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*(Information)*

# COURT OF JUSTICE

COURT OF JUSTICE

## OPINION 2/94 OF THE COURT

**of 28 March 1996**

***(Accession by the Community to the Convention for the Protection of Human Rights and Fundamental Freedoms)***

(96/C 180/01)

The Court of Justice has received a request for an opinion, lodged at the Registry of the Court on 26 April 1994 [1], from the Council of the European Union pursuant to Article 228 (6) of the EC Treaty on the following question:

'Would the accession of the European Community to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 be compatible with the Treaty establishing the European Community?'

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, F. A. Schockweiler (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges, after hearing the views of First Advocate-General Tesauro and Advocates-General Lenz, Jacobs, La Pergola, Cosmas, Léger, Elmer, Fennelly and Ruiz-Jarobo Colomer, gave the following opinion:

*As Community law now stands, the Community has no competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.*

[1] OJ No C 174, 25. 6. 1994.

## JUDGMENT OF THE COURT

**(Fifth Chamber)**

**of 7 March 1996**

**in Case C-118/94 (Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Veneto): Associazione Italiana per il World Wildlife Fund and Others v. Regione Veneto [1]**

***(Council Directive 79/409/EEC on the conservation of wild birds — Hunting — Conditions for exercise of the Member States' power to derogate)***

(96/C 180/02)

*(Language of the case: Italian)*

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

In Case C-118/94: reference to the Court under Article 177 of the EC Treaty by the Tribunale Amministrativo Regionale per il Veneto (Regional Administrative Court for the Veneto Region, Italy) for a preliminary ruling in the proceedings pending before that court between Associazione Italiana per il World Wildlife Fund, Ente Nazionale per le Protezione Animali, Lega per l'Ambiente — Comitato Regionale, Lega Anti Vivisezione — Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto, Italia Nostra — Sezione di Venezia and the Regione Veneto on the interpretation of Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ No L 103, 1979, p. 1), the Court (Fifth Chamber), composed of D. A. O. Edward, President of the Chamber, J.-P. Puissochet, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur) and P. Jann, Judges; N. Fennelly, Advocate-General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 7 March 1996 in which it ruled that:

*Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds is to be interpreted as*

*meaning that it authorizes the Member States to derogate from the general prohibition on hunting protected species laid down by Articles 5 and 7 of the Directive only by measures which refer in sufficient detail to the factors mentioned in Article 9 (1) and (2).*

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

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## JUDGMENT OF THE COURT

**(Sixth Chamber)**

**of 7 March 1996**

**in Joined Cases C-171/94 and C-172/94 (references for a preliminary ruling from the Cour du Travail, Brussels): Albert Merckx and Patrick Neuhuys v. Ford Motor Company Belgium SA (1)**

***(Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses — Concept of a transfer — Transfer of a dealership)***

(96/C 180/03)

*(Language of the case: French)*

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

In Joined Cases C-171/94 and C-172/94: references to the Court under Article 177 of the EC Treaty from the Cour du Travail (Higher Labour Court), Brussels, for a preliminary ruling in the proceedings pending before that court between Albert Merckx (C-171/94), Patrick Neuhuys (C-172/94) and Ford Motor Company Belgium SA — on the interpretation of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ No L 61, 1977, p. 26) — the Court (Sixth Chamber), composed of C. N. Kakouris, President of the Chamber, G. F. Mancini (Rapporteur), F. A. Schockweiler, P. J. G. Kapteyn and H. Ragnemalm, Judges; C. O. Lenz, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 7 March 1996, in which it rules:

1. *Article 1 (1) of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses must be interpreted as applying where an undertaking holding a motor vehicle dealership for a particular territory discontinues its activities and the dealership is then transferred to another undertaking which takes on part of the staff and is recommended to customers, without any transfer of assets.*

2. *Article 3 (1) of Directive 77/187/EEC does not preclude an employee employed by the transferor at the date of the transfer of an undertaking from objecting to the transfer to the transferee of the contract of employment or the emplyoment relationship. In such a case, it is for the Member States to determine what the fate of the contract of employment or employment relationship with the transferor should be. However, where the contract of employment or the employment relationship is terminated on account of a change in the level of remuneration awarded to the employee, Article 4 (2) of the Directive requires the Member States to provide that the employer is to be regarded as having been responsible for the termination.*

(1) OJ No C 233, 20. 8. 1994.

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## JUDGMENT OF THE COURT

**(Sixth Chamber)**

**of 7 March 1996**

**in Case C-192/94 (reference for a preliminary ruling from the Juzgado de Primera Instancia N° 10 de Sevilla): El Corte Inglés SA v. Cristina Blázquez Rivero (1)**

***(Direct effect of unimplemented Directive — Council Directive 87/102/EEC concerning consumer credit)***

(96/C 180/04)

*(Language of the case: Spanish)*

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

In Case C-192/94: reference to the Court under Article 177 of the EC Treaty from the Juzgado de Primera Instancia N° 10 (Court of First Instance No 10), Seville (Spain), for a preliminary ruling in the proceedings pending before that court between El Corte Inglés SA and Cristina Blázquez Rivero — on the interpretation of Article 129a of the EC Treaty and Article 11 of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ No L 42, 1987, p. 48) — the Court (Sixth Chamber), composed of C. N. Kakouris, President of the Chamber, G. Hirsch (Rapporteur), P. J. G. Kapteyn, J. L. Murray and H. Ragnemalm, Judges; C. O. Lenz, Advocate-General; R. Grass, Registrar, has given a judgment on 7 March 1996, in which it rules:

*In the absence of measures implementing Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit within the prescribed period, a consumer may not, even in view of Article 129a of the EC Treaty, base a right of action on the*

*Directive itself against a lender who is a private person, on account of inadequacies in the supply of goods or provision of services by the supplier or provider with whom the lender concluded an exclusive agreement with regard to the grant of credit and assert that right before a national court.*

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

## JUDGMENT OF THE COURT

### of 12 March 1996

**in Case C-441/93 (reference for a preliminary ruling from the Polymeles Protodikeio Athinon): Panagis Pafitis and Others v. Trapeza Kentrikis Ellados AE and Others (1)**

***(Company law — Directive 77/91/EEC — Alteration of capital of a bank constituted in the form of a public limited liability company — Direct effect of Articles 25 (1) and 29 (3) of the Directive — Abuse of rights)***

(96/C 180/05)

*(Language of the case: Greek)*

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

In Case C-441/93: reference to the Court under Article 177 of the EC Treaty from the Polymeles Protodikeio Athinon (Court of First Instance, Athens) for a preliminary ruling in the proceedings pending before that court between Panagis Pafitis and Others, supported by Investment and Shipping Enterprises Est and Others, and Trapeza Kentrikis Ellados AE and Others, supported by Trapeza tis Ellados AE and Others — on the interpretation of Article 25 *et seq.* and Article 29 of the Second Council Directive, Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ No L 26, 1977, p. 1) — the Court, composed of C. N. Kakouris, President of Chamber, acting for the President, D. A. O. Edward and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, H. Ragnemalm and L. Sevón, Judges; G. Tesauro, Advocate-General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 12 March 1996, in which it rules:

1. *Article 25 of the Second Council Directive (77/91/EEC) of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent precludes national legislation under which the capital of a bank constituted in the form of a public limited liability company which, as a result of its debt burden, is in exceptional circumstances may be increased by an administrative measure, without a resolution of the general meeting.*

2. *Publication of an offer of subscription in daily newspapers does not constitute information given in writing to the holders of registered shares within the meaning of third sentence of Article 29 (3) of Directive 77/91/EEC.*

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

## JUDGMENT OF THE COURT

### (Fifth Chamber)

### of 14 March 1996

**in Case C-275/94 (reference for a preliminary ruling from the Hof van Cassatie van België): Roger Van der Linden v. Berufsgenossenschaft der Feinmechanik und Elektrotechnik (1)**

***(Brussels Convention — Interpretation of Article 47 (1) — Documents to be produced by a party applying for enforcement — Obligation to produce proof of service of the judgment delivered — Possibility of producing proof of service after the application has been made)***

(96/C 180/06)

*(Language of the case: Dutch)*

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

In Case C-275/94: reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the Hof van Cassatie van België (Belgian Court of Cassation) for a preliminary ruling in the proceedings pending before that court between Roger Van der Linden and Berufsgenossenschaft der Feinmechanik und Elektrotechnik on the interpretation of Article 47 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ No L 304, 1978, p. 17), as amended by the Convention of 9 October 1978 on the Accession of the

Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ No L 304, 1978, p. 1 and — in its amended form — p. 77) — the Court (Fifth Chamber), composed of D. A. O. Edward (President of Chamber), J.-P. Puissochet, J. C. Moitinho de Almeida (Rapporteur), C. Gulmann and P. Jann, Judges; N. Fennelly, Advocate-General; R. Grass, Registrar, has given a judgment on 14 March 1996, in which it rules:

*Article 47 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, is to be interpreted as meaning that, where the domestic procedural rules so permit, proof of service of the judgment may be produced after the application has been made, in particular during the course of appeal proceedings subsequently brought by the party against whom enforcement is sought, provided that that party is given a reasonable period of time in which to satisfy the judgment voluntarily and that the party seeking enforcement bears all costs unnecessarily incurred.*

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(1) OJ No C 351, 10. 12. 1994.

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## JUDGMENT OF THE COURT

**(Sixth Chamber)**

**of 14 March 1996**

**in Case C-315/94 (reference for a preliminary ruling from the Arbeitsgericht Bielefeld): Peter de Vos v. Stadt Bielefeld (1)**

***(Freedom of movement for persons — Military service — Social advantage)***

(96/C 180/07)

*(Language of the case: German)*

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

In Case C-315/94: reference to the Court under Article 177 of the EC Treaty from the Arbeitsgericht Bielefeld (Germany) for a preliminary ruling in the proceedings pending before that court between Peter de Vos and Stadt Bielefeld on the interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) — the Court (Sixth Chamber), composed of C. N. Kakouris, President of the Chamber, G. Hirsch, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur) and J. L. Murray, Judges; D. Ruiz-Jarabo Colomer, Advocate-General; Registrar, R. Grass, gave a judgment on 14 March 1996, the operative part of which is as follows:

*Article 7 (1) and (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as meaning that a worker who is a national of one Member State and is employed in the territory of another Member State is not entitled to have payment of contributions (employer's and employee's contributions) to the supplementary old-age and survivors' pension scheme for workers in the public service continued, at the same level as would have been payable if the employment relationship had not been suspended because of his call-up for military service, where nationals of that State employed in the public service are so entitled when performing military service in that State.*

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(1) OJ No C 380, 31. 12. 1994.

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## JUDGMENT OF THE COURT

**(Fifth Chamber)**

**of 14 March 1996**

**in Case C-238/95: Commission of the European Communities v. Italian Republic (1)**

***(Failure to fulfil obligations — Directive 93/67/EEC — Assessment of risks to man and the environment posed by dangerous substances)***

(96/C 180/08)

*(Language of the case: Italian)*

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

In Case C-238/95: Commission of the European Communities (Agents: Laura Pignatoro and Maria Condou-Durande) v. Italian Republic (Agent: Professor Umberto Leanza, assisted by Pier Giorgio Ferri, avvocato dello Stato) — application for a declaration that, by failing to adopt and communicate the laws, regulations and administrative provisions necessary to comply with Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC (OJ No L 227, 1993, p. 9), the Italian Republic has failed to fulfil its obligations under that Directive and the EC Treaty — the Court (Fifth Chamber), composed of D. A. O. Edward, President of the Chamber, J.-P. Puissochet (Rapporteur), J. C. Moitinho de Almeida, L. Sevón and M. Wathelet, Judges; N. Fennelly, Advocate-General; R. Grass, Registrar, has given a judgment on 14 March 1996 in which it:

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC, the Italian Republic has failed to fulfil its obligations under Article 8 of Directive 93/67/EEC.*

2. *Orders the Italian Republic to pay the costs.*

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

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## JUDGMENT OF THE COURT

**(Sixth Chamber)**

**of 14 March 1996**

**in Case C-239/95: Commission of the European Communities v. Kingdom of Belgium (1)**

***(Failure of a Member State to fulfil its obligations — Transposition of Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices)***

(96/C 180/09)

*(Language of the case: French)*

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

In Case C-239/95: Commission of the European Communities (Agent: Hendrik van Lier) v. Kingdom of Belgium (Agent: Jan Devadder) — application for a declaration that, by failing to adopt and, in the alternative, to communicate to the Commission the measures necessary to transpose Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices (OJ No L 189, 1990, p. 17), the Kingdom of Belgium has failed to fulfil its obligations under that Directive and in particular Article 16 thereof — the Court (Sixth Chamber), composed of C. N. Kakouris, President of the Chamber, G. Hirsch, G. F. Mancini, F. A. Schockweiler and J. L. Murray (Rapporteur), Judges; Advocate-General, D. Ruiz-Jarabo Colomer; Registrar, R. Grass, gave a judgment on 14 March 1996, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices, the Kingdom of Belgium has failed to fulfil its obligations under Article 16 of that Directive.*

2. *Orders the Kingdom of Belgium to pay the costs.*

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

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## JUDGMENT OF THE COURT

**of 19 March 1996**

**in Case C-25/94: Commission of the European Communities v. Council of the European Union (1)**

***(FAO — Fishery Agreement — Right to vote — Member States — Community)***

(96/C 180/10)

*(Language of the case: French)*

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

In Case C-25/94: Commission of the European Communities (Agent: Jörn Sack) v. Council of the European Union (Agents: Rüdiger Bandilla and Felix van Craeyenest), supported by United Kingdom of Great Britain and Northern Ireland (Agents: John E. Collins and Richard Plender QC) — application for annulment of the decision of the Fisheries Council of 22 November 1993 giving the Member States the right to vote in the United Nations Food and Agriculture Organization for the adoption of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas — the Court, composed of G. C. Rodríguez Iglesias, President, J.-P. Puissochet 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, H. Ragnemalm and L. Sevón, Judges; F. G. Jacobs, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a judgment on 19 March 1996, in which it:

1. *Annuls the decision of the Fisheries Council of 22 November 1993 giving the Member States the right*

*to vote in the United Nations Food and Agriculture Organization for the adoption of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas.*

2. *Orders the Council to bear the costs.*

3. *Orders the United Kingdom to bear its own costs.*

(1) OJ No C 90, 26. 3. 1994.

## JUDGMENT OF THE COURT

**(First Chamber)**

**of 21 March 1996**

**in Case C-297/94 (reference for a preliminary ruling made by the Belgian Counseil d'État): Dominique Bruyère and Others v. Belgian State (1)**

***(Veterinary medicinal products — Directives 81/851/EEC and 90/676/EEC)***

(96/C 180/11)

*(Language of the case: French)*

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

In Case C-297/94: reference to the Court under Article 177 of the EC Treaty by the Belgian Conseil d'État for a preliminary ruling in the proceedings pending before that court between Dominique Bruyère and Others and the Belgian State — on the interpretation of Article 4 (2) of Council Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products (OJ No L 317, 1981, p. 1), in its original version and as amended by Council Directive 90/676/EEC of 13 December 1990 (OJ No L 373, 1990, p. 15) — the Court (First Chamber), composed of D. A. O. Edward, President of the Chamber, P. Jann and L. Sevón (Rapporteur), Judges; M. P. Elmer, Advocate-General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 March 1996, the operative part of which is as follows:

*Article 4 of Council Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products, in its original version and as amended by Council Directive 90/676/EEC of 13 December 1990, must be interpreted as prohibiting the importation into a Member State of a medicinal product covered by that Directive with a view to placing it on the market of that State or of administering it there in the absence of prior authorization issued by the competent authority of that Member State.*

(1) OJ No C 370, 24. 12. 1994.

