Case T-508/93 Mancini into account in the present case.

Action brought on 13 December 1995 by Roger Tremblay, Harry Kestenberg and the Syndicat des Exploitants de Lieux de Loisirs (SELL) against the Commission of the European Communities

(Case T-224/95)

(96/C 64/33)

(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 13 December 1995 by Roger Tremblay, residing at Vernantes (France), Harry Kestenberg, residing at Saint André Les Vergers (France) and the Syndicat des Exploitants de Lieux de Loisirs (SELL), established in Paris (France), represented by Jean Claude Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon.

The applicants claim that the Court should:

— annul the Decision of the Commission of 13 October 1995, in that it rejects the complaint,

— consequently, order the Commission to carry out the necessary investigations in order to establish evidence of the agreement,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

The applicants, two operators of discothèques established in France and the trade organization of which they are members, contest the Decision of the Commission of 13 October 1995, which in their view does not comply with the judgment of the Court of First Instance of 24 January in Case T-5/93 Tremblay. In that judgment, the Court of First Instance annulled the Decision of the Commission of 12 November 1992 concerning an agreement between the copyright-management societies in the other Member States, which had resulted in Sacem abusing its dominant position by imposing excessive and discriminatory tariff levels, in so far as that Decision 'rejects the applicants' allegation that the market has been partitioned as a result of an alleged agreement beteween Société des Auteurs, Compositeurs et Editeurs de Musique and the copyright-management societies in the other Member States'.

After resuming, in a purely formal manner, its examination of that part of the complaint, the Commission officially rejected it on 23 June 1995 on the basis of Article 6 of Regulation (EEC) No 99/63. Despite the observations submitted by the applicants, the defendant institution repeated its position in the contested Decision. According to the Commission, it is solely for the national courts to assess whether a concerted practice exists; they may of course resort to a reference for a preliminary ruling under Article 177.

The applicants maintain, first, that it is apparent from the contested Decision that the Commission has not complied with the requirements of the Court of First Instance and that it did not in fact proceed to carry out an inquiry and the active investigations necessitated by the abovementioned judgment of 24 January 1995. It has not, therefore, complied with the obligations incumbent on an institution whose Act has been declared void, by taking the necessary measures under Article 176 to comply with the judgment.

The Commission was penalized by the Court because what it did, and what it claimed to have done, was inadequate. It was not open to it merely to act in the same way after the judgment was given as before. The Court annulled the Decision of the Commission because it did not constitute an adequate response to the complaint of partitioning made against the agreement between copyright-management societies. The Court did not annul the Decision and remit the matter to the Commission merely for that institution to refrain from carrying out an inquiry which, by reason of their limited territorial jurisdiction, the national courts do not have the means to undertake.

The applicant further regards that conduct as a breach of the duty to provide a statement of reasons, as well as a misuse of powers.

Action brought on 15 December 1995 by AssiDomän Kraft Products AB and six other wood pulp companies against the Commission of the European Communities

(Case T-227/95)

(96/C 64/34)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 December 1995 by AssiDomän Kraft Products AB and six other wood pulp companies, represented by John Pheasant, Solicitor and Christophe Raux, Avocat, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe.

The applicants claim that the Court should:

— annul the Commission Decision of 4 October 1995,

— order the Commission to take all necessary steps to comply with the judgment of the Court of Justice in Joined Cases C-89, 104, 114, 116, 117 and 125—129/85 A. Ahlström Oy v. Commission of 31 March 1993 and, in particular, to repay to the applicants the fines paid by each of them or their predecessors in title respectively, in the amounts set out at Annex 6 thereto,

— order the Commission to pay interest on the said sums at

(i) the prevailing EMCF and EMI rates plus 1,5 % from the date on which the fines were paid by the Swedish addressees; or

(ii) the prevailing base lending rate of the Banque Nationale de Belgique plus 1 % from the date on which the fines were paid by the Swedish addressees,

in the amounts set out in Annex 9 to the application and continuing until the principal sum of the fines is repaid by the Commission, and

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments adduced in support:

The applicants, or their predecessors in title, are among the addressees of the Commission Decision 85/202/EEC of 19 December 1984 relating to a proceeding under Article 85 of the EC Treaty (IV/29.725 — Wood Pulp) by which the Commission imposed fines ranging from ECU 50 000 to ECU 500 000. The applicants, who had never accepted the allegations of infringements, did not bring an application for annulment of this Decision and paid the fines to the Commission. Upon application by other addressees of the Decision, the Court of Justice, by judgment of 31 March 1993 in Joined Cases 89, 104, 114, 116, 117 and 125 to 129/85, A. Ahlström Oy v. Commission, a number of the

infringements alleged by the Commission were found not to exist by the Court which annulled in whole or in part the fines imposed by the Commission. Pursuant to that judgment, the applicants requested the Commission to reimburse the fines paid by them. By the contested letter of 4 October 1995 signed by the Commissioner for Competition, the Commission refused on the ground that the decision imposing the fines was still standing with regard to the applicants.

The applicants submit that the effect of the Court's annulment of a Community Act is that the Act is void *erga omnes* and *ex tunc*. The institution is thereafter required to consider or reconsider the position of all interested persons in the light of the grounds and operative part of the Court's judgment. The institution is also obliged to effect a *restitutio in integrum*. This requires the restoration of the *status quo ante* and the restitution of any unjust enrichment arising from the invalid Act, and includes a duty to pay interest on any monies held pursuant to the invalid Act.

In the light of the Court's judgment, Articles 1 (1) and 1 (2) of the Wood Pulp Decision do not provide a lawful basis for the imposition of fines on any of the addressees referred to in Articles 1 (1) or 1 (2). Any fines paid in respect of the allegations contained in Articles 1 (1) and 1 (2) cannot be lawfully held by the Commission. The fines must therefore be repaid with interest at a rate which reflects the value to the Commission of possession over a period of 10 years of the fines paid by the Swedish addressees. Only thus can the *status quo ante* be restored.

Action brought on 15 December 1995 by S. Lehrfreund Limited against Council of the European Union and Commission of the European Communities

(Case T-228/95)

(96/C 64/35)

(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 15 December 1995 by S. Lehrfreund Limited, represented by Nicholas Forwood QC and Mark Hoskins, Barrister, with an address for service in Luxembourg at the Chambers of Thill & Pauly, 11 Avenue de la Gare, L-1611.

The applicant claims that the Court should:

— order that the Council and/or Commission is liable in damages to the applicant under Articles 178 and 215 of the EC Treaty, the quantum of such damages to be assessed, and

— order the Council and/or Commission to pay the costs incurred by the applicant in making this application.

Pleas in law and main arguments adduced in support:

The applicant is a small family company which has been carrying on the business of a fur merchant since it was established in the United Kingdom in 1963, the great majority of the applicant's business (about 80 %) depends on the use of fur pelts originating in and imported from the United States of America and Canada.

Article 3 (1) of Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards (OJ No L 308, 1991, p. 1) purports to prohibit the import into the Community of pelts of certain species (including musk rat) originating in certain third countries (the 'import ban'). The wording of Article 3 (1), taken literally, suggests that that ban will have effect as from 1 January 1996, and will apply to fur pelts from all third countries. The mere prospect of such a ban and the uncertainty of the manner of its implementation have already caused serious and continuing financial loss to the applicant. As and when the ban takes effect (whether on 1 January 1996 or later), the ban will cause even more severe financial loss, of a nature and extent that is likely to be such as effectively to destroy the applicant's business.

The applicant submits that such losses are and will be the result of unlawful conduct on the part of the Council and/or Commission:

(a) the Commission has acted unlawfully in adopting and implementing the import ban under Regulation (EEC) No 3254/91 in that:

  (i) the Council lacked competence under the EC Treaty to adopt the import ban in Regulation (EEC) No 3254/91;

  (ii) the import ban in Regulation (EEC) No 3254/91 is contrary to the principle of proportionality;

  (iii) the import ban in Regulation (EEC) No 3254/91 was at the time of its adoption in breach of the GATT and is now in breach of the WTO Agreement.

(b) the Commission has unlawfully failed to adopt the measures necessary to implement Regulation (EEC) No 3254/91, which would have identified third countries from which fur pelts could be imported and the necessary procedures for certifying the origin of such pelts;

(c) the acts and omissions of the Commission and/or Council having created a situation of legal uncertainty as to the scope and effective date of the import ban,

those institutions have unlawfully failed to take appropriate and timely steps to eradicate such uncertainty.

