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(Information)

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 21 January 1999

in Case C-73/97 P: French Republic v. Comafrica SpA and Others [1]

(Appeal — Banana sector — Annulment of Regulation (EC) No 3190/93 — Plea of inadmissibility)

(1999/C 100/01)

(Language of the case: English)

In Case C-73/97 P, French Republic (Agents: Catherine de Salins, Kareen Rispal-Bellanger and Frédéric Pascal) — appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 11 December 1996 in Case T-70/94 Comafrica and Dole Fresh Fruit Europe v. Commission [1996] ECR II-1741, seeking to have that judgment partially set aside in so far as it rejected the plea of inadmissibility raised by the Commission, the other parties to the proceeding being Comafrica SpA, a company governed by Italian law, established in Genoa (Italy), Dole Fresh Fruit Europe Ltd & Co., a company governed by German law, established in Hamburg (Germany), represented by Bernard O'Connor, Solicitor, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 22 Rue Marie-Adelaïde, Commission of the European Communities (Agent: Xavier Lewis) and the United Kingdom of Great Britain and Northern Ireland — the Court (Sixth Chamber), composed of: P. J. G. Kapteyn (Rapporteur), President of the Chamber, G. F. Mancini, J. L. Murray, H. Ragnemalm and K. M. Ioannou, Judges; J. Mischo, Advocate-General: R. Grass, Registrar, has given a judgment on 21 January 1999, in which it:

1. *Annuls the judgment of the Court of First Instance of 11 December 1996 in Case T-70/94 Comafrica and Dole Fresh Fruit Europe v. Commission.*

2. *Dismisses the application for annulment lodged by Comafrica SpA and Dole Fresh Fruit Europe Ltd & Co. as inadmissible.*

3. *Orders each party to bear its own costs.*

[1] OJ C 131, 26.4.1997.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 21 January 1999

in Case C-120/97 (reference for a preliminary ruling from the Court of Appeal): Upjohn Ltd v. The Licensing Authority established by the Medicines Act 1968 and Others [1]

(Proprietary medicinal products — Revocation of a marketing authorisation — Judicial review)

(1999/C 100/02)

(Language of the case: English)

In Case C-120/97: reference to the Court under Article 177 of the EC Treaty from the Court of Appeal (England and

Wales) (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Upjohn Ltd and The Licensing Authority established by the Medicines Act 1968 and Others — on the interpretation of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products (OJ, English Special Edition 1965—1966, p. 20) — the Court (Fifth Chamber), composed of: J.-P. Puissochet, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur), D. A. O. Edward and M. Wathelet, Judges; P. Léger, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 21 January 1999, in which it has ruled:

1. *Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products and, more generally, Community law do not require the Member States to establish a procedure for judicial review of national decisions revoking authorisations to market proprietary medicinal products, empowering the competent national courts and tribunals to substitute their assessment of the facts and, in particular, of the scientific evidence relied on in support of the revocation decision for the assessment made by the national authorities competent to revoke such authorisations.*

2. *Community law does not require a National Court or Tribunal which is seised of an application for annulment of a decision revoking a marketing authorisation for a particular proprietary medicinal product to take into account, when determining that application, any relevant scientific material coming to light after the adoption of that decision.*

3. *Directive 65/65/EC and Second Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, as amended by Directive 83/570/EEC are to be construed as meaning that, where the matter has been referred by various Member States to the Committee for Proprietary Medicinal Products following the adoption by the competent national authority of a decision revoking a marketing authorisation and the time-limit for the issue by that Committee of its opinion has expired, those directives do not preclude that authority from deciding to revoke the marketing authorisation in question without awaiting the opinion of the Committee for Proprietary Medicinal Products.*

([1]) OJ C 142, 10.5.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 21 January 1999

in Case C-207/97: Commission of the European Communities v. Kingdom of Belgium ([1])

(Failure of a Member State to fulfill its obligation — Council Directive 76/464/EEC — Water pollution — Failure to transpose)