## JUDGMENT OF THE COURT

**(First Chamber)**

**of 21 March 1996**

**in Case C-335/94 (reference for a preliminary ruling from the Amtsgericht, Recklinghausen): Proceedings by Hans Walter Mrozek and Bernhard Jäger against administrative fines (1)**

***(Social legislation relating to road transport — Derogation for refuse vehicles)***

(96/C 180/12)

*(Language of the case: German)*

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

In Case C-335/94: reference to the Court under Article 177 of the EC Treaty from the Amtsgericht (Local Court), Recklinghausen, for a preliminarey ruling in the proceedings against administrative fines brought before that court by Hans Walter Mrozek and Bernhard Jäger on the interpretation of Article 4 (6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ No L 370, 1985, p. 1) — the Court (First Chamber), composed of D. A. O. Edward (President of the Chamber), P. Jann (Rapporteur) and L. Sevón, Judges; P. Léger, Advocate-General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 21 March 1996 in which it rules:

1. *The words 'vehicles used in connection with . . . refuse collection and disposal' in Article 4 (6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport must be interpreted as covering vehicles used for the collection of waste of all kinds which is not subject to more specific rules and for the transportation of such waste over short distances, within the context of a general service in the public interest provided directly by the public authorities or by private undertakings under their control.*

2. *In areas not covered by Regulation (EEC) No 3820/85, Member States remain competent to adopt rules on driving periods.*

(1) OJ No C 392, 31. 12. 1994.

## JUDGMENT OF THE COURT

**(First Chamber)**

**of 21 March 1996**

**in Case C-39/95 (reference for a preliminary ruling from the Tribunal de Police, La Rochelle): Criminal proceedings against Pierre Goupil (1)**

***(Social legislation relating to road transport — Derogation for refuse vehicles)***

(96/C 180/13)

*(Language of the case: French)*

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

In Case C-39/95: reference to the Court under Article 177 of the EC Treaty from the Tribunal de Police (Local Criminal Court), La Rochelle, for a preliminary ruling in the criminal proceedings pending before that court against Pierre Goupil on the interpretation of Article 4 (6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ No L 370, 1985, p. 1) — the Court (First Chamber), composed of D. A. O. Edward (President of the Chamber), P. Jann (Rapporteur) and L. Sevón, Judges; P. Léger, Advocate-General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 21 March 1996 in which it rules:

*The words 'vehicles used in connection with ... refuse collection and disposal' in Article 4 (6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport must be interpreted as covering vehicles used for the collection of waste of all kinds which is not subject to more specific rules and for the transportation of such waste over short distances, within the context of a general service in the public interest provided directly by the public authorities or by private undertakings under their control.*

(1) OJ No C 87, 8. 4. 1995.

## JUDGMENT OF THE COURT

**of 26 March 1996**

**in Case C-392/93 (reference for a preliminary ruling from the High Court of Justice, Queen's Bench Division, Divisional Court): The Queen v. H. M. Treasury, *ex parte*: British Telecommunications plc (1)**

***(Reference for a preliminary ruling — Interpretation of Directive 90/531/EEC — Telecommunications — Transposition into national law — Obligation to pay compensation in the event of incorrect implementation)***

(96/C 180/14)

*(Language of the case: English)*

In Case C-392/93: reference to the Court under Article 177 of the EC Treaty by the High Court of Justice, Queen's Bench Division, Divisional Court, for a preliminary ruling in the proceedings pending before that court between the Queen and H. M. Treasury, *ex parte* British Telecommunications plc, on the interpretation of Article 8 (1) of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 297, 1990, p. 1) — the Court, composed of G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward and J.-P. Puissochet, Presidents of Chambers, G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida (Rapporteur), C. Gulmann and J. L. Murray, Judges; G. Tesauro, Advocate-General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 26 March 1996, in which it rules:

1. *It is not open to a Member State, when transposing into national law Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, to determine which telecommunications services are to be excluded from its scope in implementation of Article 8 (1), since that power is vested in the contracting entities themselves.*

2. *The criterion laid down by Article 8 (1) of Directive 90/531, namely that 'other entities are free to offer the same services in the same geographical area and under substantially the same conditions', is to be verified as a matter of law and of fact, having regard in particular to all the characteristics of the services concerned, the existence of alternative services, price factors, the dominance or otherwise of the contracting entity's position on the market and any legal constraints.*

3. *Community law does not require a Member State which, in transposing Directive 90/531/EEC into national law, has itself determined which services of a contracting entity are to be excluded from its scope in implementation of Article 8, to compensate that entity for any loss suffered by it as a result of the error committed by the State.*

(1) OJ No C 287, 23. 10. 1993.

## JUDGMENT OF THE COURT

### of 26 March 1996

### in Case C-238/94 (reference for a preliminary ruling from the Tribunal des affaires de sécurité sociale for Tarn-et-Garonne): José García and Others v. Mutuelle de prévoyance sociale d'Aquitaine and Others (1)

*(Non-life insurance — Council Directive 92/49/EEC — Scope)*

(96/C 180/15)

*(Language of the case: French)*

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

In Case C-238/94: reference to the Court under Article 177 of the EC Treaty from the Tribunal des affaires de sécurité sociale (Social Security Tribunal) for Tarn-et-Garonne for a preliminary ruling in the proceedings pending before that court between José García and Others v. Mutuelle de prévoyance sociale d'Aquitaine and Others — on the interpretation of Article 2 (2) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ No L 228, 1992, p. 1) — the Court, composed of G. C. Rodríguez Iglesias, President, D. A. O. Edward, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), F. A. Schockweiler, J. C. Moitinho de Almeida (Rapporteur), P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann and H. Ragnemalm, Judges; G. Tesauro, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a judgment on 26 March 1996, the operative part of which is as follows:

*Article 2 (2) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) must be interpreted as meaning that social security schemes such as those in issue in the main proceedings are excluded from the scope of the Directive.*

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

## JUDGMENT OF THE COURT

### of 26 March 1996

### in Case C-271/94: European Parliament v. Council of the European Union (1)

*(Council Decision 94/445/EC — Edicom — Telematic networks — Legal basis)*

(96/C 180/16)

*(Language of the case: French)*

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

In Case C-271/94, European Parliament (Agents: Gregorio Garzón Clariana, Johann Schoo and José Luis Rufas Quintana), supported by the Commission of the European Communities (Agent: Georgios Kremlis) v. Council of the European Union (Agents: Antonio Sacchettini and Amadeu Lopes Sabino) — application for the annulment of Council Decision 94/445/EC of 11 July 1994 on interadministration telematic networks for statistics relating to the trading of goods between Member States (Edicom) (OJ No L 183, 1994, p. 42) — the Court, composed of G. C. Rodríguez Iglesias, President, C. N. Kakouris and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón (Rapporteur), Judges, Advocate-General: A. La Pergola, Registrar: H. von Holstein, Deputy Registrar, gave a judgment on 26 March 1996 in which it:

1. *Annuls Council Decision 94/445/EC of 11 July 1994 on interadministration telematic networks for statistics relating to the trading of goods between Member States (Edicom).*

2. *Maintains the effects of the Commission decisions already adopted pursuant to the annulled decision until such time as a decision adopted on the appropriate legal basis enters into force.*

3. *Orders the Council to pay the costs.*

4. *Orders the Commission to bear its own costs.*

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

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 28 March 1996

**in Case C-468/93 (reference to the Court for a preliminary ruling from the Gerechtshof te Leeuwarden): Gemeente Emmen v. Belastingdienst Grote Ondernemingen** (1)

***(Sixth VAT Directive — Article 13B (h) and Article 4 (3) (b) — Supply of building land)***

(96/C 180/17)

*(Language of the case: Dutch)*

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

In Case C-468/93, reference to the Court under Article 177 of the EC Treaty by the Gerechtshof te Leeuwarden (Regional Court of Appeal, Leeuwarden) (Netherlands) for a preliminary ruling in the proceedings pending before that court between Gemeente Emmen and Belastingdienst Grote Ondernemingen — on the interpretation of the combined provisions of Article 13B (h) and Article 4 (3) (b) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (OJ No L 145, 1977, p. 1) — the Court (Fifth Chamber) composed of D. A. O. Edward, President of the Chamber, J.-P. Puissochet (Rapporteur), J. C. Moitinho de Almeida, C. Gulmann and M. Wathelet, Judges; Advocate-General: N. Fennelly, Registrar: H. von Holstein, Deputy Registrar, gave a judgment on 28 March 1996, the operative part of which is as follows:

*It is for the Member States to define the concept of 'building land' within the meaning of the combined provisions of Article 13B (h) and Article 4 (3) (b) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment. It therefore does not fall to the Court to specify what degree of improvement land which has not been built on must exhibit in order to be categorized as building land within the meaning of that Directive.*

(1) OJ No C 43, 12. 2. 1994.

## JUDGMENT OF THE COURT

(Third Chamber)

of 28 March 1996

**in Case C-99/94 (reference for a preliminary ruling from the Finanzgericht Rheinland-Pfalz): Robert Birkenbeul GmbH & Co. KG v. Hauptzollamt Koblenz** (1)

***(Anti-dumping duties on imports of electric motors)***

(96/C 180/18)

*(Language of the case: German)*

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

In Case C-99/94: reference to the Court under Article 177 of the EC Treaty from the Finanzgericht Rheinland-Pfalz (Finance Court, Rhineland-Palatinate), Germany for a preliminary ruling in the proceedings pending before that court between Robert Birkenbeul GmbH & Co. KG v. Hauptzollamt Koblenz on the interpretation of Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multiphase electric motors having an output of more than 0,75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR (OJ No L 280, 1986, p. 68), and of Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multiphase electric motors having an output of more than 0,75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union, and definitively collecting the amounts secured as provisional duties (OJ No L 83, 1987, p. 1), the Court (Third Chamber), composed of J.-P. Puissochet (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida and C. Gulmann, Judges; N. Fennelly, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 28 March 1996 in which it ruled:

*Commission Regulation (EEC) No 3019/86 of 30 September 1986 imposing a provisional anti-dumping duty on imports of standardized multiphase electric motors having an output of more than 0,75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR, and Council Regulation (EEC) No 864/87 of 23 March 1987 imposing a definitive anti-dumping duty on imports of standardized multiphase electric motors having an output of more than 0,75 kW but not more than 75 kW, originating in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union, and definitively collecting the amounts secured as provisional duties, must be interpreted as applying only to imports of standardized, multiphase electric motors which are complete or finished.*

(1) OJ No C 132, 14. 5. 1994.

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 28 March 1996

**in Case C-129/94 (reference for a preliminary ruling from the Audiencia Provincial de Sevilla): criminal proceedings against Rafael Ruiz Bernáldez** [1]

***(Compulsory insurance of motor vehicles — Exclusion of damage caused by intoxicated drivers)***

(96/C 180/19)

*(Language of the case: Spanish)*

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

In Case C-129/94: reference to the Court under Article 177 of the EC Treaty from the Audiencia Provincial de Sevilla (Seville Provincial Court), Spain, for a preliminary ruling in the criminal proceedings before that court against Rafael Ruiz Bernáldez — on the interpretation of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972(II), p. 360), the Second Council Directive 84/5/EEC of 30 December 1983 (OJ No L 8, 1984, p. 17) and the Third Council Directive 90/232/EEC of 14 May 1990 (OJ No L 129, 1990, p. 33), both on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles — the Court (Fifth Chamber), composed of D. A. O. Edward, President of the Chamber, J.-P. Puissochet (Rapporteur), J. C. Moitinho de Almeida, L. Sevón and M. Wathelet, Judges; C. O. Lenz, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 28 March 1996, which it rules:

*Article 3 (1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, is to be interpreted as meaning that, without prejudice to the provisions of Article 2 (1) of the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, a compulsory insurance contract may not provide that in certain cases, in particular where the driver of the vehicle was intoxicated, the insurer is not obliged to pay compensation for the damage to property and personal injuries caused to third parties by the insured vehicle. It may, on the other hand, provide that in such cases the insurer is to have a right of recovery against the insured.*

[1] OJ No C 188, 9. 7. 1994.

## JUDGMENT OF THE COURT

of 28 March 1996

**in Case C-191/94 (reference for a preliminary ruling from the Tribunal de Première Instance, Brussels): AGF Belgium SA v. European Economic Community and Others** [1]

***(Protocol on the Privileges and Immunities of the Communities — Additional motor insurance premiums)***

(96/C 180/20)

*(Language of the case: French)*

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

In Case C-191/94: reference to the Court under Article 177 of the EC Treaty from the Tribunal de Première Instance (Court of First Instance), Brussels, for a preliminary ruling in the proceedings pending before that court between AGF Belgium SA and the European Economic Community, Institut National d'Assurance Maladie-Invalidité (INAMI), Fonds National de Reclassement Social des Handicapés, Croix-Rouge de Belgique and the Belgian State — on the interpretation of Article 3 of the Protocol on the Privileges and Immunities of the European Communities — the Court, composed of J. C. Rodríguez Iglesias, President, C. N. Kakouris, J.-P. Puissochet (Rapporteur) and G. Hirsch (Presidents of Chambers), F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; F. G. Jacobs, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a judgment on 28 March 1996, in which it ruled:

1. *Article 3 of the Protocol on the Privileges and Immunities of the European Communities is to be interpreted as covering compulsory charges, such as additional motor insurance premiums, intended to contribute to the financing of public interest institutions.*

2. *The third paragraph of Article 3 of the Protocol is to be interpreted as not applicable to compulsory charges, such as additional motor insurance premiums, which are intended to contribute generally to the financing of public interest institutions and which do not constitute consideration for a specific service.*

3. *The second paragraph of Article 3 of the Protocol is to be interpreted as meaning that the remission or refund of the amount of indirect taxes or sales taxes for which it provides applies to all types of purchase, including*

*obtaining a supply of services, which are necessary for the accomplishment of the Communities' task, and the amount of which exceeds the threshold laid down by the legislation in question.*

(1) OJ No C 233, 20. 8. 1994.

## JUDGMENT OF THE COURT

**(First Chamber)**

**of 28 March 1996**

**in Case C-272/94 (reference for a preliminary ruling from the Tribunal Correctionnel, Arlon (Belgium)): criminal proceedings before that court against Michel Guiot and Climatec SA (1)**

***(Employer's contributions — Loyalty stamps — Bad-weather stamps — Freedom to provide services)***

(96/C 180/21)

*(Language of the case: French)*

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

In Case C-272/94: reference to the Court under Article 177 of the EC Treaty from the Tribunal Correctionnel (Criminal Court), Arlon, for a preliminary ruling in the criminal proceedings before that court against Michel Guiot and Climatec SA, as employer liable at civil law — on the interpretation of Articles 59 and 60 of the EC Treaty — the Court (First Chamber), composed of D. A. O. Edward (Rapporteur), President of the Chamber, P. Jann and L. Sevón, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 28 March 1996, the operative part of which is as follows:

*Articles 59 and 60 of the EC Treaty preclude a Member State from requiring an undertaking established in another Member State and temporarily carrying out works in the first-mentioned Member State to pay employers contributions in respect of loyalty stamps and bad-weather stamps with respect to workers assigned to carry out those works, where that undertaking is already liable for comparable contributions, with respect to the same workers and for the same period of work, in the State where it is established.*

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

## JUDGMENT OF THE COURT

**(Sixth Chamber)**

**of 28 March 1996**

**in Case C-299/94 (reference for a preliminary ruling from the High Court of Ireland): Anglo Irish Beef Processors International and Others v. Minister for Agriculture, Food and Forestry (1)**

***(Differentiated export refunds — Force majeure — Additional security — Release of security — Resolution of the UN Security Council)***

(96/C 180/22)

*(Language of the case: English)*

In Case C-299/94: reference to the Court under Article 177 of the EC Treaty from the High Court of Ireland for a preliminary ruling in the proceedings pending before that court between Anglo Irish Beef Processors International and Others and Minister for Agriculture, Food and Forestry — on the interpretation and validity of Council Regulation (EEC) No 2340/90 of 8 August 1990 preventing trade by the Community as regards Iraq and Kuwait (OJ No L 213, 1990, p. 1) and Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ No L 351, 1987, p. 1), as amended by Commission Regulation (EEC) No 354/90 of 9 February 1990 (OJ No L 38, 1990, p. 34), the Court (Sixth Chamber), composed of C. N. Kakouris, President of the Chamber, G. Hirsch, G. F. Mancini, F. A. Schockweiler and P. J. G. Kapteyn (Rapporteur), Judges; A. La Pergola, Advocate-General; L. Hewlett, Administrator, for the Registrar, gave a judgment on 28 March 1996, the operative part of which is as follows:

1. *Article 33 (5) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EEC) No 354/90 of 9 February 1990, is to be interpreted as meaning that where, owing to* force majeure, *goods do not reach their intended country of destination but are exported to other non-member countries which qualify for a lower export refund or none at all, the security forfeited is to be equal to the difference between the amount of the refund paid in advance, and that of the refund actually due.*

2. *Consideration of Regulation (EEC) No 3665/87 has not disclosed any factor capable of affecting its validity.*

(1) OJ No C 386, 31. 12. 1994.