The loss which the applicant has suffered and will suffer falls into two categories:

(a) 'current loss' — the loss of turnover and profit that is already being sustained as a result of a current fall in demand for fur pelts and related products, in the expectation that such pelts will or may not be able to be imported after 1 January 1996;

(b) 'future loss' — the future losses of turnover and profit that will be suffered as and when any import ban takes effect.

Action brought on 19 December 1995 by the Committee of European Copier Manufacturers (Cecom) against the Council of the European Union

(Case T-232/95)

(96/C 64/36)

(Language of the case: German)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 19 December 1995 by the Committee of European Copier Manufacturers (Cecom) of Cologne, represented by Dietrich Ehle and Volker Schiller (Rechtsanwälte) of Cologne, with an address for service in Luxembourg at the Chambers of Marc Lucius (Rechtsanwalt), 6 Rue Michel Welter.

The applicant claims that the Court should:

— annul the second paragraph of Article 3 of Regulation (EC) No 2380/95 of 2 October 1995 (OJ No L 244, 1995, p. 1) imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan in so far as it provides that the Regulation is to expire two years after its entry into force,

— in the event of the claim being successful, and in so far as may be necessary, order that the anti-dumping duties introduced by Article 1 of Regulation (EC) No 2380/95 are to remain in force, even after the expiry of the two-year period, until the relevant institutions have taken the measures required by the judgment of the Court,

— order the Chamber to pay the costs of these proceedings.

Pleas in law and main arguments adduced in support:

The applicant maintains that the provision whereby the anti-dumping duties on photocopiers are to expire after two years from the entry into force of Regulation (EC) No 2380/95 is invalid. In its submission, the second paragraph of Article 3 of Regulation (EC) No 2380/95 is invalid on the following grounds:

(a) infringement of Article 15 (1) of Regulation (EEC) No 2423/88: under this provision, anti-dumping duties are to remain valid not only for five years from their entry into force, but for five years from the date on which they were last modified or confirmed. That is a mandatory provision from which the Council may not derogate, and indeed has not derogated in its practice to date. The Regulation does not state any reason why there should be a derogation in favour of plain paper photocopiers with a speed of more than 75 copies per minute (Article 190, EC Treaty);

(b) in the alternative, manifest error of assessment in the shortening of the five-year period to two years: the restriction of the validity of Regulation (EC) No 2380/95 to two years clearly contradicts the factual findings by the Community institutions in the investigation proceedings. Significant dumping was established, as was significant injury to the Community industry and the existence of a Community interest in continuing anti-dumping protection. Five years of anti-dumping measures are necessary in order to counteract the harmful dumping. Regulation (EC) No 2380/95 does not state why in the case of plain paper photocopiers with a speed of over 75 copies per minute, which are protected against harmful dumping for the first time by that Regulation, the protection is to last only two years (Article 190, EC Treaty);

(c) disregard of the structure of the basic anti-dumping Regulation, especially the balance of rights and duties between the Community industry which has been injured and the dumping exporters and participating importers: when harmful dumping is established, the rules require the Community industry to be protected for five years. That is balanced by Article 11 (3) of Regulation (EC) No 3283/94, which gives exporters and importers the possibility of requesting a review, and by Article 11 (8) of the same Regulation, whereby importers may request a refund of anti-dumping duties in certain circumstances;

(d) the Community industry is prevented from effectively defending and asserting its rights: if the validity of anti-dumping measures is limited to two years from their entry into force, the injured Community industry is clearly hindered from making appropriate and successful use of its rights under Article 12 (effects of anti-dumping duties) and Article 13 (anti-circumvention) of Regulation (EC) No 3283/94.

Action brought on 21 December 1995 by Hamburger Stahlwerke GmbH against the Commission of the European Communities

(Case T-234/95)

(96/C 64/37)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 December 1995 by Hamburger Stahlwerke GmbH, of Hamburg (Federal Republic of Germany), represented by Axel Löhde, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the Chambers of Lucy Dupong of Messrs Dupong & Associés, 14a Rue des Bains.