(1999/C 100/03)

(Language of the case: French)

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

In Case C-207/97, Commission of the European Communities (Agents: initially Richard B. Wainwright and Jean-Francis Pasquier, and subsequently Richard B. Wainwright and Olivier Couvert-Castéra) v. Kingdom of Belgium (Agent: Jan Devadder) — application for a declaration that, by not adopting pollution reduction programmes including quality objectives for water — at least in respect of 99 substances listed in an annex to the application — or by not communicating to the Commission summaries of such programmes and the results of their implementation, in infringement of Article 7 of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ L 129, 18.5.1976, p. 23), the Kingdom of Belgium has failed to fulfil its obligations under the EC Treaty — the Court (Sixth Chamber), composed of: P. J. G. Kapteyn, President of the Chamber, G. F. Mancini, H. Ragnemalm, R. Schintgen and K. M. Ioannou (Rapporteur), Judges; Advocate-General: J. Mischo; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 January 1999, in which it:

1. *Declares that, by not adopting pollution reduction programmes including quality objectives for water in respect of the 99 substances listed in the annex to the application, the Kingdom of Belgium has failed to fulfil its obligations under Article 7 of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community.*

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

(1) OJ C 228, 26.7.1997.

JUDGMENT OF THE COURT

of 26 January 1999

in Case C-18/95 (request for a preliminary ruling by the Gerechtshof te 's-Hertogenbosch): F. C. Terhoeve v. Inspecteur van de Belastingdienst Particulieren/ Ondernemingen Buitenland (1)

(Freedom of movement for workers — Combined assessment covering income tax and social security contributions — Non-applicability to workers who transfer their residence from one Member State to another of a social contributions ceiling applicable to workers who have not exercised their right to freedom of movement — Possible offsetting by income tax advantages — Possible incompatibility with Community law — Consequences)

(1999/C 100/04)

(Language of the case: Dutch)

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

In Case C-18/95, reference to the Court under Article 177 of the EC Treaty by the Gerechtshof te 's-Hertogenbosch (Regional Court of Appeal, 's-Hertogenbosch) Netherlands, for a preliminary ruling in the proceedings pending before that court between: F. C. Terhoeve and Inspecteur van de Belastingdienst Particulieren/ Ondernemingen Buitenland (Tax Inspector for Foreign Individuals and Undertakings) — on the interpretation of Articles 7 and 48 of the EEC Treaty and Article 7(2) 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, composed of: P. J. G. Kapteyn, President of the Fourth and Sixth Chambers, acting for the President, G. Hirsch and P. Jann, President of Chambers, G. F. Mancini (Rapporteur), J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, L. Sevón, M. Wathelet, R. Schintgen and K. M. Ioannou, Judges; Advocate-General: D. Ruiz-Jarabo Colomer; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 26 January 1999, in which it has ruled:

1. *Article 48 of the EEC Treaty and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community may be relied on by a worker against the Member State of which he is a national where he has resided and been employed in another Member State.*

2. *Article 48 of the Treaty precludes a Member State from levying, on a worker who has transferred his residence in the course of a year from one Member State to another in order to take up employment there, greater social security contributions than those which would be payable, in similar circumstances, by a worker who has continued to reside throughout the year in the Member State in question, where the first worker is not also entitled to additional social benefits.*

3. *A heavier contributions burden on a worker who transfers his residence from one Member State to another in order to take up employment there, which is in principle incompatible with Article 48 of the Treaty, may not be justified either by the fact that it stems from legislation whose objective is to simplify and coordinate the levying of income tax and social security contributions, or by difficulties of a technical nature preventing other methods of collection, or else by the fact that, in certain circumstances, other advantages relating to income tax may offset, or indeed outweigh, the disadvantage as to social contributions.*

4. *When assessing whether the burden of social security contributions borne by a worker who has transferred his residence from one Member State to another in order to take up employment there is heavier than that borne by a worker who has continued to reside in the same Member State, all income relevant under national law for determining the amount of contributions, including, as the case may be, income arising from real property, must be taken into account.*