## JUDGMENT OF THE COURT

**(Fifth Chamber)**

**of 28 March 1996**

**in Case C-318/94: Commission of the European Communities v. Federal Republic of Germany [1]**

***(Failure to fulfil obligations — Public works contracts — Failure to publish a tender notice)***

(96/C 180/23)

*(Language of the case: German)*

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

In Case C-318/94: Commission of the European Communities (Agents: Hendrik van Lier and, initially, Angela Bardenhewer, and, subsequently, Claudia Schmidt) v. Federal Republic of Germany (Agents: Ernst Röder and Gereon Thiele ) — application for a declaration that, the Waterways and Navigation Office, Emden having awarded the public works contract for the dredging of the lower Ems between Papenburg and Oldersum by negotiated procedure without prior publication of a tender notice in the *Official Journal of the European Communities*, the Federal Republic of Germany has failed to fulfil its obligations under Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (OJ, English Special Edition 1971 (II), p. 682), as amended by Council Directive 89/440/EEC of 18 July 1989 (OJ No L 210, 1989, p. 1) — the Court (Fifth Chamber), composed of D. A. O. Edward (President of the Chamber), J. C. Moitinho de Almeida, P. Jann (Rapporteur), L. Sevón and M. Wathelet, Judges; M. B. Elmer, Advocate-General; R. Grass, Registrar, has given a judgment on 28 March 1996, in which it:

1. *Declares that, the Waterways and Navigation Office, Emden having awarded the public works contract for the dredging of the lower Ems between Papenburg and Oldersum by negotiated procedure without prior publication of a tender notice in the* Official Journal of the European Communities, *the Federal Republic of Germany has failed to fulfil its obligations under Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts, as amended by Council Directive 89/440/EEC of 18 July 1989.*

2. *Orders the Federal Republic of Germany to pay the costs.*

[1] OJ No C 380, 31. 12. 1994.

## JUDGMENT OF THE COURT

**(Sixth Chamber)**

**of 25 April 1996**

**in Case C-274/93: Commission of the European Communities v. Grand Duchy of Luxembourg [1]**

***(Failure by a Member State to fulfil obligations — Failure to implement Council Directive 86/609/EEC — Protection of animals used for experimental and other scientific purposes)***

(96/C 180/24)

*(Language of the case: French)*

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

In Case C-274/93: Commission of the European Communities (Agent: Xavier Lewis) v. Grand Duchy of Luxembourg — application for a declaration that, by not adopting, within the prescribed period, all the measures necessary to comply with Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States relating to the protection of animals used for experimental and other scientific purposes, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 25 of that Directive and under Articles 5 and 189 of the EC Treaty — the Court (Sixth Chamber), composed of C. N. Kakouris, President of the Chamber, G. Hirsch (Rapporteur), F. A. Schockweiler, P. J. G. Kapteyn and J. L. Murray, Judges; F. G. Jacobs, Advocate-General; H. von Holstein, Deputy Registrar, gave a judgment on 25 April 1996, in which it:

1. *Dismisses the application as inadmissible.*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

[1] OJ No C 168, 19. 6. 1993.

## JUDGMENT OF THE COURT

**(Fifth Chamber)**

**of 25 April 1996**

**in Case C-87/94: Commission of the European Communities v. Kingdom of Belgium [1]**

***(Public contracts — Transport sector — Directive 90/531/EEC)***

(96/C 180/25)

*(Language of the case: French)*

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

In Case C-87/94, Commission of the European Communities (Agent: Hendrik van Lier) v. Kingdom of

Belgium (Agent: Jan Devadder, assisted by Michel Waelbroeck and Denis Waelbroeck) — application for a declaration that, by taking into account, in the procedure for the award of a public contract by the Société régionale wallonne du transport, amendments made to one of the tenders after the opening of those tenders, by admitting to the procedure for the award of the contract a tenderer who did not meet the selection criteria laid down in the contract documents and by accepting a tender which did not meet the criteria for the award of the contract laid down in the contract documents, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 297, 1990, p. 1) and to comply with the principle of equal treatment, which underlies all the rules on procedures for the award of public contracts — the Court (Fifth Chamber), composed of D. A. O. Edward (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, P. Jann and L. Sevón, Judges; Advocate-General: C. O. Lenz; Registrar: H. A. Rühl, Principal Administrator, gave a judgment on 25 April 1996, in which it:

1. *Declares that, by taking into account, in the procedure for the award of a public contract by the Société régionale wallonne du transport, information on fuel consumption submitted by EMI in its supplementary note of 24 August 1993 and, therefore, after the opening of tenders, by awarding the contract to EMI on the basis of figures which did not correspond to the prescriptive requirements of Annex 23 of the special conditions for calculating the notional penalty of EMI for maintenance costs in respect of engine and gearbox replacement, by taking into account, when comparing the tenders for Lots Nos 4, 5 and 6, the cost-saving features suggested by EMI without having referred to them in the contract documents or in the tender notice, by using them to offset the financial differences between the tenders in first place and those of EMI placed second, and by accepting some of EMI's tenders as a result of taking those features into account, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.*

2. *Orders the Kingdom of Belgium to pay the costs.*

(1) OJ No C 132, 14. 5. 1994.

## JUDGMENT OF THE COURT

**of 30 April 1996**

**in Case C-308/93 (reference for a preliminary ruling from the Centrale Raad van Beroep): Bestuur van de Sociale Verzekeringsbank v. J. M. Cabanis-Issarte** (1)

***(Social security for migrant workers — Voluntary old-age insurance — Surviving spouse of a worker — Equal treatment)***

(96/C 180/26)

*(Language of the case: Dutch)*

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

In Case C-308/93: reference to the Court under Article 177 of the EC Treaty from the Centrale Raad van Beroep for a preliminary ruling in the proceedings pending before that court between Bestuur van de Sociale Verzekeringsbank and J. M. Cabanis-Issarte on the interpretation of Articles 2 and 3 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ No L 230, 1983, p. 6), the Court, composed of G. C. Rodríguez Iglesias, President, D. A. O. Edward, J.-P. Puissochet 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, P. Jann, H. Ragnemalm and M. Wathelet (Rapporteur), Judges; G. Tesauro, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 30 April 1996 in which it ruled:

1. *Articles 2 and 3 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, are to be interpreted as meaning that they may be relied on by the surviving spouse of a migrant worker for the purpose of determining the rate of contribution in relation to a period of voluntary insurance completed under the old-age pension scheme of the Member State in which the worker was employed.*

2. *This judgment may not be relied on in support of claims concerning benefits relating to periods prior to the date of delivery of the judgment, except by persons who have,*

*prior to that date, initiated proceedings or raised an equivalent claim.*

(1) OJ No C 196, 20. 7. 1993.

## JUDGMENT OF THE COURT

of 30 April 1996

**in Case C-58/94: Kingdom of the Netherlands v. Council of the European Union (1)**

***(Action for annulment — Rules on public access to Council documents)***

(96/C 180/27)

*(Language of the case: Dutch)*

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

In Case C-58/94: Kingdom of the Netherlands (Agents: A. Bos and J. W. de Zwaan), supported by the European Parliament (Agents: G. Garzón Clariana, C. Pennera and E. Vandenbosch) v. Council of the European Union (Agents: J.-P. Jacqué and G. Houttuin), supported by the Commission of the European Communities (Agents: P. Vaan Nuffel and S. Van Raepenbusch) and the French Republic (Agents: C. de Salins and H. Renié) — application for the annulment of Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ No L 340, 1993, p. 43), Article 22 of the Rules of Procedure of the Council as amended by Council Decision 93/662/EC of 6 December 1993 (OJ No L 304, 1993, p. 1) and the Code of Conduct (93/730/EC) concerning public access to Council and Commission documents (OJ No L 340, 1993, p. 41) in so far as that act is to be regarded as an act having legal effects — 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, F. A. Schockweiler, J. C. Moitinho de Almeida (Rapporteur), P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 30 April 1996, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The Kingdom of the Netherlands is ordered to pay the costs.*

3. *The French Republic, the European Parliament and the Commission of the European Communities are ordered to bear their own costs.*

(1) OJ No C 90, 26. 3. 1994.

## JUDGMENT OF THE COURT

(Sixth Chamber)

of 2 May 1996

**in Case C-18/94 (reference to the Court for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division): Barbara Hopkins and Others v. National Power plc, Powergen plc, third party: British Coal Corporation (1)**

***(ECSC Treaty — Discrimination between producers — Application of Articles 4 and 63 of the Treaty — Direct effect — EC Treaty — Abuse of dominant position — Article 86 of the Treaty — Compensation for damage resulting from infringement of those provisions — Powers of the Commission and of the national court)***

(96/C 180/28)

*(Language of the case: English)*

In Case C-18/94, reference to the Court by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling under Article 177 of the EC Treaty and Article 41 of the ECSC Treaty in the proceedings pending before that court between Barbara Hopkins and Others v. National Power plc, Powergen plc, third party: British Coal Corporation — on the interpretation of Articles 4 and 63 of the ECSC Treaty and Article 86 of the EC Treaty — the Court (Sixth Chamber) composed of C. N. Kakouris, President of the Chamber, G. Hirsch, G. F. Mancini (Rapporteur), F. A. Schockweiler and P. J. G. Kapteyn, Judges, Advocate-General: N. Fennelly, Registrar: L. Hewlett, Administrator, gave a judgment on 2 May 1996, the operative part of which is as follows:

1. *The provisions of the ECSC Treaty, and in particular Articles 4 (b) and 63 (1) thereof, constitute the legal framework for dealing with discrimination practised by purchasers against producers as regards price, volume and other terms and conditions for the purchase of coal.*

2. *Articles 4 (b) and 63 (1) of the ECSC Treaty do not create rights which individuals may rely on directly before national courts. However, wherever the provisions of a recommendation based on Article 63 (1) appear, as regards their subject-matter, to be unconditional and sufficiently precise, those provisions may be relied upon directly by individuals before the national court.*

3. *Commission decisions based on Articles 65 and 66 (7) of the ECSC Treaty, which are binding in their entirety pursuant to Article 14 of the ECSC Treaty, are binding*

*on the national courts. However, the national courts may still ask the Court of Justice to rule on their validity or interpretation.*

(1) OJ No C 76, 12. 3. 1994, OJ No C 174, 25. 6. 1994.

## JUDGMENT OF THE COURT

of 2 May 1996

**in Case C-206/94 (reference for a preliminary ruling from the Bundesarbeitsgericht): Brennet AG v. Vittorio Paletta (1)**

***(Social security — Recognition of incapacity for work)***

(96/C 180/29)

*(Language of the case: German)*

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

In Case C-206/94: reference to the Court under Article 177 of the EC Treaty from the Bundesarbeitsgericht (Federal Labour Court) for a preliminary ruling in the proceedings pending before that court between Brennet AG and Vittorio Paletta — on the interpretation of Article 22 (1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), as amended by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ No L 230, 1983, p. 6), and on the interpretation and validity of Article 18 (1) to (5) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972 (I), p. 159) — the Court, composed of G. C. Rodríguez Iglesias, President, C. N. Kakouris, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida (Rapporteur), P. J. G. Kapteyn, J. L. Murray, P. Jann and H. Ragnemalm, L. Sevón and M. Wathelet, Judges; G. Cosmas, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 2 May 1996, the operative part of which is as follows:

1. *Article 22 (1) (a) (ii) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, as amended by Council Regulation (EEC) No 2001/83 of 2 June 1983, is to be interpreted as covering national legislation under which an employee is entitled, on becoming incapacitated for work, to continued payment of his wages for a certain period, even where those wages are not payable until a given period has elapsed since the incapacity commenced.*

2. *The interpretation of Article 18 (1) to (5) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71, given by the Court in its judgment in Case C-45/90* Paletta v. Brennet *[1992] ECR I-3423, does not imply that employers are barred from adducing evidence to support, where appropriate, a finding by the national court of abuse or fraudulent conduct on the part of the worker concerned in that, although he may claim to have become incapacitated for work, such incapacity having been certified in accordance with Article 18 of that Regulation, he was not sick at all.*

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

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 May 1996

**in Case C-234/95: the Commission of the European Communities v. French Republic (1)**

***(Failure of a Member State to fulfil its obligations — Directive 92/50/EEC)***

(96/C 180/30)

*(Language of the case: French)*

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

In Case C-234/95: Commission of the European Communities (Agent: Hendrik van Lier) v. French Republic (Agents: Catherine de Salins and Philippe Martinet) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ No L 209, 1992, p. 1) and, in the alternative, by failing to inform the Commission of such measures forthwith, the French Republic has failed to fulfil its obligations under that Directive and, in particular, Article 44 thereof — the Court (Fifth Chamber), composed of D. A. O. Edward, President of the Chamber, J.-P. Puissochet, P. Jann (Rapporteur), L. Sevón and M. Wathelet, Judges; A. La Pergola, Advocate-General; R. Grass, Registrar, gave a judgment on 2 May 1996, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, the French Republic has failed to fulfil its obligations under Article 44 (1) of that Directive.*

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

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

## JUDGMENT OF THE COURT

**(Fifth Chamber)**

**of 2 May 1996**

**in Case C-253/95: Commission of the European Communities v. Federal Republic of Germany** [1]

***(Failure of a Member State to fulfil its obligations — Directive 92/50/EEC)***

(96/C 180/31)

*(Language of the case: German)*

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

In Case C-253/95: the Commission of the European Communities (Agent: Claudia Schmidt) v. the Federal Republic of Germany (Agents: Ernst Röder and Bernd Kloke) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ No L 209, 1992, p. 1) and, in the alternative, by failing to inform the Commission forthwith of the measures taken, the Federal Republic of Germany has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty in conjunction with Article 44 (1) of that Directive — the Court (Fifth Chamber), composed of D. A. O. Edward, President of the Chamber, J.-P. Puissochet, P. Jann (Rapporteur), L. Sevón and M. Wathelet, Judges; A. La Pergola, Advocate-General; R. Grass, Registrar, gave a judgment on 2 May 1996, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, the Federal Republic of Germany has failed to fulfil its obligations under Article 44 (1) of that Directive.*

2. *Orders the Federal Republic of Germany to pay the costs.*

[1] OJ No C 248, 23. 9. 1995.

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## JUDGMENT OF THE COURT

**(Fifth Chamber)**

**of 2 May 1996**

**in Case C-311/95: Commission of the European Communities v. Hellenic Republic** [1]

***(Failure to fulfil obligations — Directive 92/50/EEC)***

(96/C 180/32)

*(Language of the case: Greek)*

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

In Case C-311/95: Commission of the European Communities (Agent: Dimitrios Gouloussis) v. Hellenic Republic (Agents: Ioanna Galani-Maragkoudaki and Dimitra Tsagkaraki) — application for a declaration that, by failing to adopt or to communicate to the Commission within the prescribed period the necessary laws, regulations and administrative provisions to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ No L 209, 1992, p. 1), the Hellenic 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.-P. Puissochet, P. Jann (Rapporteur), L. Sevón and M. Wathelet, Judges; C. O. Lenz, Advocate-General; R. Grass, Registrar, has given a judgment on 2 May 1996, in which it:

1. *Declares that, by failing to adopt within the prescribed period the necessary laws, regulations and administrative provisions to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, the Hellenic Republic has failed to fulfil its obligations under Article 44 (1) of that Directive.*

2. *Orders the Hellenic Republic to pay the costs.*

[1] OJ No C 315, 25. 11. 1995.

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## ORDER OF THE COURT

**of 14 March 1996**

**in Case C-31/95 P: Sergio Del Plato v. Commission of the European Communities** [1]

***(Official — Appeal manifestly inadmissible — Lack of pleas in law)***

(96/C 180/33)

*(Language of the case: Italian)*

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

In Case C-31/95 P: Sergio Del Plato (Represented by: Luigi Bonomi) — appeal against the order of the Court of First Instance of the European Communities (First Chamber) of 7 December 1994 in Case T-242/94 *Del Plato v. Commission* [1994] ECR-SC II-961, seeking to have that order set aside, the other party to the proceedings being the Commission of the European Communities (Agent: Gianluigi Valsesia) — the Court (Second Chamber),

composed of G. Hirsch (Rapporteur), President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges; N. Fennelly, Advocate-General; R. Grass, Registrar, made an order on 14 March 1996, the operative part of which is as follows:

1. *The appeal is dismissed as manifestly inadmissible.*

2. *Mr Del Plato is ordered to pay the costs of these proceedings.*

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(1) OJ No C 87, 8. 4. 1995.