The applicant claims that the Court should:

— annul the decision of the Commission of 31 October 1995 concerning the grant of State aid by the Free and Hanseatic City of Hamburg to the ECSC steel undertaking Hamburger Stahlwerke GmbH, Hamburg — SG(95) D/14318/K(95) 2754 final,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

The claim is founded on infringement of essential procedural requirements, in the form of the decision having been based on incorrect facts and in the form of a breach of the principle of the right to a fair hearing, on infringement of the ECSC Treaty and of the legal rules applicable to its implementation, and on an error of assessment.

In particular:

The loan made in December 1992 increasing the credit facility by DM 20 million did not constitute aid. The applicant considers in that regard that the Free and Hanseatic City of Hamburg and the Hamburgische Landesbank must have taken into account the fact that the total loans made by the Hamburgische Landesbank to the applicant would be treated, in the event of the bankruptcy of the applicant, as having replaced equity capital. The Commission's view that the prolongation and extension of the credit facility in December 1993 also constituted aid, because the conduct of the Free and Hanseatic City of Hamburg was not comparable with that of a normal commercial investor, is incorrect.

By contrast, the Federal Government pointed out in its communication to the Commission of 18 August 1995 that the applicant's subsidiary company in Euskirchen, the annual production capacity of which amounted to 80 000 tonnes, had finally been closed down, and that that closure was to be taken into account as offsetting grants of aid, even outside the procedure laid down by Article 95 of the ECSC Treaty, in accordance with the principle of equal treatment. In its communication of 7 February 1995, the Federal Government further stated that it could only be reasonable, from a commercial and entrepreneurial point of view, to terminate a commitment when economic conditions are good, rather than during a recession, and that the limited credit increase made in 1993 — with the express object of selling the applicant company — was therefore not merely the only economically appropriate measure to take but also the same measure as would have been taken by any private entrepreneur in a comparable situation. The Commission did not dispute those arguments in its decision.

Even on the incorrect assumption that the prolongation and extension of the credit facility in December 1993 constituted a grant of aid, it is clear in any event that this could only apply as regards an insignificant part.

Action brought on 24 December 1995 by Dr Anthony Goldstein against the Commission of the European Communities

(Case T-235/95)

(96/C 64/38)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 24 December 1995 by Dr Anthony Goldstein, represented by Raymond St John Murphy of Merriman White, Solicitors, 3 King's Bench Walk, Inner Temple, London.

The applicant claims that the Court should:

— annul the Commission's Decision of 16 October 1995 refusing, *inter alia,* to reconsider the Decision of 20 January 1994 in the light of the factual and legal information submitted for its assessment in accordance with the principles laid down by the Treaty as interpreted by the judgments of the Court of Justice,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

On 10 August 1993 the applicant, a Community medical specialist in rheumatology submitted to the Commission under Article 3 (2) of Council Regulation No 17 an application for a finding that the General Medical Council (GMC), a statutory body which regulates the medical profession in the territory of the United Kingdom, had infringed Articles 85 and 86 of the EC Treaty. According to the applicant's complaint, the GMC:

— restricts persons holding a Community medical specialist diploma issued pursuant to Council Directive 93/16/EC from having their specialist status publicized in the medical register, and

— has rules which inhibit direct access to Community medical specialists and inhibit advertising by Community medical specialists to the public.

At the same time as the complaint the applicant requested interim measures which the Commission rejected. The applicant made further requests for interim measures in several letters to the Commission, with which he provided supplementary factual and legal information in support of his requests. These applications include, *inter alia*, a request that the Commission reconsider its first refusal to grant interim measures in the light of new factual and legal information. The Commission rejected the applicant's further requests for interim measures by letter dated 16 October 1995, which constitutes the contested decision.

The applicant alleges an infringement of Article 190 of the EC Treaty. Concretely, the contested decision does not contain any statement of reasons for which the part of the applicant's complaint alleging unlawful anti-competitive conduct by the GMC, which prevents direct access by Community medical specialists to the market in medical services in the United Kingdom, was rejected in the light of the principles established by the Court of Justice in its judgment given on 10 May 1995 in Case C-384/93 Alpine Investments, as stated in paragraph 1 of the abovementioned letter.