5. *If the contested national legislation is incompatible with Article 48 of the Treaty, a worker who transfers his residence from one Member State to another in order to take up employment there is entitled to have his social security contributions set at the same level as that of the contributions which would be payable by a worker who has continued to reside in the same Member State.*

(1) OJ C 74, 25.3.1995.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 February 1999

in Case C-343/96 (reference for a preliminary ruling from the Pretura Circondariale di Bolzano, Sezione Distaccata di Vipiteno (Italy)): Dilexport Srl v. Amministrazione delle Finanze dello Stato [1]

(Internal taxes contrary to Article 95 of the Treaty — Recovery of sums paid but not due — National rules of procedure)

(1999/C 100/05)

(Language of the case: Italian)

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

In Case C-343/96: Reference to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Bolzano, Sezione Distaccata di Vipiteno (Italy) for a preliminary ruling in the proceedings pending before that court between Dilexport Srl and Amministrazione delle Finanze dello Stato on the interpretation of Community law relating to sums paid but not due — the Court (Fifth Chamber), composed of: J.-P. Puissochet (Rapporteur, President of the Chamber), C. Gulmann, D. A. O. Edward, L. Sevón and M. Wathelet, Judges, D. Ruiz-Jarabo Colomer, Advocate-General, D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 9 February 1999, in which it has ruled:

1. *Community law does not preclude national provisions from making repayment of customs duties or taxes contrary to Community law subject to less favourable time-limits and procedural conditions than those laid down for actions between private individuals for recovery of sums paid but not due, provided that those conditions apply in the same way to actions for repayment which are based on Community law and to those based on national law and do not make it impossible or excessively difficult to exercise the right to repayment.*

2. *Community law does not preclude the adoption by a Member State, following judgments of the Court declaring duties or charges to be contrary to Community law, of provisions which render the conditions for repayment applicable to those duties and charges less favourable than those which would otherwise have been applied, provided that the duties and charges in question are not specifically targeted by that amendment and the new provisions do not make it impossible or excessively difficult to exercise the right to repayment.*

3. *Community law precludes a Member State from making repayment of customs duties and taxes contrary to Community law subject to a condition, such as the requirement that such duties or taxes have not been passed on to third parties, which the plaintiff must show he has satisfied.*

4. *Community law does not preclude the imposition, in the case of claims for repayment of customs duties or taxes contrary to Community law, of the non-retroactive requirement which, if not fulfilled, renders the claim inadmissible, that notice thereof is to be given ot the tax authority which received the tax return of the person concerned for the year in question.*

[1] OJ C 354, 23.11.1996.

JUDGMENT OF THE COURT

of 9 February 1999

in Case C-167/97 (reference for a preliminary ruling from the House of Lords): Regina v. Secretary of State for Employment [1]

(Men and women — Equal pay — Equal treatment — Compensation for unfair dismissal — Definition of 'pay' — Right of a worker not to be unfairly dismissed — Whether falling under Article 119 of the EC Treaty or Directive 76/207/EEC — Legal test for determining whether a national measure constitutes indirect discrimination for the purposes of Article 119 of the EC Treaty — Objective justification)

(1999/C 100/06)

(Language of the case: English)

In case C-167/97: Reference to the Court under Article 177 of the EC Treaty by the House of Lords (United Kingdom) for a preliminary ruling in the proceedings pending before that court, Regina v. Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez, on the interpretation of Article 119 of the EC Treaty and Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, 14.2.1976, p. 40) — the Court, composed of: G. C. Rodríguez Iglesias, President, P. J. G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann

(Presidents of Chambers), G. F. Mancini, (Rapporteur) J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet, R. Schintgen and K. M. Ioannou, Judges, G. Cosmas, Advocate-General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 9 February 1999, in which it has ruled:

1. *A judicial award of compensation for breach of the right not to be unfairly dismissed constitutes pay within the meaning of Article 119 of the EC Treaty.*