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## ORDER OF THE COURT

**(Fourth Chamber)**

**of 24 April 1996**

**in Case C-87/95 P: Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori (CNPAAP) v. Council of the European Union** (1)

***(Action for annulment — Regulation (EC) No 3604/93 specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty — Admissibility — Appeal clearly unfounded)***

(96/C 180/34)

*(Language of the case: Italian)*

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

In Case C-87/95 P: Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori (CNPAAP) (represented by Pietro Adonino, Mario Sanino, Maurizio de Stefano and Alberto Colabianchi) — appeal against the order of the Court of First Instance of the European Communities (Third Chamber) of 11 January 1995 in Case T-116/94 *Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori* v. *Council of the European Union* [1995] ECR II-1, seeking to have that order set aside, the other party to the proceedings being Council of the European Union (Agents: Rüdiger Bandilla and Antonio Lucidi) — the Court (Fourth Chamber), composed of C. N. Kakouris, President of the Chamber, P. J. G. Kapteyn and J. L. Murray (Rapporteur), Judges; A. La Pergola, Advocate-General; R. Grass, Registrar, made an order on 24 April 1996, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The appellant shall bear the costs.*

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(1) OJ No C 159, 24. 6. 1995

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## ORDER OF THE COURT

**of 25 March 1996**

**in Case C-137/95 P: Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid and Others v. Commission of the European Communities** (1)

***(Appeal — Competition — Decisions of associations of undertakings — Exemption — Appraisal of the gravity of the infringements — Appeal manifestly unfounded)***

(96/C 180/35)

*(Language of the case: Dutch)*

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

In Case C-137/95 P: Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid and Others (represented by L. H. van Lennep and E. H. Pijnacker Hordijk) — appeal against the judgment of the Court of First Instance of the European Communities of 21 February 1995, Case T-29/92 *SPO and Others* v. *Commission* [1995] ECR II-289, seeking to have that judgment set aside, the other party to the proceedings being the Commission of the European Communities (Agent: B. J. Drijber, assisted by P. Glazener, Avocat) — 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, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann (Rapporteur), H. Ragnemalm, L. Sevón and M. Wathelet, Judges; M. B. Elmer, Advocate-General; R. Grass, Registrar, made an order on 25 March 1996, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The applicants are ordered, jointly and severally, to pay the costs.*

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(1) OJ No C 189, 22. 7. 1995.

## ORDER OF THE COURT

(First Chamber)

of 28 March 1996

**in Case C-270/95 P: Christina Kik v. Council of the European Union and Commission of the European Communities, supported by the Kingdom of Spain** [1]

***(Regulation (EC) No 40/94 on the Community trade mark — Languages — Actions for annulment of measures — Natural and legal persons — Acts of direct and individual concern to them — Appeal manifestly unfounded)***

(96/C 180/36)

*(Language of the case: Dutch)*

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

In Case C-270/95 P: Christina Kik, represented by Goosen L. Kooy — appeal against the order of the Court of First Instance of the European Communities (First Chamber) of 19 June 1995 in Case T-107/94 *Kik* v. *Council and Commission* [1995] ECR II-1717, seeking to have that order set aside, the other parties to the proceedings being the Council of the European Union (Agents: Giorgio Maganza and Guus Houttuin) and the Commission of the European Communities (Agent: Pieter Van Nuffel), supported by the Kingdom of Spain (Agents: Alberto José Navarro González and Gloria Calvo Díaz) — the Court (First Chamber), composed of D. A. O. Edward, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, Judges; P. Léger, Advocate-General; R. Grass, Registrar, made an order on 28 March 1996, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The appellant is ordered to pay her own costs and the costs of the Council and the Commission. The intervener is ordered to bear its own costs.*

[1] OJ No C 268, 14. 10. 1995.

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## ORDER OF THE COURT

of 13 March 1996

**in Case C-326/95: Banco de Fomento e Exterior SA v. Amândio Maurício Martins Pechim and Others** [1]

***(Preliminary ruling — Inadmissible)***

(96/C 180/37)

*(Language of the case: Portuguese)*

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

In Case C-326/95: reference to the Court under Article 177 of the EC Treaty from the Tribunal Cível da Comarca de Lisboa (Lisbon Local Civil Court) for a preliminary ruling in the proceedings pending before that court between Banco de Fomento e Exterior SA and Amândio Maurício Martins Pechim, Maria da Luz Lima Barros Raposo Pechim, Confecçoes Têxteis de Vouzela Ld.ª (CTV) — on the interpretation of Articles 59, 90 and 92 of the EC Treaty — 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, F. A. Schockweiler, J. C. Moitinho de Almeida (Rapporteur), P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; Advocate-General, D. Ruiz-Jarabo Colomer; Registrar, R. Grass, made an order on 13 March 1996, the operative part of which is as follows:

*The request for a preliminary ruling submitted by the Tribunal Cível da Comarca de Lisboa is inadmissible.*

[1] OJ No C 333, 9. 12. 1995.

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## ORDER OF THE COURT

of 20 March 1996

**in Case C-2/96: Criminal proceedings against Carlo Sunino and Giancarlo Data** [1]

***(Interpretation of Articles 48, 55, 59, 60, 66, 86 and 90 of the EC Treaty)***

(96/C 180/38)

*(Language of the case: Italian)*

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

In Case C-2/96: reference to the Court under Article 177 of the EC Treaty from the Pretura Circondariale di Ivrea, Sezione di Strambino (Ivrea District Magistrate's Court, Strambino Division) (Italy), for a preliminary ruling in the criminal proceedings pending before that court against Carlo Sunino and Giancarlo Data — on the interpretation of Articles 48, 55, 59, 60, 66, 86 and 90 of the EC Treaty with regard to national legislation which precludes private undertakings from pursuing the activity of intermediary in the temporary employment market — 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, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; Advocate-General, M. B. Elmer; Registrar, R. Grass, made an order on 20 March 1996, the operative part of which is as follows:

*The request for a preliminary ruling submitted by the Pretura Circondariale di Ivrea, Sezione di Strambino, by an order of 14 December 1995 is inadmissible.*

(1) OJ No C 46, 17. 2. 1996.

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**Reference for a preliminary ruling from the Finanzgericht Düsseldorf — Fourth Chamber — by order of that court of 26 March 1996, in the case of Fruko-Handelsgesellschaft mbH v. Hauptzollamt Emmerich**

**(Case C-120/96)**

(96/C 180/39)

Reference has been made to the Court of Justice of the European Communities by an order of the Finanzgericht (Finance Court) Düsseldorf, Fourth Chamber, of 26 March 1996, which was received at the Court Registry on 15 April 1996, for a preliminary ruling in the case of Fruko-Handelsgesellschaft mbH v. Hauptzollamt Emmerich on the following questions:

1. What degree of severity is required before there can be any finding of irreparable damage within the meaning of the second paragraph of Article 244 of Regulation (EEC) No 2913/92 (1)?

2. When is there damage within the meaning of the second paragraph of Article 244 of Regulation (EEC) No 2913/92?

3. What degree of probability must be held to exist for it to be found that there is a possibility of the occurrence of the irreparable damage referred to in the second paragraph of Article 244 of Regulation (EEC) No 2913/92?

4. If the answer to Question 1 is that sufficiently severe damage is constituted by the mere possibility of a winding-up petition based on the disputed but not suspended decision of the customs authority being presented with prospects of success in view of the tax debtor's financial circumstances, should implementation of the decision be suspended if a winding-up petition could be presented even in the absence of the customs authority's decision?

(1) OJ No L 302, 1992, p. 1.

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**Reference for a preliminary ruling from the Oberster Gerichtshof by order of that court of 11 March 1996, in the case of Stephen Austin Saldanha and MTS Securities Corporation v. Hiross Holding Aktiengesellschaft**

**(Case C-122/96)**

(96/C 180/40)

Reference has been made to the Court of Justice of the European Communities by an order of the Oberster Gerichtshof (Austrian Supreme Court) of 11 March 1996, which was received at the Court Registry on 16 April 1996, for a preliminary ruling in the case of Stephen Austin Saldanha and MTS Securities Corporation v. Hiross Holding Aktiengesellschaft on the following question:

Where proceedings are brought before an Austrian civil court by a British national who is also a national of the United States of America, who resides in that country (in Florida) and does not have any residence or assets in Austria, against a joint-stock company whose registered office is in Austria, by which he seeks to restrain that company from selling or otherwise transferring shares in specified subsidiary companies to its Italian subsidiary company, or to subsidiaries of that company established in Italy, without the approval of a qualified majority of three quarters of the general meeting of shareholders or, in the alternative, of a simple majority of the general meeting of shareholders, does the fact that he has been ordered by the competent Austrian court (of first instance), on application by the defendant company pursuant to paragraph 57 (1) of the Austrian Code of Civil Procedure, to provide security for costs in a specified sum constitute discrimination on grounds of nationality contrary to the first paragraph of Article 6 of the EC Treaty?

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**Action brought on 17 April 1996 by Kingdom of Spain against the Commission of the European Communities**

**(Case C-123/96)**

(96/C 180/41)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 17 April 1996 by Kingdom of Spain, represented by Gloria Calvo Díaz, Abodago del Estado, with an address for service in Luxembourg at the Spanish Embassy, 4—6 Boulevard E. Servais.

The applicant claims that the Court should:

1. annul the following Articles of Commission Directive 96/2/EC of 16 January 1996 (1):

   — Article 1 (3) in so far as follows:

      — the second indent of Article 3 (a) inserted into Directive 90/388/EEC (2),

      — the fifth (last) indent of Article 3 (a) inserted into Directive 90/388/EEC,

      — Article 3 (c) inserted into Directive 90/388/EEC,

      — Article 3 (d) inserted into Directive 90/388/EEC,

   — Articles 2 (1) and 2 (2), and

   — Article 4;

2. order the Commission to pay the costs.

*Pleas in law and main arguments*

Lack of competence of the Commission (see Case C-11/96, OJ No C 95, 1996, p. 5).

Misuse of powers: the articles added *ex novo* to Directive 90/388/EEC by Directive 96/2/EC make substantive changes to the existing system without observing either the division of powers between the Community institutions and in relation to the Member State or the procedure and the timetable laid down by the Council for drawing up the necessary provisions to enable the obligations flowing from the full liberalization of the mobile and personal communications sector to be imposed upon the Member States.

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(1) OJ No L 20, 26. 1. 1996, p. 59.
(2) OJ No L 192, 24. 7. 1990, p. 10.

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**Reference for a preliminary ruling by Her Majesty's Court of Session in Scotland, by decision of that court of 29 March 1996, in the case of Marie Brizard et Roger International SA against William Grant & Sons (International) Ltd and Another**

**(Case C-126/96)**

(96/C 180/42)

Reference has been made to the Court of Justice of the European Communities by a decision of Her Majesty's Court of Session in Scotland of 29 March 1996, which was received at the Court Registry on 18 April 1996, for a preliminary ruling in the case of Marie Brizard et Roger International SA against William Grant & Sons (International) Ltd and another, on the following questions:

*Interrelationship between Article 38 (1)(1) and Article 38 (2)*

1. (a) Whether or not, in a situation where adequate protection for the judgment debtor can be made available, Article 38 is to be construed to make available to the Article 37 (1) appellate court both the Article 38 (1) power to sist or stay the proceedings and the Article 38 (2) power to make enforcement of a judgment conditional on such security as the Court shall determine, and

   (b) If Question (1) (a) is answered in the affirmative, whether the exercise of one of these powers is to be preferred to that of the other.

*Interrelationship between Article 38 (1) and the issuing court's order for security*

2. Whether or not the Article 37 (1) appellate court has the power to order a sist or stay in proceedings under Article 38 (1) where the issuing court has already ordered that provisional execution of the judgment against the judgment debtor is to be conditional on the provision of certain security to the judgment debtor.

*Interrelationship between Article 38 (2) and the issuing court's order for security*

3. Whether or not the Article 37 (1) appellate court has the power to consider whether the security or guarantee already provided by the judgment creditor is an adequate response to the order of the issuing court and take account of any inadequacy in deciding whether to make an order under Article 38 (2), and

4. whether or not the Article 37 (1) appellate court has the power, under Article 38 (2), to make enforcement conditional on the provision of security or guarantee greater than that ordered by the issuing court pending a final determination of the appeal proceedings in the issuing country.

*Time of exercise of Article 38 (1) power to sist or stay*

5. Whether or not the power to sist or stay the proceedings under Article 38 (1) may be exercised by an Article 37 (1) appellate court only on dismissing the Article 37 (1) appeal (regardless of whether a further appeal on a point of law may be made to the court designated under Article 37 (2)) or instead may be exercised by the Article 37 (1) appellate court before it reaches any final decision on the merits of the appeal before it.

*Interrelationship between Article 38 (1) and Article 34*

6. Whether, when deciding whether or not to exercise the power given under Article 38 (1), the Article 37 (1) appellate court may properly take into consideration,

   (i) only those matters set out in Articles 27 and 28;

   (ii) those matters which have arisen due to a material change of circumstances since the order for provisional execution was pronounced;

   (iii) matters of which the respondents could not have been aware at the time the order for provisional execution was pronounced;

   (iv) matters of which the respondents were unaware at the time of the order for provisional execution, whether or not they might reasonably have anticipated them, and which were accordingly not presented to the issuing court;

(v) matters of which the defenders were aware but which they did not have opportunity to raise before the issuing court?

*Powers ancillary to the exercise of Article 38 (1) power to sist or stay*

7. Whether the Article 37 (1) appellate court has power to make an order for a stay or sist of the enforcement proceedings conditional upon the judgment debtor providing security or guarantee sufficient to protect the interests of the judgment creditor in the event that the judgment debtor is unsuccessful in its appeal against the judgment in the issuing State.

(1) Article 38 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ No L 299, 1972, p. 32) as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ No L 304, 1978, p. 1 and — as amended — p. 77).

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**Reference for a preliminary ruling by Sala de lo Social, Tribunal Superior de Justicia, Murcia, by order of that court of 22 February 1996 in the case of Francisco Hernández Vidal, SA and Prudencia Gómez Pérez, María Gómez Pérez, and Contratas y Limpiezas, SL**

**(Case C-127/96)**

(96/C 180/43)

Reference has been made to the Court of Justice of the European Communities by an order of the Sala de lo Social (Chamber for Social Matters), Tribunal Superior de Justicia (High Court of Justice), Murcia, of 22 February 1996, which was received at the Court Registry on 22 April 1996, for a preliminary ruling in the case of Francisco Hernández Vidal, SA and Prudencia Gómez Pérez, María Gómez Pérez, and Contratas y Limpiezas, SL on the following questions:

(a) whether the work of cleaning the premises of an undertaking whose main business is not cleaning, being in this case the production of chewing gum and sweets, but having a permanent need for that secondary activity, is a 'part of a business'.

(b) and whether the term 'legal transfer' may cover the termination of a mercantile contract for the provision of cleaning services, after three years, with annual renewals, at the end of the third year, by decision of the undertaking hiring the services; and whether, if that is the case, it may depend on whether the undertaking hiring the services carries out the cleaning using its own workers or using workers under a new contractual arrangement.

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**Reference for a preliminary ruling by the Conseil d'Etat du Royaume de Belgique by judgment of that court of 29 March 1996 in the case of Inter-Environnement Wallonie ASBL against Région Wallonne**

**(Case C-129/96)**

(96/C 180/44)

Reference has been made to the Court of Justice of the European Communities by judgment of the Conseil d'Etat Section d'Administration (Council of State, Administrative Section) of 29 March 1996, which was received at the Court Registry on 23 April 1996, for a preliminary ruling in the case of Inter-Environnement Wallonie ASBL against Région Wallone on the following questions:

1. Do Articles 5 and 189 of the EC Treaty preclude Member States from adopting a provision contrary to Directive 75/442/EEC of 15 July 1975 on waste (1), as amended by Directive 91/156/EEC of 18 March 1991 (2), before the period for transposing the latter has expired?