Action brought on 27 December 1995 by TAT European Airlines against the Commission of the European Communities

(Case T-236/95)

(96/C 64/39)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 December 1995 by TAT European Airlines, represented by Antoine Winckler and Romano Subiotto, of Cleary, Gottlieb, Steen & Hamilton, with an address for service in Luxembourg at the Chambers of Elvinger & Hoss, 15 Côte d'Eich.

The applicant claims that the Court should:

— annul Commission Decision C 23/94 of 21 June 1995, concerning the payments of the second tranche of aid in favour of Air France approved by Commission Decision of 27 July 1994,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

The applicant, a competitor company of Compagnie Nationale Air France in the international air lines market, challenges the Commission's Decision authorizing the second of the three tranches of Air France's capital increase, approved by the Commission on 27 July 1994, as a form of State aid.

The 1994 Decision subjects the payment of the second and third tranches of the capital increase to the fulfilment of 13 obligations. The applicant submits that the disputed Decision has been taken without any consideration of the fact that three of the said obligations have not been respected by the French authorities.

The first obligation is aimed at preventing any transfer of the aid to Air Inter by the setting up of a holding company which would have a majority shareholding in both companies. It is pointed out that as part of its strategy the Air France Group, began the procedure which will lead to the merger on 1 January 1997 of Air Inter with Air France's European profit centre immediately after the 1994 Decision. In fact, Air France and Air Inter continued to hold shares in the same undertaking and pursued their joint initiatives. In these circumstances Air France and Air Inter form one economic unit, so that Air Inter must inevitably have benefited from the aid before the adoption of the Decision.

Secondly, Air France has ignored the second obligation, aimed at preventing it from applying tariffs below those of its competitors for an equivalent supply on the routes which it operates, by deviating by between 15 % and 74 % relative to other fares on some routes in which Air France takes advantage of a price leadership.

The applicant submits that the French authorities have not complied with the obligation aimed at ensuring that the traffic distribution rules for the Paris airport system should be modified, as soon as possible after the adoption of 1994 Decision, in accordance with the Commission's Decision of 27 April 1994 on the opening of the Orly-London link.

Finally, the French authorities have taken no measure to ensure that the work required to adapt the two terminals at Orly carried out by Aéroports de Paris and a possible saturation of one or other of those terminals, do not affect competitive conditions to the detriment of the companies operating there. On the contrary, the circumstances and timing of the decisions relating to this question leave no doubt that the adaptation of the Orly terminal was organized precisely in such a way as to discriminate against competitors of the Air France Group.

Action brought on 22 December 1995 by Francesco Mongelli against the Commission of the European Communities

(Case T-238/95)

(96/C 64/40)

(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 22 December 1995 by Francesco Mongelli, a former official of the Commission of the European Communities, residing in Cecina (Leghorn), represented by Giuseppe Marchesini, advocate with the right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt.

The applicant claims that the Court should:

— annul the applicant's pension statements as from January 1995 on the grounds set forth in the application,

— order the Commission to pay the amounts due in their entirety, together with interest at 8 % calculated from the dates on which they fell due,

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments adduced in support:

The applicant, a former Commission official, receives an old age pension. He is resident in Italy and is subject to the weighting provided for in respect of Italy. The applicant observed from the pension statement for January 1995 that there had been a significant reduction in his emoluments by comparison with the amount received in the preceding months. The origin of that reduction lay in Council Regulation 3161/94 of 19 December 1994 which amended the weighting previously in force.

The applicant seeks the annulment of the pension statement, contesting incidentally the Council's basic provisions. The application is based on the following grounds:

— infringement of Article 64 of the Staff Regulations: the applicant claims that a weighting based primarily on the rate of exchange between national currencies and not on the price developments in the Member State, as provided for in Article 64 of the Staff Regulations, is unlawful. The anomaly is even greater if it is borne in mind that a reduction in the Italian weighting corresponds to an actual increase in the cost of living in Italy,