   Do those same Treaty Articles preclude Member States from adopting and bringing into force legislation which purports to transpose the abovementioned Directive but whose provisions appear to be contrary to the requirements of that Directive?

2. Is a substance referred to in Annex I to Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste and which directly or indirectly forms an integral part of an industrial production process to be considered 'waste' within the meaning of Article 1 (a) of that Directive?

(1) OJ No L 194, 1975, p. 39.
(2) OJ No L 78, 1991, p. 32.

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**Reference for a preliminary ruling by order of the Supremo Tribunal Administrativo (Second Division — Taxation matters) of 28 February 1996 in the proceedings pending before that court between Fazenda Pública and Solisnor — Estaleiros Naveis SA**

**(Case C-130/96)**

(96/C 180/45)

Reference has been made to the Court of Justice of the European Communities by an order of the Supremo Tribunal Administrativo (Supreme Administrative Court) (Second Division — Taxation matters) of 28 February 1996, which was received at the Court Registry on 24 April 1996, for a preliminary ruling in the proceedings pending before that court between Fazenda Pública (National Revenue Authority) and Solisnor — Estaleiros Naveis SA, on the following question:

Is the stamp tax having the characteristics mentioned above to be regarded as a turnover tax in the terms of Article 33 of the said Sixth Directive [1], subject to a possible derogation under Article 378 of the Act annexed to the Treaty of Accession [2] or any other Community legal provision?

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (OJ No L 145, 13. 6. 1977, p. 1).

[2] Documents concerning the accession of the Portuguese Republic to the European Communities, OJ No L 302, 15. 11. 1985.

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**Reference for a preliminary ruling from the Bundessozialgericht by order of that court of 8 February 1996 in the case of Carlos Mora Romero v. Landesversicherungsanstalt Rheinprovinz**

**(Case C-131/96)**

(96/C 180/46)

Reference has been made to the Court of Justice of the European Communities by an order of the Bundessozialgericht (Federal Social Court) of 8 February 1996, which was received at the Court Registry on 24 April 1996, for a preliminary ruling in the case of Carlos Maria Romero v. Landesversicherungsanstalt Rheinprovinz on the following question:

Are Articles 6, 48 and 51 of the Treaty establishing the European Community and Article 7 of Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community [1] to be interpreted as permitting the legislature of a Member State to extend the period for drawing orphan's benefit beyond the age of 25 years only in respect of those persons whose education and training has been prolonged beyond the age of 25 years through fulfilment of the duty of military service in accordance with the laws of the State?

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

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**Reference for a preliminary ruling by the Pretura, Rome, by order of that court of 4 April 1996 in the case of Antonio Stinco against Istituto Nazionale della Previdenza Sociale (INPS)**

**(Case C-132/96)**

(96/C 180/47)

Reference has been made to the Court of Justice of the European Communities by order of the Pretura (Magistrate's Court) Rome, of 4 April 1996, which was received at the Court Registry on 24 April 1996, for a preliminary ruling in the case of Antonio Stinco against Istituto Nazionale della Previdenza Sociale (INPS) on the interpretation of Article 46 (2) (a) of Regulation (EEC) No 1408/71 [1] in order to ascertain:

whether, in order to determine the amount of an Italian pro rata pension, the INPS (national social security institution) must base its calculations on the 'notional' or theoretical pension alone or on the 'notional' or theoretical pension supplemented to meet the statutory minimun.

[1] OJ, English Special Edition 1971 (II), p. 416.

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**Reference for a preliminary ruling by the Corte di Appello, Ancona, by order of that court of 11 April 1996 in the case of Finanze dello Stato against Foods Import SRL**

**(Case C-133/96)**

(96/C 180/48)

Reference has been made to the Court of Justice of the European Communities by order of the Corte di Appello (Court of Appeal) Ancona, of 11 April 1996, which was received at the Court Registry on 24 April 1996, for a preliminary ruling in the Case of Finanze dello Stato against Foods Import SRL on the following questions:

1. Is the list given in Council Regulation (EEC) No 3796/81 of 29 December 1981 [1] (and repeated in Council Regulation (EEC) No 3333/83 of 4 November 1983 [2]), Annex VI to which reproduces Chapter 3 of the Common Customs Tariff in which cod appears under heading 03.02 A. I and fillets of cod under heading 03.02. A. II, supplemented by the mention *Gadus morrhua, Boreogadus saida, Gadus ogac,* exhaustive or illustrative and, accordingly, is the dried cod scientifically classified as *Molva molva* covered by that list?

2. Does Article 20 of Council Regulation (EEC) No 3796/81, suspending certain Common Customs Tariff duties, apply only to the three sub-species of cod referred to in Question 1 (*Gadus morrhua, Boreogadus saida, Gadus ogac*) to the exclusion of other sub-species such as *Molva*?

3. In any event, since the Court of Justice established by its judgment of 22 October 1987 in Case 314/85 that, where the three requirements specified in Article 5 (2) of Council Regulation (EEC) No 1697/79 [3] are satisfied, debtors are entitled to non-recovery of duties not collected, in what circumstances is that provision to be applied, that is to say, what conduct on the part of the creditor and the debtor is to be regarded as decisive with respect to the right to non-recovery of duties not collected?

[1] OJ No L 379, 31. 12. 1981, p. 1.
[2] OJ No L 313, 14. 11. 1983, p. 1.
[3] OJ No L 197, 3. 8. 1979, p. 1.

**Action brought on 24 April 1996 by the Commission of the European Communities against the Kingdom of Spain**

**(Case C-134/96)**

(96/C 180/49)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 24 April 1996 by the Commission of the European Communities, represented by Antonio Caeiro and Miguel Díaz-Llanos La Roche, Legal Advisers, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by making subject to an administrative authorization the physical exportation of money in cash, notes or bearer cheques in pesetas for foreign currency in an amount exceeding Pta 5 million, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 88/361/EEC(1) and, as from 1 January 1994, Articles 73b and 73d of the EC Treaty;

2. order the Kingdom of Spain to pay the costs.

*Pleas in law and main arguments*

Since Directive 88/361/EEC does not set any specific limits, the free movement of capital must be interpreted in the broadest sense possible and not otherwise. That interpretation may be extracted from the wording of the introduction to the nomenclature in Annex I to the Directive. That conclusion is corroborated by the wording of the new Article 73b of the EC Treaty which prohibits all restrictions on the movement of capital between Member States and between Member States and third countries. Article 73d 1 (b) nonetheless explains that Article 73b is to be without prejudice to the right of Member States to apply the requisite measures to prevent infringement of national law and regulations, in particular in the field of taxation and prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security. The concept of 'requisite measure' meets the requirement of proportionality which must characterize any measure which involves an exception to a freedom recognized by the Treaty.

The Spanish authorities allege tax fraud, terrorism and money laundering, which is often linked to drugs trafficking, that is to say, problems which affect all the Member States and which constitute a real public order threat in those States. Once it is acknowledged that the objective is lawful, in order to ascertain whether the requirement of authorization is proportional, methods of supervision which allow the objective itself of preventing infringement of national law and regulations, but which hinder to a lesser extent movements of capital should be considered. The Commission is of the view that a properly implemented system of declaration can perform that function perfectly well.

(1) OJ No L 178, 8. 7. 1988, p. 5.

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**Action brought on 24 April 1996 by the Commission of the European Communities against the Kingdom of Belgium**

**(Case C-135/96)**

(96/C 180/50)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 24 April 1996 by the Commission of the European Communities, represented by Hendrik van Lier and Jean-Francis Pasquier, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The Commission of the European Communities claims that the Court should:

— declare that, by failing within the prescribed period to adopt the laws, regulations and administrative measures necessary in order to comply with Commission Directive 91/659/EEC adapting to technical progress Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (asbestos)(1), the Kingdom of Belgium has failed to fulfil its obligations under the Treaty,

— order the Kingdom of Belgium to pay the costs.

*Pleas in law and main arguments*

The mandatory nature of the provisions of the third paragraph of Article 189 of the EC Treaty is such as to oblige Member States to whom directives are addressed to adopt the measures necessary for the implementation of such directives within the time limit prescribed therein. The time limit in question expired on 1 January 1993 but the Kingdom of Belgium has not adopted the necessary measures.

(1) OJ No L 363, 31. 12. 1991, p. 36.

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**Reference for a preliminary ruling from the Tribunal de Grande Instance, Paris, by judgment of that court of 23 February 1996 in the case of The Scotch Whisky Association v. La Martiniquaise LM, now called Compagnie Financière Européenne de Prises de Participation (Cofepp), Prisunic SA, Centrale d'Achats et de Services Alimentaires SARL (Casal)**

**(Case C-136/96)**

(96/C 180/51)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de

Grande Instance (Regional Court), Paris, of 23 February 1996, which was received at the Court Registry on 25 April 1996, for a preliminary ruling in the case of The Scotch Whisky Association v. La Martiniquaise LM, now called Compagnie Financière Européenne de Prises de Participation (Cofepp), Prisunic SA, Centrale d'Achats et de Services Alimentaires SARL (Casal) on the following question:

Having regard to European rules, in particular Article 5 of Council Regulation (EEC) No 1576/89 of 29 May 1989 [1], may the generic term 'whisky' be included in the trade name of spirit drinks consisting entirely of whisky diluted with water, so that the alcoholic strength by volume is less than 40°?

[1] OJ No L 160, 12. 6. 1989, p. 1.

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**Action brought on 24 April 1996 by the Commission of the European Communities against the Federal Republic of Germany**

**(Case C-137/96)**

(96/C 180/52)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 24 April 1996 by the Commission of the European Communities, represented by Klaus-Dieter Borchardt, of its Legal Service, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing within the prescribed period to adopt the measures necessary in order to comply with Directive 91/414/EEC [1], the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and under that Directive;

2. order the defendant to pay the costs.

*Pleas in law and main arguments*

The pleas in law and main arguments are the same as those in Case C-135/96 [2]; the time limit for transposition expired on 27 July 1993.

[1] OJ No L 230, 1991, p. 1.
[2] See p. 23 of this Official Journal.

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**Action brought on 25 April 1996 by the Commission of the European Communities against the Federal Republic of Germany**

**(Case C-138/96)**

(96/C 180/53)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 25 April 1996 by the Commission of the European Communities, represented by Klaus-Dieter Borchardt, of its Legal Service, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing within the prescribed period to adopt the measures necessary in order to comply with Directive 92/116/EEC [1], the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and under that Directive;

2. order the defendant to pay the costs.

*Pleas in law and main arguments*

The pleas in law and main arguments are the same as those in Case C-135/96 [2], the time limit for transposition expired on 1 January 1994.

[1] OJ No L 62, 1993, p. 1.
[2] See p. 23 of this Official Journal.

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**Reference for a preliminary ruling from the Bundesfinanzhof by order of that court of 14 March 1996 in the case of Finanzamt Osnabrück-Land v. Bernhard Langhorst**

**(Case C-141/96)**

(96/C 180/54)

Reference has been made to the Court of Justice of the European Communities by an order of the Fifth Senate of the Bundesfinanzhof (Federal Finance Court) of 14 March 1996, which was received at the Court Registry on 29 April 1996, for a preliminary ruling in the case of Finanzamt Osnabrück-Land v. Bernhard Langhorst on the following questions:

1. Is it permissible under Article 22 (3) (c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (the Sixth Directive) [1] for a credit note within the meaning of paragraph 14 (5) of the Umsatzsteuergesetz (Law on turnover tax) 1980 to be regarded as an invoice or other document serving as invoice (Article 21 (1) (c) of the Sixth Directive)?

2. If the answer to Question 1 is affirmative: Is it permissible under Article 21 (1) (c) of the Sixth Directive for a person who accepts a credit note showing a higher amount of tax than that owed by reason of taxable transactions, and does not contradict in that respect the mention of tax in the credit note, to be regarded as a person who mentions value-added tax on an invoice or other document serving as invoice and is therefore liable to pay that value added tax?

3. Can the recipient of a credit note, in the circumstances set out in Question 2, rely on Article 21 (1) (c) of the Sixth Directive if the value-added tax mentioned in the credit note is claimed from him as a tax debt to the extent of the difference between the tax mentioned and the tax owed by reason of taxable transactions?

(1) OJ No L 145, 1977, p. 1.

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**Reference for a preliminary ruling from the Bundesfinanzhof by order of that court of 7 March 1996 in the case of Hauptzollamt München v. Wacker Werke GmbH & Co. KG**

**(Case C-142/96)**

(96/C 180/55)

Reference has been made to the Court of Justice of the European Communities by an order of the Seventh Chamber of the Bundesfinanzhof (Federal Finance Court) of 7 March 1996, which was received at the Court Registry on 29 April 1996, for a preliminary ruling in the case of Hauptzollamt München (Principal Customs Office, Munich) v. Wacker Werke GmbH & Co. KG on the following questions:

1. Is the second alternative provided for in the second subparagraph of Article 13 (2) of Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements (OJ No L 212, 1986, p. 1) to be interpreted as meaning that a method of determining processing costs is reasonable only if the resulting value of the temporary export goods corresponds approximately to the purchase price paid by the holder of an outward processing authorization or to the production costs?

2. If the answer to the first question is in the negative, can reference be made to the purchase price for the inputs inclusive of uplifts paid by the processor to the holder of an outward processing authorization in determining the processing costs, and does that apply equally where there is a tariff anomaly resulting in a higher rate of duty for the unprocessed goods than for the compensating products?

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**Reference for a preliminary ruling from the Bundesfinanzhof by order of that court of 7 March 1996 in the case of Leonhard Knubben Speditions GmbH v. Hauptzollamt Mannheim**

**(Case C-143/96)**

(96/C 180/56)

Reference has been made to the Court of Justice of the European Communities by order of the Seventh Chamber of the Bundesfinanzhof (Federal Finance Court) of 7 March 1996, which was received at the Court Registry on 29 April 1996, for a preliminary ruling in the case of Leonhard Knubben Speditions GmbH v. Hauptzollamt (Principal Customs Office) Mannheim on the following question:

How is subheading 0904 20 of the Common Customs Tariff — combined nomenclature 1989 and 1990 — to be interpreted? Does the term 'sonst zerkleinert' used therein signify merely a fineness similar to the 'gemahlen' (crushed) product, or does it also cover a product cut into pieces, such as a product cut into pieces measuring between 4 and 8 mm?

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**Reference for a preliminary ruling from the Cour du Travail de Bruxelles by judgment of that court of 25 April 1996 in the case of Office National des Pensions v. Cirotti**

**(Case C-144/96)**

(96/C 180/57)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour du Travail de Bruxelles (Higher Labour Court, Brussels) of 25 April 1996, which was received at the Court Registry on 3 May 1996, for a preliminary ruling in the case of Office National des Pensions (National Pensions Office) v. Cirotti on the following question:

Must Articles 46 and 51 of Regulation (EEC) No 1408/71 (1) be interpreted as applying in the event of an invalidity benefit, calculated under the legislation of one Member State, overlapping with an old-age benefit, calculated under the legislation of another Member State, that grants a person a share of the employed person's old-age benefit payable to his or her spouse from whom that person is living apart, even if this would give migrant workers an advantage over non-migrant workers, when Article 3 (1) of the Regulation provides for equal treatment of all nationals of the Member States?

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

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**Reference for a preliminary ruling from the Tribunale di Genova, Sezione Prima Civile, by order of that court of 11 April 1996 in the case of ICAT FOOD SRL and Amministrazione delle Finanze**

**(Case C-155/96)**

(96/C 180/58)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Genova, Sezione Prima Civile (District Court, Genoa, First Civil Section) of 11 April 1996 which was received at the Court Registry on 7 May 1996, for a preliminary ruling in the case of ICAT FOOD SRL and Amministrazione delle Finanze on the same questions as in Joined Cases C-47/95 and Others (1).

(1) OJ No C 119, 13. 5. 1995, p. 5.

**Appeal brought on 7 May 1996 by C. Williams against the judgment delivered on 7 March 1996 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-146/94 between C. Williams and the Court of Auditors**

**(Case C-156/96 P)**

(96/C 180/59)

An appeal against the judgment delivered on 7 March 1996 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-146/94 between C. Williams and the Court of Auditors was brought before the Court of Justice of the European Communities on 7 May 1996 by C. Williams, represented by Eric Boigelot, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim.

The appellant claims that the Court should:

1. declare the appeal admissible and well founded;

2. consequently:

   (a) annul in its entirety the judgment delivered;

   (b) itself determine the case and, adjudicating on his initial application, annul the decision of 24 January 1994, notified by bailiff service on the same day, and, in so far as may be necessary, annul the decision of 23 January 1994 implicitly rejecting the complaint submitted by the appellant on 23 September 1993 under Article 90 (2) of the Staff Regulations;

   (c) order the Court of Auditors to pay the costs of the appeal and of the proceedings at first instance.

*Pleas in law and main arguments*

Infringement of Community law. The appellant maintains the pleas and claims advanced by him in the proceedings before the Court of First Instance [1].

[1] OJ No C 146, 28. 5. 1994, p. 12.

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**Reference for a preliminary ruling from the Cour de Cassation of the Grand Duchy of Luxembourg by judgment of that court of 25 April 1996 in the case of Raymond Kohll v. Union des Caisses de Maladie**

**(Case C-158/96)**

(96/C 180/60)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour de Cassation (Court of Cassation) of the Grand Duchy of Luxembourg of 25 April 1996, which was received at the Court Registry on 9 May 1996, for a preliminary ruling in the case of Raymond Kohll v. Union des Caisses de Maladie (Union of Health Insurance Funds) on the following questions:

1. Are Articles 59 and 60 of the Treaty establishing the EEC to be interpreted as precluding rules under which reimbursement of the cost of benefits is subject to authorization from the insured person's social security institution if the benefits are provided in a Member State other than the State in which that person resides?

2. Is the answer to the first question any different if the aim of the rules is to maintain a balanced medical and hospital service accessible to everybody in a given region?

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**Removal from the register of Case C-327/93 [1]**

(96/C 180/61)

By order of 29 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-327/93 (reference for a preliminary ruling from the High Court of Justice, Queen's Bench Division): The Queen v. Secretary of State for the National Heritage, *ex parte:* (1) Continental Television BVio, (2) Continental Television plc and (3) Mark Roy Garner.

[1] OJ No C 211, 5. 8. 1993.

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**Removal from the register of Case C-120/94 [1]**

(96/C 180/62)

By order of 19 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-120/94: Commission of the European Communities v. Hellenic Republic.

[1] OJ No C 174, 25. 6. 1994.

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**Removal from the register of Case C-145/94 [1]**

(96/C 180/63)

By order of 13 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-145/94 (reference for a preliminary ruling from the Juzgado de lo Penal No 2 de Lleida): criminal proceedings against José Antonio Alonso Rubio.

[1] OJ No C 202, 23. 7. 1994.

**Removal from the register of Case C-294/94** [1]

(96/C 180/64)

By order of 12 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-294/94 (reference for a preliminary ruling from the Juzgado Central de lo Penal de la Audiencia Nacional): criminal proceedings against Luis Carlos Quintanilha.

[1] OJ No C 351, 10. 12. 1994.

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**Removal from the register of Case C-310/94** [1]

(96/C 180/65)

By order of 16 January 1996, the President of the Second Chamber of the Court of Justice of the European Communities ordered the removal from the register of Case C-310/94 (reference for a preliminary ruling from the Tribunal de Commerce de Saintes): Garage Ardon SA, Bernard Martin — Garage Colin-Martin, Relais de Saintonge SARL and Bernard Menet SARL v. Garage Trabisco SA.

[1] OJ No C 380, 31. 12. 1994.

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**Removal from the register of Case C-20/95** [1]

(96/C 180/66)

By order of 12 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-20/95 (reference for a preliminary ruling from the Juzgado Central de lo Penal de la Audiencia Nacional): criminal proceedings against Oscar Weg.

[1] OJ No C 74, 25. 3. 1995.

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**Removal from the register of Case C-33/95** [1]

(96/C 180/67)

By order of 20 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-33/95 (reference for a preliminary ruling from the Tribunal de Grande Instance de Saint-Nazaire): SARL Polypièces v. Directeur des Services Fiscaux de Loire-Atlantique.

[1] OJ No C 74, 25. 3. 1995.

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**Removal from the register of Case C-230/95** [1]

(96/C 180/68)

By order of 19 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-230/95: Council of the European Union v. European Parliament.

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

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**Removal from the register of Case C-256/95** [1]

(96/C 180/69)

By order of 19 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-256/95: Commission of the European Communities v. French Republic.

[1] OJ No C 248, 23. 9. 1995.

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**Removal from the register of Case C-318/95** [1]

(96/C 180/70)

By order of 14 March 1996, thue President of the Court of Justice of the European Communities ordered the removal from the register of Case C-318/95: Commission of European Communities v. Ireland.

[1] OJ No C 333, 9. 12. 1995.

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**Removal from the register of Case C-374/95** [1]

(96/C 180/71)

By order of 12 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-374/95 (reference for a preliminary ruling from the Southampton Industrial Tribunal): James Paul Barker v. Service Children's Schools.

[1] OJ No C 31, 3. 2. 1996.

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**Removal from the register of Case C-381/95** [1]

(96/C 180/72)

By order of 27 March 1996, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-381/95: Commission of European Communities v. Kingdom of Spain.

[1] OJ No C 31, 3. 2. 1996.

COURT OF FIRST INSTANCE

## JUDGMENT OF THE COURT OF FIRST INSTANCE
### of 8 May 1996
### in Case T-19/95: Adia Interim SA v. Commission of the European Communities [1]

***(Public service contract — Agency staff — Tender vitiated by a calculation error — Statement of reasons of the decision rejecting the tender — No obligation for the contracting authority to contact the tenderer)***

(96/C 180/73)

*(Language of the case: French)*

In Case T-19/95: Adia Interim SA, having its registered office in Brussels, represented by Vincent Thiry, of the Liège Bar, Christian Jacobs, Rechtsanwalt, Bremen, Hans Joachim Prieß and Klaus Heinemann, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Tom M. Gilliams, 47 Grand-Rue, v. Commission of the European Communities (Agents: Xénophon A. Yataganas and Hendrik van Lier) — application for annulment of the Commission decision, communicated to the applicant on 5 December 1994, informing it that the tender which it submitted in response to invitation to tender No 94/21/IX.C.1 on the supply of agency staff had been rejected, and for annulment of the Commission's decision, communicated to the applicant on 21 December 1994, awarding the contracts in question to the companies Ecco, Gregg and Manpower — the Court of First Instance (Fourth Chamber), composed of: K. Lenaerts, President, P. Lindh and J. D. Cooke, Judges, Registrar: B. Pastor, Principal Administrator, has given a judgment on 8 May 1996, in which it:

1. *Dismisses the application.*

2. *Orders the applicant to pay the costs.*

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[1] OJ No C 87, 8. 4. 1995.

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## JUDGMENT OF THE COURT OF FIRST INSTANCE
### of 14 May 1996
### in Case T-82/95: Carmen Gómez de Enterría y Sanchez v. European Parliament [1]

***(Officials — Retirement — Article 50 of the Staff Regulations — Protection of the interests of the official concerned)***

(96/C 180/74)

*(Language of the case: French)*

In Case T-82/95: Carmen Gómez de Enterría y Sanchez, a former official of the European Parliament, 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, v. European Parliament (Agents: Gregorio Garzon Clariana and Manfred Peter) — application for annulment of the decision, based on Article 50 of the Staff Regulations of officials of the European Communities, retiring the applicant from service — the Court of First Instance (Third Chamber), composed of: C. P. Briët, President, and B. Vesterdorf and A. Potocki, Judges; H. Jung, Registrar, has given a judgment on 14 May 1996, in which it:

1. *Dismisses the action as inadmissible in so far as it requests the Court to issue directions to the European Parliament.*

2. *Annuls the decision retiring the applicant from service, which was communicated to the applicant by letters from the President of the Parliament of 30 November 1994 and 19 December 1994.*

3. *Orders the Parliament to pay the costs.*

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[1] OJ No C 137, 3. 6. 1995.

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## JUDGMENT OF THE COURT OF FIRST INSTANCE
### of 15 May 1996
### in Case T-326/94: Konstantinos Dimitriadis v. Court of Auditors of the European Communities [1]

***(Official — Staff report — Damages)***

(96/C 180/75)

*(Language of the case: Greek)*

In Case T-326/94: Konstantinos Dimitriadis, an official of the Court of Justice of the European Communities and formerly an official of the Court of Auditors of the European Communities, residing in Luxembourg, represented by Markos Papazisis of the Salonika Bar, with an address for service in Luxembourg at the applicant's residence, 4A Boulevard Grand-Duchesse Charlotte, against the Court of Auditors of the European Communities (Agents: Jean-Marie Stenier, Christos Komninos and Paolo Giusta) — application for the annulment of the applicant's staff report of 13 July 1994 and compensation for the damage allegedly suffered — the Court of First Instance (Fifth Chamber), composed of R. Schintgen (President of the

Chamber), R. García-Valdecasas and J. Azizi, Judges; H. Jung, Registrar, has given a judgment on 15 May 1996, in which it:

1. *Dismisses the application.*

2. *Orders the parties to bear their own costs.*

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(1) OJ No C 331, 26. 11. 1994.

## JUDGMENT OF THE COURT OF FIRST INSTANCE

**of 21 May 1996**

**in Case T-153/95, Raymond Kaps v. Court of Justice of the European Communities (1)**

***(Officials — Competition — Selection board — Oral test — Decision of selection board not to enter the applicant on the reserve list — Scope of the duty to state reasons — Scope of judicial review)***

(96/C 180/76)

*(Language of the case: French)*

In Case T-153/95: Raymond Kaps, an official of the Court of Justice of the European Communities, residing in Schifflange, represented by Jean-Noël Louis, Thierry Demaseure, Véronique Leclercq and Ariane Tornel, all of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson Sàrl, 1 Rue Glesener, against the Court of Justice of the European Communities (Agent: Timothy Millett) — application for the annulment of the selection board's decisions in the internal competition by tests No CJ 51/93 awarding the applicant marks for his written and oral tests which did not qualify him for entry on the reserve list and, in so far as necessary, the annulment of the defendant's decision not to enter the applicant on the reserve list of Competition No CJ 51/93 and of the decision of the complaints committee of 15 May 1995 rejecting the applicant's complaint — the Court of First Instance (Fifth Chamber), composed of R. Schintgen (President of the Chamber), R. García-Valdecasas and J. Azizi, Judges; B. Pastor, Principal Administrator, for the Registrar, has given a judgment on 21 May 1996, in which it:

1. *Dismisses the application.*

2. *Orders the parties to bear their own costs.*

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(1) OJ No C 248, 23. 9. 1995.

## ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

**of 29 March 1996**

**in Case T-24/96 R: U. v. European Centre for the Development of Vocational Training**

(96/C 180/77)

*(Language of the case: German)*

In Case T-24/96 R: U, an official of the European Centre for the Development of Vocational Training, residing in Berlin, represented by Frank Montag, Rechtsanwalt, Brussels, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue, v. European Centre for the Development of Occupational Training (Agent: Bertrand Wägenbaur) — application, first, for suspension of operation of the defendant's decision transferring the applicant to Thessaloniki and, second, for an order that the applicant's posting in the Commission's office in Berlin be maintained for the time being — the President of the Court of First Instance made an order on 29 March 1996, the operative part of which is as follows:

1. *The suspension granted by the order of the President of the Court of First Instance of 29 February 1996 is renewed up to and including 12 April 1996. Until that date, the applicant's posting in Berlin is to continue;*

2. *The remainder of the application for interim measures is dismissed;*

3. *The costs are reserved.*

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**Action brought on 22 March 1996 by Eyckeler & Malt AG against the Commission of the European Communities**

**(Case T-42/96)**

(96/C 180/78)

*(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 22 March 1996 by Eyckeler & Malt AG, of Hilden (Federal Republic of Germany), represented by Dietrich Ehle and Volker Schiller, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Marc Lucius, 6 Rue Michel Welter.

The applicant claims that the Court should:

— annul the decision of the Commission of 20 December 1995 (Case REM 5/95),

— order the defendant to pay the costs.

*Pleas in law and main arguments*

The applicant, an undertaking engaged for many years in the importation of high quality beef ('Hilton' beef) from Argentina, contests the Commission's decision of 20 December 1995 (Case REM 5/95), notified by the Hauptzollamt (Principal Customs Office), Düsseldorf, by which the Commission refused to refund import levies on Hilton beef from Argentina amounting to DM 11 422 736,45.

The applicant maintains in particular that the Commission's decision is founded on an incorrect legal basis. The correct legal basis on which the decision should have been founded was not Article 13 of Regulation (EEC) No 1430/79 but Article 239 of Regulation (EEC) No 2913/92 (the Customs Code).

The decision breaches essential procedural requirements, since in the present case the applicant was not granted any direct right to be heard or to vindicate its position in the remission procedure (analogous to *inter partes* proceedings) before the Commission.

In its interpretation and application of the term 'circumstances' within the meaning of Article 239 of the Customs Code, the Commission committed a number of serious and manifest errors of assessment, in so far as it appraised the arguments advanced in the application at all and provided a statement of the grounds for its decision refusing the same. In particular, the Commission failed to appreciate, or incorrectly appreciated, the serious dereliction of duty on the part of the competent Argentinian authorities and/or the Argentinian Government in their capacity as guarantor of the system for issuing and monitoring certificates of authenticity in Argentina, as well as its own serious dereliction of duty with regard to the implementation and supervision of the Community tariff quotas within the Community. As a result of those derelictions of duty, it had been possible to falsify certificates of authenticity even before 1991. The applicant should not, as an importer, be made to bear a risk which had been created only as a result of the derelictions of duty, and which it was powerless to prevent.

The decision breaches the principle of proportionality, since the Commission was in a position, having been empowered so to do by the Council, to reduce, with regard to Argentina, the quota in respect of quantities of Hilton beef imported on the basis of falsified certificates of authenticity, but only partially availed itself of that option. The principle of proportionality precludes the Commission from unjustifiably and unnecessarily imposing excessive import levies on the applicant in its capacity as a bona fide importer.

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## Action brought on 26 March 1996 by Oleifici Italiani SpA against the Commission of the European Communities

**(Case T-44/96)**

(96/C 180/79)

*(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 26 March 1996 by Oleifici Italiani SpA, whose registered office is at Ostuni (BR) (Italy), represented by Antonio Tizzano and Gianmichele Roberti, both of the Naples Bar, with an address for service at 36 Place du Grand Sablon, Brussels.

The applicant claims that the Court should:

— annul partially the Commission's decision contained in the letter from Mr M. Jacquiot, the Director of Directorate General Agriculture (DG VI) — Directorate G, European Agricultural Guidance and Guarantee Fund (EAGGF) — of 16 January 1996 (Case No VI/003107), in so far as it refuses to compensate Oleifici Italiani for part of the damage caused by the Commission by the delay in the take-over of the lots of olive oil awarded on the basis of Regulation (EC) No 2494/94 of 14 October 1994 [1],

— order the harm suffered by the applicant as a consequence of the alleged unlawful conduct to be made good by the Commission,

— order the Commission to pay the costs.

*Pleas in law and main arguments:*

In the context of the tendering procedure for the supply of olive oil to the people of Georgia and Armenia, opened by Regulation (EC) No 2494/94, the Commission awarded to the applicant the supply of three of the consignments of olive oil which were the object of the call for tenders. Following the award, the applicant fulfilled all the obligations relating to the supply in question. However, the subsequent take-over of the goods was delayed as a result of the negligent organization by the Commission of the embarkation and transport operations. By letter of 22 May 1995 the applicant requested compensation for damage suffered (vehicles not able to be used, storage and insurance costs, cost of the bank guarantee and damage arising from the failure to use the appropriate lines of credit), for a total amounting to Lit 1 062 880 216. On 29 September 1995, following that request for compensation, the applicant received from the Commission credit of Lit 444 908 307. By a letter of 16 January 1996, the Commission sent the applicant a list of the expenditure which it agreed to compensate. The applicant points out that its dispute with the Commission essentially concerns the question of

compensation for damage. It claims that the delay in taking over the delivery of oil caused not only the damage acknowledged in the present case by the Commission but also subsequent and extensive damage which the Commission has unlawfully failed to consider. In particular, the Commission has not acknowledged: (a) loss of profits since the applicant did not have available the security lodged in favour of the Commission. The security could not be released during the whole period of the unlawful delay; (b) interest at the statutory rate and currency devaluation from the moment the damage suffered by the applicant occurred. The applicant, after having sought in vain to reach an understanding with the Commission, is now constrained to bring an action under Articles 178 and 215 of the EC Treaty in order to obtain full compensation for such harm.