— discriminatory treatment: the applicant criticizes the consequences of such a *modus procedendi,* that is, treating pensioners differently according to whether they reside in a State with a strong currency or a State with a weak currency. It may readily be observed that pensioners residing in Italy are objectively disadvantaged where they have to bear charges and expenses, particularly if they are permanent or continuous, in a State whose currency is strong or must or wish to purchase goods from such a State. On the other hand, pensioners residing in States whose currency is strong are at an advantage when making purchases or payments in a currency of a lower value. Moreover, it may readily be ascertained that Member States whose currency is certainly stronger than that of Italy and whose rate of inflation is lower (Germany, France, United Kingdom, among others) paradoxically all have a weighting in excess of 100 which, in the case of Germany, is in fact greater than the previous year,

— breach of the legitimate expectation that nominal income would be preserved: the applicant points out that the principle that the nominal income is to be preserved is not a mere affirmation but is given concrete expression in the practice observed by the institutions since 1970. That practice, moreover, has been officially sanctioned in statements of the Council and the Commission,

— infringement of the second paragraph of Article 63 and Article 45 of Annex VIII to the Staff Regulations: the applicant maintains that the irregularity is even more serious inasmuch as they have opted to pay the pension in the currency in which the institution has its seat. The conversion procedure adopted by the administration is in two stages: the payment in Belgian francs to those who have so chosen was carried out by applying to the pension in Italian lire the exchange rate in force on 1 July of the year in question. That means that the administration first calculates the pension in lire resulting from a prior conversion from Belgian francs to Italian lire (since remuneration is expressed in Belgian francs, in accordance with Article 63 of the Staff Regulations). Then, to the amount in lire resulting therefrom, it applies the exchange rate between lire and Belgian francs in force on 1 July, and carries out a second conversion. This constitutes two manifest infringements. The first concerns the second paragraph of Article 63 of the Staff Regulations. That Article, after explaining that emoluments are always to be expressed first of all in Belgian francs, provides that the remuneration paid in a currency other than Belgian francs is to be calculated on the basis of exchange rates used for the implementation of the general budget of the European Communities. This means that the pensions of those who chose the Belgian franc as the currency for payment must be settled and paid in Belgian francs without there being a need for any conversion

whatsoever, precisely because they are not paid in any other currency. The second concerns the fourth subparagraph of Article 82, which refers to the pensions which are to be paid in a currency other than Belgian francs and provides for a conversion operation only in this context.

Action brought on 22 December 1995 by Alberto Castagnoli against the Commission of the European Communities

(Case T-239/95)

(96/C 64/41)

(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 22 December 1995 by Alberto Castagnoli, a former official of the Commission of the European Communities, residing in Segrate (Milan), represented by Giuseppe Marchesini, advocate with the right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt.

The applicant claims that the Court should:

— annul the applicant's pension statements as from January 1995 on the grounds set forth in the application,

— order the Commission to pay the amounts due in their entirety, together with interest at 8 % calculated from the dates on which they fell due,

— order the defendant to pay the costs of the proceedings.

The *pleas in law and main arguments* are analogous to those in Case T-238/95 Francesco Mongelli v. Commission.

Action brought on 22 December 1995 by Eduardo Capuano against the Commission of the European Communities

(Case T-240/95)

(96/C 64/42)

(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 22 December 1995 by Eduardo Capuano, a former official of the Commission of the European Communities, residing in Rome, represented by Giuseppe Marchesini, advocate with the right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt.

The applicant claims that the Court should:

— annul the applicant's pension statements as from January 1995 on the grounds set forth in the application,

— order the Commission to pay the amounts due in their entirety, together with interest at 8 % calculated from the dates on which they fell due,

— order the defendant to pay the costs of the proceedings.

The *pleas in law and main arguments* are analogous to those in Case T-238/95 Francesco Mongelli v. Commission.

Action brought on 22 December 1995 by Vittorio Sadini against the Commission of the European Communities

(Case T-241/95)

(96/C 64/43)

(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 22 December 1995 by Vittorio Sadini, a former official of the Commission of the European Communities, residing in Segrate (Milan), represented by Giuseppe Marchesini, advocate with the right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt.

The applicant claims that the Court should:

— annul the applicant's pension statements as from January 1995 on the grounds set forth in the application,

— order the Commission to pay the amounts due in their entirety, together with interest at 8 % calculated from the dates on which they fell due,

— order the defendant to pay the costs of the proceedings.

The *pleas in law and main arguments* are analogous to those in Case T-238/95 Francesco Mongelli v. Commission.

Action brought on 22 December 1995 by Lando Tinelli against the Commission of the European Communities

(Case T-242/95)

(96/C 64/44)

(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 22 December 1995 by Lando Tinelli, a former official of the Commission of the European Communities, residing in Rome, represented by Giuseppe Marchesini, advocate with the right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8—10 Rue Mathias Hardt.

The applicant claims that the Court should:

— annul the applicant's pension statements as from January 1995 on the grounds set forth in the application,

— order the Commission to pay the amounts due in their entirety, together with interest at 8 % calculated from the dates on which they fell due,

— order the defendant to pay the costs of the proceedings.

The *pleas in law and main arguments* are analogous to those in Case T-238/95 Francesco Mongelli v. Commission.

Action brought on 2 January 1996 by Bernhard Böcker-Lensing and Ludger Schulze-Beiering Gesellschaft bürgerlichen Rechts against the Council of the European Union and the Commission of the European Communities

(Case T-1/96)

(96/C 64/45)

(Language of the case: German)

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 2 January 1996 by Bernhard Böcker-Lensing and Ludger Schulze-Beiering Gesellschaft bürgerlichen Rechts, Borken, represented by Bernd Meisterernst, Mechtild Düsing, Dietrich Manstetten and Dr. Frank Schulze, Rechtsanwälte, Münster, with an address for service in Luxembourg at the Chambers of Dupong & Associés, 14a Rue des Bains.

The applicant claims that the Court should:

— order the defendants to pay to the applicant milk quota compensation (SLOM-II) for the period from 2 April 1984 to 13 June 1991, amounting to DM 118 436,52, together with 8 % interest from 19 May 1992, and to pay the costs of the proceedings and the applicants' experts' fees in the sum of DM 1 961,90,

— stay the proceedings.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are the same as those in Case T-20/94.

Action brought on 3 January 1996 by Neue Maxhütte Stahlwerke GmbH against the Commission of the European Communities

(Case T-2/96)

(96/C 64/46)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 January 1996 by Neue Maxhütte Stahlwerke GmbH of Sulzbach-Rosenberg (Germany), represented by Rainer Bierwagen (Rechtsanwalt) of Brussels, with an address for service in Luxembourg at the Chambers of Elvinger and Dessoy, 31 Rue d'Eich.

The applicant claims that the Court should:

— annul Commission Decision K(95) 2828 final of 18 October 1995 in so far as it affects the applicant,

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments adduced in support:

The applicant, Neue Maxhütte Stahlwerke GmbH of Sulzbach-Rosenberg, the ECSC steel producer to which loans described by the Commission as aids were granted, maintains that the contested Decision infringes essential procedural requirements and principles.

In its submission, the Decision contained incorrect and inadequate factual findings concerning the alleged aid.

The proceedings concerning the privatization of Neue Maxhütte and the granting of the loans have the same subject-matter, since the granting of the loans is part of the

search for a successful means of privatization. By opening two sets of proceedings and not joining them in any way, the Commission artificially divided a subject-matter that was one and the same. The Decision should be set aside by reason of that unlawful division of the proceedings.

Article 2 of the Decision requires repayment of the alleged aids by the undertakings concerned. As stated above, the two sets of proceedings are inseparably related. In the event of a court decision in favour of privatization in principle, the loans granted would be set off and the second proceeding would become irrelevant. In this situation, the applicant is obliged to challenge the Commission Decision of 18 October 1995. In order to provide effective legal protection for the applicant, either the investigation or the repayment obligation in Article 2 should have been suspended pending the court decision concerning privatization.

The Commission did not give the applicant a proper hearing before making its Decision, and did not send the views of competitors to the applicant for comment.

The loans granted did not constitute aid within the meaning of Article 4 (c) of the ECSC Treaty. That was apparent from the facts, the Commission having misunderstood the circumstances which led the Region of Bavaria to grant the loans. From the legal point of view, an aid can only exist if a private investor in a similar position would not have made a similar loan. That requirement was not satisfied in this case.