Moreover, the applicant points out that the Commission specifically refused to acknowledge part of the damage complained of by a decision of the institution, communicated to the applicant by the aforementioned letter of 16 January 1996. Thus, the applicant also considered it appropriate to bring an action under Article 173 of the Treaty for partial annulment against the decision itself. The applicant considers that the restriction placed on the extent of the damage acknowledged is not justified on any objective or valid ground. The Commission has committed in the present case a manifest error of assessment. It follows that the Commission, by refusing to acknowledge part of the damage suffered by the applicant, has misused its powers, thus vitiating the lawfulness of the decision.

(1) OJ No L 265, 15. 10. 1994.

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**Action brought on 27 March 1996 by Whirlpool Sweden AB and Whirlpool SMC Microwave Products Co., Ltd, against the Council of the European Union**

**(Case T-46/96)**

(96/C 180/80)

*(Language of the case: English)*

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 27 March 1996 by Whirlpool Sweden AB and Whirlpool SMC Microwave Products Co., Ltd., represented by Mr Onno W Brouwer and Mr Pierre Larouche with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11, rue Goethe.

The applicants claim that the Court should:

— annul Articles 1 and 2 of Council Regulation (EC) No 5/96 of 22 December 1995 imposing definitive anti-dumping duties on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand, insofar as it applies to the applicants; and

— order the defendant institution to bear the costs of the proceedings pursuant to Article 7 of the Rules of Procedure of the Court of First Instance.

*Pleas in law and main arguments:*

The applicants, two companies incorporated under Swedish and Hong-Kong law respectively, belonging both to the multinational Whirlpool Corporation, the world's leading producer and marketer of quality major home appliances, challenge Regulation (EC) No 5/96 on the following grounds:

*Violation of the basic Regulation and Anti-dumping Code.* The applicants submit on this regard that no causal link between imports from the countries concerned and an injury of the Community industry can be found. In the alternative, should such a link be found, then an apportion should have been made by the Community institutions. Since no such apportion was made, the Community institutions would have violated Articles 4 (1) and 13 (3) of the basic Regulation and Articles 3.5 and II.1 of the Anti-dumping Code.

Consequently, by failing to conduct an appropriate inquiry, the Community institutions did not correctly apply the legal standard for the assessment of causation. In any case, Whirlpool results should have been taken into account when assessing injury.

*Infringement of an essential procedural requirement,* insofar as the Community institutions breached the rights of defence and the right to a fair hearing in the conduct of the proceeding leading to the adoption of the contested Regulation.

*Misuse of power.* The Community institutions misused their powers by failing to exert their delegated powers fairly and impartially, with due respect for procedural rights and general principles of Community law.

*Infringement of Article 190 of the EC Treaty,* inasmuch as the inaccurate, incomplete and contradictory statement of reasons presented by the Community institutions makes it impossible to know the real and complete reasons for their decisions.

## Action brought on 28 March 1996 by Syndicat Départemental de Défense du Droit des Agriculteurs (SDDDA) against Commission of the European Communities

**(Case T-47/96)**

(96/C 180/81)

*(Language of the case: French)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 March 1996 by the Syndicat Départemental de Défense du Droit des Agriculteurs (SDDDA), whose registered office is at Beaucaire, France, represented by Olivier Girard, of the Nîmes Bar.

The applicant claims that the Court should:

— declare that the European Commission has failed to act by not responding clearly to the problem of the applicability of Directives 92/49/EEC and 92/96/EEC with regard to the monopoly of the French statutory social security scheme in the fields of non-life insurance and life assurance;

— order the Commission to pay the costs.

*Pleas in law and main arguments*

The applicant alleges that the Commission has failed to act on a complaint which it lodged against the French State for breach of the provisions of Directives 92/49/EEC and 92/96/EEC. Those two Directives lay down the principle that all monopolies are to be abolished in the fields of non-life insurance and life assurance and enable any insurer established in the Community to cover any type of risk.

It claims that the French authorities have systematically refused to apply those two directives and, in order to maintain the monopoly of the statutory scheme, have enacted Law No 95/116 of 4 February 1995 containing miscellaneous social security provisions, Article 43 of which lays down penalties of imprisonment and fine for any person who 'incites those covered by the legislation to refuse (. . .) to join a social security organization'. The applicant concludes that France wishes to maintain the monopoly system intact.

According to the applicant, the Commission's only response to its complaint was to state that the directives in question do not concern statutory social security schemes, and it used a reference for a preliminary ruling pending before the Court of Justice (Case C-238/94) as a pretext for eluding its obligation to state reasons.

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## Action brought on 29 March 1996 by Acme Industry Co., Ltd against the Council of the European Union

**(Case T-48/96)**

(96/C 180/82)

*(Language of the case: English)*

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 29 March 1996 by Acme Industry Co., Ltd, represented by Jacques H. J. Bourgeois, of the Brussels Bar, Baker & McKenzie, with an address for service at the Chambers of Loesch & Wolters, 11 rue Goethe, Luxembourg.

The applicant claims that the Court should:

— annul Regulation (EC) No 5/96 in so far as it affects Acme Industry Company Ltd,

— order the Council to pay the costs.

*Pleas in law and main arguments:*

The applicant, a private company 65 % of which is held by the Japanese holding company Nisshin Industry Co., Ltd, and whose only activity relates to the production of microwave ovens, challenges Council Regulation No 5/96, imposing definitive antidumping duties on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and collecting definitively provisional duties.

The application is based on the following grounds:

— infringement of Regulation (EEC) No 2423/88 on protection against dumped or subsidized imports from countries not members of the EC (basic Regulation), because of the refusal of the Council and the Commission to calculate the constructed value by reference to the sales made by the exporter in the same business sector in the country of export (Japan),

— infringement of the general principle of non-discrimination by applying the amounts for SG&A costs and profits of the Korean exporter, who has a substantially different commercial structure, in order to calculate the constructed normal value of ACME products,

— the Council should have applied the limitation provided in Article 2.6 of Regulation (EC) No 3283/94, for the purpose of determining the amounts of profit to be included in the calculation of the constructed normal value. Although according to its express wording the Regulation was not yet applicable, it is a general principle of equity to apply a provision which is technically not yet in force in so far as it is less onerous for the individual concerned than the previous text. Alternatively, the Council should have interpreted Regulation (EEC) No 2423/88 in the light of Article 2.2.2 of the Uruquay Round Anti-Dumping Code,

— the contested regulation is not adequately reasoned in so far as the Council did not consider the applicant's argument based on the cooperating Thai producer's request that the normal value for Thailand be established on the basis of the sales made by that producer's related company on the Japanese market,

— infringement of the basic Regulation, by making a comparison between the normal value and the export price which infringes Article 2.9.a(ii) of that Regulation.

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**Action brought on 12 April 1996 by Primex Produkte Import-Export GmbH & Co. KG, Gebr. Kruse GmbH and Interporc Im- und Export GmbH against the Commission of the European Communities**

**(Case T-50/96)**

(96/C 180/83)

*(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 12 April 1996 by Primex Produkte Import-Export GmbH & Co. KG, of Hamburg (Federal Republic of Germany), Gebr. Kruse GmbH, of Hamburg (Federal Republic of Germany), and Interporc Im- und Export GmbH, of Hamburg (Federal Republic of Germany), represented by Georg M. Berrisch, Rechtsanwalt, Brussels, with an address for service in Luxembourg at the Chambers of Guy Harles of Messrs Arendt & Medernach, 8—10 Rue Mathias Hardt.

The applicants claim that the Court should:

— annul the decision of the Commission of 26 January 1996 in case REM 8/95, 11/95 and 12/95 (COM Doc. C(96) 180 final), addressed to the Federal Republic of Germany, in so far as it concerns the applicants,

— order the Commission to pay the costs.

*Pleas in law and man agruments:*

By the contested decision, the Commission decided that import duties are not to be remitted in respect of applications made by the applicants and submitted by Germany pursuant to Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979. Those applications related to the import of high-grade beef, known as 'Hilton quality' beef, from Argentina, in respect of which falsified certificates of authenticity, purporting to be issued by the Argentine authorities, had been submitted to the customs authorities.

*First plea:*

The decision was founded on the wrong legal basis. The correct legal basis was Article 239 of the Community Customs Code and not Article 13 of the Regulation relating to remission.

*Second plea:*

The Commission wrongly assumed that the criteria for remission of import duties under Article 13 of the remission regulation were not fulfilled. In monitoring and supervising imports falling within the Hilton quota, the Commission committed serious errors, and it was solely as a result of those errors that it was possible for imports to be effected, in the quantities now determined and over a period of two years, on the basis of the submission of falsified certificates of authenticity. In the contested decision, the Commission misjudged the extend of its misconduct and the legal consequences arising therefrom.

*Third plea:*

The Commission breached essential rules of procedure, by denying Germany's representative at the meeting of experts of the Member States, held on 4 December 1995, any opportunity to submit oral comments.

*Fourth plea:*

The Commission breached the applicants' right to a fair hearing, since it did not grant them any direct hearing in accordance with the law. The Commission was under an obligation to do so, despite the fact that the procedural rules laid down by the Regulation implementing the Community Customs Code did not provide for direct participation by the applicants in the proceedings before the Commission.

*Fifth plea:*

Lastly, the contested decision infringes Article 190 of the EC Treaty, since it is inadequately reasoned.

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**Action brought on 12 April 1996 by Miwon Co., Ltd against the Council of the European Communities**

**(Case T-51/96)**

(96/C 180/84)

*(Language of the case: English)*

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 12 April 1996 by Miwon Co. Ltd, represented by Jean-François Bellis, of Van Bael & Bellis, with an address for service in Luxembourg at the Chambers of Loesch & Wolters, 11 rue Goethe, Luxembourg.

The applicant claims that the Court should:

— annul Council Regulation (EC) No 81/96 of 19 January 1996 imposing definitive anti-dumping duties on imports of monosodium glutamate originating, *inter alia*, in the Republic of Korea in so far as it imposes a definitive anti-dumping duty on the applicant and orders the collection of provisional anti-dumping duties with respect to products exported by the applicant; and

— order the Council to bear the costs of this proceeding.

*Pleas in law and main arguments:*

The applicant, a limited company established under the laws of the Republic of Korea, produces a wide range of food and chemicals products, including monosodium glutamate ('MSG'), a product used as a flavour enhancer in food products. On 3 November 1995, it lodged an application for annulment against Commission Regulation (EC) No 1754/95 imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia, the Republic of Korea, Taiwan and Thailand [1]. The act challenged in the present application is Council Regulation (EC) No 81/96 [2], imposing definitive anti-dumping duties on imports of monosodium glutamate originating in Korea, Indonesia and Taiwan.

The grounds, on the basis of which the legality of the contested Regulation is challenged, can be summarized as follows:

1. the Council has wrongly determined the applicant's dumping margin, and hence the applicant's anti-dumping duty, in that it has determined the applicant's export price on the basis of Articles 2 (8) (b) and 7 (7) (b) of the anti-dumping Regulation whilst it should have exclusively applied Article 2 (8) (a);

2. the Council's finding that the imports from the countries subject to investigation had, taken in isolation, continued to cause material injury to the Community industry is vitiated by fundamental contradictions.

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[1] Case T-208/95, OJ No C 351, 30. 12. 1995, p. 19.
[2] OJ No L 15, 20. 1. 1996, p. 20.

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**Action brought on 16 April 1996 by Sogecable SA against the Commission of the European Communities**

**(Case T-52/96)**

(96/C 180/85)

*(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 16 April 1996 by Sogecable SA, whose registered office is in Madrid, represented by Santiago Martínez Lage and Rafael Allendesalazar Corcho, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue.

The applicant claims that the Court should:

— annul the decision of the Commission contained in the letters of 6 and 7 February 1996 sent to the applicant and the Tribunal de Defensa de la Competencia de España (Spanish Court for the Defence of Competition) respectively, and made public by way of a statement of the spokesperson for the Commissioner responsible for Competition Policy on 8 February 1996, in which the Commission concluded that the concentration by which Cablevisión SA was taken under joint control constitutes a concentration operation with a Community dimension;

— order the defendant to pay the costs.

*Pleas in law and main arguments:*

The applicant submits that, on 26 July 1995, Telefónica de España, SA and its subsidiary Telecartera, SA, on the one hand, and Sociedad de Gestión de Cable, SA and Sociedad de Televisión Canal Plus, SA (two companies which, since January 1996, constitute a single company known from March 1996 as Sogecable) on the other, signed agreements which involved the transformation of Sociedad General de Cablevisión, SA into a joint venture of a concentrated nature and intended to provide multimedia services, not including telecommunications, to local cable operators. Since those agreements implied the existence of an economic concentration, the signatory undertakings considered whether it had a Community dimension within the meaning of Article 1 (2) of Regulation (EEC) No 4064/89. After considering the relevant factors, those undertakings arrived at the conclusion that the concentration had a national dimension, so that it was excluded from the scope of the regulation. The Commission, on the contrary, found that the establishment of Cablevisión was a concentration with Community dimension.

That decision of the Commission constitutes the subject-matter of the present action based on the infringement of Article 5 (4) of Regulation (EEC) No 4064/89.

According to the applicant, the argument of the Commission is essentially the following: Sogecable is jointly controlled by two of its shareholders, Prisa (Promotora de Informaciones, SA) and Canal Plus Francia (Canal Plus, Société Anonyme); consequently, pursuant to Article 5 (4) of Regulation (EEC) No 4064/89, Sogecable's turnover must be added to the turnover of Prisa and Canal Plus Francia. The Community dimension results from that aggregate.

The applicant claims that, *vis-à-vis* Sogecable, only Prisa is in any of the situations contemplated by Article 5 (4) of the regulation, namely, that laid down in Article 5 (4) (e) (has the right to manage the undertaking's affairs), although that is not the case so far as Canal Plus Francia is concerned. The fact of the matter is that the Commission, by its decision, seeks in essence to replace the clear, exhaustive and formal criteria of Article 5 (4) with the vaguer, more imprecise and practical criteria of Article 3 (3) which is not intended to determine whether a concentration has a Community dimension but merely to define whether an operation constitutes a concentration. Thus, the Commission infringes

Article 5 (4) which is the only provision applicable in this case.

In the alternative, even assuming that Sogecable were 'jointly controlled' by Prisa and Canal Plus Francia, as the Commission maintains, the applicant states, first, that Prisa and Canal Plus Francia would not jointly have any of the powers and rights set out in Article 5 (4) (b) and, secondly, that, even if they jointly had the powers and rights laid down in Article 5 (4) (b), their turnover should not be added to Sogecable's turnover, pursuant to Article 5 (4) (c).

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**Action brought on 16 April 1996 by Syndicat des Producteurs de Viande Bovine de la Coordination Rurale, Syndicat des Producteurs de Lait de la Coordination Rurale and Philippe de Villiers against the Commission of the European Communities**

**(Case T-53/96)**

(96/C 180/86)

*(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 16 April 1996 by the Syndicat des Producteurs de Viande Bovine de la Coordination Rurale and the Syndicat des Producteurs de Lait de la Coordination Rurale, established at L'Isle Jourdain (France), and Philippe de Villiers, residing at Les Aubretières (France), represented by Alexandre Varaut, of the Paris Bar.

The applicants claim that the Court should:

— declare the European Commission liable, on the basis of Article 178 and the second paragraph of Article 215 of the Treaty on European Union, for failure to introduce measures for the protection of public health on the outbreak of bovine spongiform encephalitis, known as mad cow disease;

— order the European Union to pay the Syndicat des Producteurs de Viande Bovine de la Coordination Rurale, the Syndicat des Producteurs de Lait de la Coordination Rurale and Philippe de Villiers the sum of FF 1 as token damages for the non-material damage suffered;

— appoint such expert as the Court may think fit to determine the loss suffered by the members of the Syndicat des Producteurs de Viande Bovine de la Coordination Rurale and the Syndicat des Producteurs de Lait de la Coordination Rurale.