Action brought on 10 January 1996 by Roland Haas and four others against the Commission of the European Communities

(Case T-3/96)

(96/C 64/47)

(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 January 1996 by Roland Haas, Hans-Werner Schmidt, Siegfried Schweikle, Albert Veith and Horst Wohlfeil, resident in Luxembourg, represented by Georges Vandersanden and Laure Levi, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SÀRL, 1 Rue Glesener.

The applicants claim that the Court should:

— order the Commission to pay the additional remuneration resulting from applying the Berlin weighting for Germany to the part of the applicants' remuneration transferred in German marks during the period from 1 October 1990 to 31 December 1994,

— order the Commission to pay interest for delay on such additional remuneration at 10 % per annum,

— in so far as necessary, annul the Commission Decisions of 9 March 1995 and 4 October 1995, rejecting the applicants' claim and their complaint respectively,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

The applicants, who are Commission officials employed in Luxembourg, state that, using their right under Annex VII to the Staff Regulations, they had part of their remuneration transferred to Germany. Under Article 17 (3) of Annex VII, the amounts transferred were adjusted by the coefficient resulting from the ratio between the weighting for Germany and the weighting for Luxembourg. Until 1 July 1994, the date from which Council Regulation (ECSC, EC, Euratom) No 3161/94 of 19 December 1994 adjusting, with effect from 1 July 1994, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ No L 335, 1994, p. 1) took effect, the weighting for Germany had remained fixed at the Bonn level, although Berlin had been proclaimed the capital of Germany on 3 October 1990. The applicants consider that they are entitled to additional payments, reflecting the weighting for Germany calculated at the Berlin level, in respect of the part of their remuneration transferred to Germany as from 1 October 1990. Their claims to that effect have, however, been rejected by the Commission.

The applicants maintain that the rejection infringes Articles 63 and 65a of the Staff Regulations. Under those provisions, the weighting for each Member State is to be fixed in relation to the cost of living in its capital; Berlin became the capital of Germany on 3 October 1990. They argue that the Commission was not entitled to use a Regulation which failed to provide for retrospective calculation of the weighting at the Berlin level as from 1 October 1990, and is obliged to recalculate the coefficient affecting the portions of salary transferred as from 3 October 1990 and to pay them the difference.

They also argue that the Commission has disregarded the effects of the judgments in Cases T-64/92 and T-536/93, in

which the Court of First Instance held that amending Regulations which, after 3 October 1990, fixed a weighting for Germany by reference to the cost of living in Bonn were unlawful; the Commission applied Regulation (ECSC, EC, Euratom) No 3161/94, thereby remedying the illegality which had been established only as from 1 July 1994.

The applicants also allege an infringement of the principle of equal treatment, since, as from 1 October 1990, they did not enjoy a purchasing power equivalent to that of other officials who did not transfer part of their remuneration to Germany.

Finally, the Commission failed to ensure that the weighting for Germany was fixed, in accordance with the Staff Regulations, at the level of the capital, Berlin, thereby infringing its duty to have due regard for the interests of officials. Nor did it bring any action for the annulment of the Regulation in question, even though it was clearly unlawful; it thereby failed in its task of ensuring the observance of Community law, a task which also falls within the duty to have due regard for the interests of officials, when the persons towards whom the unlawful provision and secondary legislation is directed are officials and other servants.

Removal from the register of Case T-276/94 [1]

(96/C 64/48)

(Language of the case: French)

By order of 23 January 1996 the President of the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-276/94: Adam Buick v. Commission of the European Communities.

[1] OJ No C 304, 29. 10. 1994.

Removal from the register of Case T-84/95 [1]

(96/C 64/49)

(Language of the case: French)

By order of 12 January 1996 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-84/95: René Bébin v. Commission of the European Communities.

[1] OJ No C 208, 12. 8. 1995.

Removal from the register of Case T-138/95 [1]

(96/C 64/50)

(Language of the case: German)

By order of 16 January 1996 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-138/95: Friedrich Engelking v. Council of the European Union and Commission of the European Communities.

[1] OJ No C 208, 12. 8. 1995.

Removal from the register of Case T-213/95 R

(96/C 64/51)

(Language of the case: Dutch)

By order of 24 January 1996 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-213/95 R: Stichting Certificatie Kraanverhuurbedrijf v. Commission of the European Communities.