*Pleas in law and main arguments:*

The applicants complain that the Commission failed, in the context of its task of monitoring trade between Member States, public health and consumer protection, to introduce appropriate measures for the protection of public health on the outbreak of bovine spongiform encephalitis (BSE), known as 'mad cow disease'. They state that the steps taken by the Commission since 1988 to prevent the spread of BSE, and possibly Creutzfeldt-Jacob's disease, must be regarded as inadequate, having regard to the embargo measures precipitately decided on 26 March 1996 by that same Commission, which nevertheless has no more information than previously on any potential risk. The applicants maintain that the Commission is liable, inasmuch as it breached the principle of proportionality and made an incorrect assessment of the facts, giving rise to a risk to public health and consumers and having a manifest impact on trade in bovine livestock in the European Union.

Although the first recorded case of mad cow disease dates from 1986, on a farm in Kent in the United Kingdom, and despite numerous communications, scientific and journalistic, confidential and public, on the risks of the spread of BSE and the risks of human contamination, the Commission, on the pretext of a lack of scientific certainty, failed to take the only measure to be taken in the face of a public health risk, namely the total prohibition of exports and the possible slaughter of herds.

The applicants consider that the Commission failed to perform its obligation to supervise and monitor intra-Community trade. As a result of that failure, they, like any other European citizen, have suffered non-material damage for which they seek reparation; some of the applicants also claim to have suffered material damage, the extent of which is to be established in the course of the proceedings.

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**Action brought on 17 April 1996 by Oleifici Italiani SpA and F.lli Rubino Industrie Olearie SpA against the Commission of the European Communities**

**(Case T-54/96)**

(96/C 180/87)

*(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 17 April 1996 by Oleifici Italiani SpA, whose registered office is at Ostuni (BR) (Italy), and F.lli Rubino Industrie Olearie SpA, whose registered office is at Bari (Italy), represented by Antonio Tizzano and Gianmichele Roberti, both of the Naples Bar,

with an address for service at the Chambers of Tizzano, 36 Place du Grand Sablon, Brussels.

The applicant claims that the Court should:

— annul the Commission's decision, contained in the letter from Mr G. Legras, the Director-General of Directorate General Agriculture (DG VI) — Directorate G, European Agricultural Guidance and Guarantee Fund (EAGGF) — of 7 February 1996 (Case No VI/000513) which provided for the blocking of all payment owed for the warehousing of olive oil in the 1991/92 and 1992/93 marketing years,

— order the harm suffered by the applicant as a consequence of the alleged unlawful conduct to be made good by the Commission,

— order the Commission to pay the costs.

*Pleas in law and main arguments:*

The applicants have for some years been registered in the Albo degli Assuntori (Register of Contractors) of the Azienda per gli Interventi nel Mercato Agricola (State Board for Intervention in the Agricultural Market, 'AIMA'). In that capacity, they are responsible for intervention operations in the olive oil market in accordance with Community law. For the marketing years 1991/92 and 1992/93, the applicants bought in 16 653 566 tonnes of virgin olive oil. Upon the oil entering into store, AIMA carried out the control and analysis prescribed by Community law. Since it found the stored oil to be in full compliance, AIMA itself duly paid the corresponding proprietors of that oil.

In November 1993, the EAGGF department of DG VI at the Commission decided to carry out a general inquiry into the bought-in oil in Italy.

In the context of that check samples were taken of the oil and were sent to a Spanish laboratory for analysis. The analysis showed that, with the exception of the wax levels, the oil tested showed values fully in compliance with the criteria laid down by the Community system. However, in view of the discrepancy with regard to waxes, the laboratory concluded that there was some olive-residue oil in the sample tested. The Commission, taking into account the objections and the requests submitted by the Italian authorities, upheld the request to proceed to a second check at an Italian laboratory. The findings of the Commission concerning the alleged anomalies of the oil in question however prevented payment to the contractors of the amounts due to them.

At the end of March 1995, the Italian judicial authorities also undertook an investigation into the oil in question, ordering, *inter alia*, that it be impounded. In June 1995, one of the applicants sent the Spanish laboratory three samples of olive oil from the impounded oil containers. The second analysis carried out by that laboratory acknowledges that, where the other values comply with the standard, a wax content above the limit does not of itself indicate the presence of oil of olive residues (and therefore irregular mixing), since it arises from an altogether natural chemical process due to the ageing of the oil. The findings of the Spanish laboratory were fully confirmed by the results of the investigation ordered by the Italian judicial authorities.

Following the results of the latest analyses, the Commission acknowledged that the oil in question should be bought in (letter to AIMA from the Director of DG VI of 2 October 1995, letter to AIMA from the Director-General of DG VI of 23 November 1995 and letter from the Director of DG VI of 6 February 1996). Despite the unequivocal position adopted by the Commission, the Director-General of DG VI, by letter of 7 February 1996, asked the Member State to take steps to carry out further analysis on the samples in the possession of the EAGGF at an independent laboratory, to inform the interested parties thereof and, in the meantime, to block any security and/or payment relating to the oil in question. In view of such conduct, the applicants brought the present action.

The applicants claim that the letter of 7 February 1996, in so far as it imposes a block on payment as such and on the security in respect of the abovementioned oil, is a retroactive revocation of a lawful act which confers rights or advantages to individuals. Such a revocation, according to consistent case-law, is to be considered contrary to the general principles of law recognized by the Community legal system and in particular to the fundamental principle of protection of acquired rights. The applicants point out, however, that, irrespective of such a breach, the abovementioned letters of the Commission of 2 October and 23 November 1995 were such as to give rise to at least a legitimate expectation in respect of the applicants as regards the conformity of the oil held by them and that the relevant payments would be made. The subsequent unforeseen and unjustified u-turn by the Commission is in sharp contrast with the principle of respect for legitimate expectations laid down throughout the Community's case-law. Furthermore, the applicants consider that the Commission, in deciding to block payments, misused its powers and committed a manifest error of assessment of material facts. Finally, the applicants point out that the Commission has not complied with the requirements of proportionality inasmuch as it requested by letter of 7 February 1996 the blocking of payment not only for the consignments of the 'disputed' oil — that is consignments in which a high level of wax had been found — but also for the consignments of oil in which no abnormality had been found in the wax levels.

The applicants further seek compensation for damage (actual losses and lost profits) caused by the alleged conduct of the Commission, within the meaning of Articles 178 and 215 of the Treaty.

**Action brought on 22 April 1996 by Alberto Maccaferri against the Commission of the European Communities**

**(Case T-56/96)**

(96/C 180/88)

*(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 22 April 1996 by Alberto Maccaferri, of Bologna (Italy), represented by Jean-Noël Louis, Thierry Demaseure and Ariane Tornel, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson, 1 Rue Glesener.

The applicant claims that the Court should:

— annul the decision not to appoint the applicant to the post which was the subject of selection procedure 62T/XXIII/93 with a view to filling the post of A4/5 temporary staff member in Directorate-General XXIII — 'Enterprise Policy, Distributive Trades, Tourism and Cooperatives', sector for implementation of administrative simplification in the Community,

— annul the decision to transfer the budgeted post of a temporary staff member at level A4/5 from DG XXIII to another directorate general and to replace it with the budgeted post of a temporary staff member at level B,

— order the defendant to pay the costs.

*Pleas in law and main arguments:*

The applicant challenges the Commission's decision not to appoint him to an A5/A4 post in DG XXIII which was the subject of selection procedure 62T/XXIII/93 despite his having been included on the list of successful candidates. By a note from the Director of Directorate B, 'Community action to assist enterprises', the Director-General of DG XXIII was asked to 'take the appropriate steps' for him to be recruited as quickly as possible. Nothing came of that request.

The applicant observes that he entered the service of the Commission in 1993 as a member of the auxiliary staff, and that when his contract as an auxiliary staff member expired he was recruited by a private company in order to be made available to DG XXIII of the Commission to perform the work he did as a member of the auxiliary staff.

The applicant puts forward the following pleas in law in support of his application:

*breach of the rules for filling vacant posts and of the duty to state reasons.* In the procedure at issue it is apparent that the appointing authority exchanged the budgeted post which was the subject of the recruitment procedure in question for a post of temporary staff member at grade B1 in another directorate general, and that neither the applicant nor the other successful candidates were informed of the exchange or given clear, precise and complete reasons justifying it. The applicant states that in so far as the appointing authority organized the said selection procedure with a view to filling a specific grade A5/A4 post in DG XXIII, the defendant institution breached the rules for filling vacant posts by derogating in the present case from the rule requiring it to do so by appointing a candidate whose name is on the list of suitable candidates drawn up by the selection board;

*misuse of powers,* in that it is apparent, according to the applicant, that the real motive for the exchange of posts at issue was the recruitment as a temporary staff member at grade B1 of a candidate chosen in advance, although the requirements of the service compelled the Commission to conclude a contact for services with a private undertaking in order for the applicant to be made available to it,

*breach of the principle of the protection of legitimate expectations.* Both the applicant and the other successful candidates in selection procedure 62T/XXIII/93 could legitimately expect the post which was the subject of competition to be filled by the recruitment of one of them.

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**Action brought on 22 April 1996 by Livio Costantini against Commission of the European Communities**

**(Case T-57/96)**

(96/C 180/89)

*(Language of the case: Italian)*

An action against the Commission of the European Communities was brought before the Court of First Instance on 22 April 1996 by Livio Costantini, an official in the Commissions' scientific and technical services, working at the International Atomic Energy Agency, Vienna, represented by Giuseppe Marchesini, Avvocato with right of appearance 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 refusal to pay him the installation allowance and daily subsistence allowance,

— declare that the Commission is required to pay him the sums payable under Articles 5 and 10 of Annex VII to the Staff Regulations or such sums as may be arrived at by recalculation of his allowances in accordance with Article 38 of the Staff Regulations,

— order that interest be paid on all the above sums at the rate of 8 % from the date of the application to the time of payment,

— order the defendant to pay the costs.

*Contentions and principal arguments adduced in support:*

The applicant, an official in the Commission' scientific and technical services at the Joint Research Centre, Ispra, maintains that it is unlawful to refuse to pay him the installation allowance and daily subsistence allowance on his return from a period of external service with the International Atomic Energy Agency, Vienna. The contested decision is based on the view that the applicant would neither encounter particular difficulties in resettling into the environment which he had earlier left or nor need to effect removals again, having returned to his own dwelling in Italy.

According to the applicant, the provisions of the Staff Regulations concerning the installation allowance relate only to the objective fact that the person concerned is obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations. The latter provision lays down no further requirement and takes account of no other factor.

It is true that the case-law has clarified the scope of the provisions of the Staff Regulations, but it has done so in factual circumstances where legal preconditions were not fulfilled (failure to move house or be accompanied by members of one's family, transfers at one's own request and for personal reasons, and so on) or else in relation to conduct intended to evade legal provisions. That case-law has nothing to do with this case, where the applicant and his family both duly moved to another State, a residence was rented in Austria and there was a compulsory transfer back to Italy.

As regards the return to the applicant's dwelling in Italy, which involved a genuine financial sacrifice for the applicant since — both because of the certain date of his return and the legal difficulties of regaining possession of the dwelling in Italy after renting it out — he had to bear throughout the period in question the financial burdens and operating expenses of two residences.

As regards the refusal to pay him the daily subsistence allowance, the applicant maintains that the payment of such allowances is based on the very circumstances described above, in other words a change of residence by an official in order to comply with his obligations under Article 20 of the Staff Regulations. The only difference from the case of the installation allowance lies in the fact that the daily subsistence allowance is paid until removal or for a maximum period of six months. The difference is thus only a question of time.

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## Action brought on 25 April 1996 by Jean-Louis Burban against the European Parliament

**(Case T-59/96)**

(96/C 180/90)

*(Language of the case: French)*

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 25 April 1996 by Jean-Louis Burban, residing in Paris, represented by Jean-Pierre Spitzer, of the Paris Bar, with an adress for service at the Chambers of Aloyse May, 31 Grand-Rue.

The applicant claims that the Court should:

— award compensation in the sum of ECU 100 000 for the material damage, and ECU 100 000 for the non-material damage, suffered by the applicant,

— order the defendant to pay all of the costs.

*Pleas in law and main arguments:*

The applicant, a grade A 4 official of the European Parliament, seeks reparation for the material and non-material damage suffered by him by reason of the delay in drawing up his staff reports for the periods 1991—1992 and 1993—1994.

He considers that the defendant has not only breached the principle whereby staff reports are to be drawn up on a regular and periodic basis, but has also failed to adopt any measure in lieu capable of remedying the absence of such reports at the time when consideration of the comparative merits of internal candidates took place.

The applicant draws attention in that regard to the questionable nature of the only report, relating to 1989, on the basis of which the appointing authority examined all of the applicant's applications from 1990 onwards. He contends that, in drawing up that report, the former head of the defendant's Information Office for France misused his powers as reporting officer, with a view to being replaced in his post as Assistant Director not by the applicant, his natural successor, but by a personal friend outside the European Parliament, by means of an external competition.

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## Action brought on 30 April 1996 by José Francisco Meoro Avilés against Commission of the European Communities

**(Case T-61/96)**

(96/C 180/91)

*(Language of the case: Spanish)*

An action against the Commission of the European Communities was brought before the Court of First Instance on 30 April 1996 by José Francisco Meoro Avilés,

residing in Alcantarilla (Murcia, Spain), represented by Ramón Marés Salvador, of the Madrid Bar, with an address for service in Luxembourg at the chambers of Alain Lorang, 51 Rue Albert Ier.

The applicant claims that the Court should:

— declare void notices of open competition Nos EUR/LA/97 and EUR/LA/98 (96/C 62 A/01) for the constitution of reserve lists for the recruitment of translators (LA 7/LA 6) and assistant translators (LA 8) published in the *Official Journal of the European Communities* on 1 March 1996,

— require the Commission of the European Communities to amend, in accordance with Article 176 of the Treaty establishing the EEC, the 'Guide for candidates taking part in interinstitutional competitions or in open competitions organized by the Commission' published regularly in the *Official Journal of the European Communities* and any other publication concerning access to the Community civil service so as to include, unambiguously, 'Ingeniería técnica' (technical engineering) in the table entitled 'Guide to national educational qualifications required as a minimum condition of admission to open competitions' and specifically in the section dealing with Spanish candidates for 'A' and 'LA' competitions,

— order the Commission of the European Communities to pay the costs.

*Contentions and principal arguments adduced in support:*

The applicant explains that in Spain there are two types of full university education leading to a formal end-of-course qualification: the course of education followed by aspiring graduates and the equivalent thereof (engineers and architects), which are of a maximum duration of four-and-a-half years to six years, and that followed by aspiring diploma-holders and the equivalent thereof (*ingenieros técnicos* technical engineers and *arquitéctos técnicos* technical architects) which is of a maximum duration of approximately three-and-a-half years. Both graduates and diploma-holders complete a full course of university study leading to a qualification officially recognized by the Spanish State. The notices of open competition, Nos EUR/LA/97 and EUR/LA/98, challenged in these proceedings lay down as a precondition for admission possession of, at least, a degree of *licenciado*. That implies that 'technical engineers' will not be admitted. The same does not apply to persons who hold equivalent qualifications in other Community countries, such as the Federal Republic of Germany, the United Kingdom or Denmark *(Fachhochschulabschluss, University degree or equivalent, Kandidateksamen)*, who are admitted to the abovementioned A and LA competitions.

The applicant puts forward the following pleas in law:

— the text of the contested competition notices misinterprets and unjustifiably restricts, as regards Spanish nationals, the provisions of Article 5 of the Staff Regulations solely in order to discriminate against 'technical engineers' who have obtained their qualifications in Spain, depriving them of access to A and LA competitions and, consequently, to the corresponding posts. The Commission is thus guilty of manifest abuse of procedure and misuse of powers. Also, in view of the fact that the competition notices are in breach of Article 5 of the Staff Regulations and Article 7 of the EC Treaty, there is also a breach of the principles of legal certainty and protection of legitimate expectations and of the right of access to the European Civil Service under the conditions laid down by the Staff Regulations,

— the contested notices also contravene the principle of equal treatment since they involve discrimination on grounds of nationality without any objective justification,

— the Commission's conduct is also in breach of Directive 89/48/EEC on recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, which applies by analogy to the European civil service,

— the requirement of a *licenciatura* (degree) for access to the Community civil service of Spanish candidates is neither necessary nor appropriate to the objective of Article 5 of the Staff Regulations, which is to employ in the Community civil service persons with university education. There is thus a clear breach of the principle of proportionality.