2. *The conditions determining whether an employee is entitled, where he has been unfairly dismissed, to obtain compensation fall within the scope of Article 119 of the Treaty. However, the conditions determining whether an employee is entitled, where he has been unfairly dismissed, to obtain reinstatement or re-engagement fall within the scope of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

3. *It is for the National Court, taking into account all the material legal and factual circumstances, to determine the point in time at which the legality of a rule to the effect that protection against unfair dismissal applies only to employees who have been continuously employed for a minimum period of two years is to be assessed.*

4. *In order to establish whether a measure adopted by a Member State has disparate effect as between men and women to such a degree as to amount to indirect discrimination for the purposes of Article 119 of the Treaty, the National Court must verify whether the statistics available indicate that a considerably smaller percentage of women than men is able to fulfil the requirement imposed by that measure. If that is the case, there is indirect sex discrimination, unless that measure is justified by objective factors unrelated to any discrimination based on sex.*

5. *If a considerably smaller percentage of women than men is capable of fulfilling the requirement of two years' employment imposed by the rule described in paragraph 3 of the operative part of this judgment, it is for the Member State, as the author of the allegedly discriminatory rule, to show that the said rule reflects a legitimate aim of its social policy, that that aim is unrelated to any discrimination based on sex, and that it could reasonably consider that the means chosen were suitable for attaining that aim.*

(1) OJ C 181, 14.6.1997.

JUDGMENT OF THE COURT

(First Chamber)

of 9 February 1999

in Case C-280/97 (reference for a preliminary ruling from the Finanzgericht Düsseldorf): ROSE Elektrotechnik GmbH & Co. KG v. Oberfinanzdirektion Köln (1)

(Combined nomenclature — Tariff headings — Junction box without cables or contacts)

(1999/C 100/07)

(Language of the case: German)

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

In Case C-280/97: Reference to the Court under Article 177 of the EC Treaty by the Finanzgericht Düsseldorf (Germany) in the proceedings pending before that court between ROSE Elektrotechnik GmbH & Co. KG and Oberfinanzdirektion Köln on the interpretation of the combined nomenclature as contained in Annex I to Commission Regulation (EC) No 1734/96 of 9 September 1996 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 238, 19.9.1996, p. 1) — the Court (First Chamber), composed of: D. A. O. Edward, acting for the President of the Chamber, L. Sevón (Rapporteur) and M. Wathelet, Judges; N. Fennelly, Advocate-General; R. Grass, Registrar, has given a judgment on 9 February 1999, in which it has ruled:

The combined nomenclature, as contained in Annex I to Commission Regulation (EC) No 1734/96 of 9 September 1996 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, must be interpreted as meaning that a product consisting of a rectangular container with a lid of coated die-cast aluminium (aluminium/silicon alloy with aluminium content predominant by weight), four steel connecting bolts and four earthing bolts of copper-plated steel (packed loose in the product and yet to be inserted into threaded holes provided for that purpose), which is intended to receive electrical terminals and holes enabling electrical circuits to be connected, must be classified, in accordance with Rule 2(a) of the General Rules for the interpretation of the combined nomenclature, under subheading 8536 90 85 as an incomplete junction box.

(1) OJ C 295, 27.2.1997.

JUDGMENT OF THE COURT

(First Chamber)

of 9 February 1999

in Case C-354/97 Commission of the European Communities v. French Republic [1]

(Failure by a Member State to fulfil its obligations — Directives 93/74/EEC, 94/28/EC, 94/39/EC, 95/9/EC and 95/10/EC)

(1999/C 100/08)

(Language of the case: French)

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

In Case C-354/97: Commission of the European Communities (Agent: Xavier Lewis) v. French Republic (Agents: Kareen Rispal-Bellanger and Christina Vasak) — Application for a declaration that, by failing to bring into force within the periods prescribed the laws, regulations and administrative provisions — including, where appropriate, sanctions — necessary to comply with:

— Council Directive 93/74/EEC of 3 September 1993 on feedingstuffs intended for particular nutritional purposes (OJ L 237, 22.9.1993, p. 23),

— Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ L 178, 12.7.1994, p. 66),

— Commission Directive 94/39/EC of 25 July 1994 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes (OJ L 207, 10.8.1994, p. 20),

— Commission Directive 95/9/EC of 7 April 1995 amending Directive 94/39/EC (OJ L 91, 22.4.1995, p. 35), and

— Commission Directive 95/10/EC of 7 April 1995 fixing the method of calculating the energy value of dog and cat food intended for particular nutritional purposes (OJ L 91, 22.4.1995, p. 39),

and/or by failing to notify the Commission thereof, the French Republic has failed to fulfil its obligations under Article 12 of Directive 93/74/EEC, Article 13 of Directive 94/28/EC, Article 2 of Directive 94/39/EC, Article 2 of Directive 95/9/EC and Article 3 of Directive 95/10/EC — the Court (First Chamber), composed of: P. Jann (President of the Chamber) D. A. O. Edward (Rapporteur) and, L. Sevón, Judges; D. Ruiz-Jarabo Colomer, Advocate-General; R. Grass, Registrar, has given a judgment on 9 February 1999, in which it:

1. *Declares that, by failing to adopt within the periods prescribed the laws, regulations and administrative provisions necessary to comply with:*

   — *Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes,*

   — *Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species,*

   — *Commission Directive 94/39/EC of 25 July 1994 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes,*

   — *Commission Directive 95/9/EC of 7 April 1995 amending Directive 94/39/EC, and*

   — *Commission Directive 95/10/EC of 7 April 1995 fixing the method of calculating the energy value of dog and cat food intended for particular nutritional purposes,*

   the French Republic has failed to fulfil its obligations under Article 12 of Directive 93/74/EEC, Article 13 of Directive 94/28/EC, Article 2 of Directive 94/39/EC, Article 2 of Directive 95/9/EC and Article 3 of Directive 95/10/EC;

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

[1] OJ C 357, 22.11.1997.

JUDGMENT OF THE COURT

(First Chamber)

of 9 February 1999

in Case C-383/97 (reference for a preliminary ruling from the Amtsgericht Nordhorn): Criminal proceedings against Arnoldus van der Laan [1]

(Labelling and presentation of foodstuffs — Article 30 of the EC Treaty and Directive 79/112/EEC — Dutch formed shoulder ham composed of shoulder ham pieces)

(1999/C 100/09)

(Language of the case: German)

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

In Case C-383/97: Reference to the Court under Article 177 of the EC Treaty by the Amtsgericht

Nordhorn (Germany) for a preliminary in the criminal proceedings before that court against Arnoldus van der Laan — on the interpretation of Article 30 of the EC Treaty — the Court (First Chamber), composed of: P. Jann (Rapporteur), (President of the Chamber) D. A. O. Edward and M. Wathelet, Judges, J. Mischo, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 9 February 1999, in which it has ruled:

It is contrary to Article 30 of the EC Treaty for national rules to prohibit, for reasons of consumer protection, the marketing of foodstuffs lawfully manufactured and marketed in another Member State, where consumers are protected by means of labelling in accordance with the provisions of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, in particular those concerning the description of products and the list of ingredients.

It is contrary to Articles 2 and 5(1) of Directive 79/112/EEC to use a trade description which does not make it possible for purchasers in the State where the product is sold to ascertain the true nature of the foodstuff.

Where the quantity of added water represents more than 5% by weight of the finished product, failure to include 'water' in the list of ingredients constitutes infringement of Article 3(1), read in conjunction with Article 6(5)(a), of Directive 79/112/EEC.

(1) OJ C 7, 10.1.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 February 1999

in Case C-366/97 (reference for a preliminary ruling from the Tribunale Civile e Penale, Florence): criminal proceedings against Massimo Romanelli and Paolo Romanelli (1)

(Freedom to provide services — Credit institutions — Repayable funds)

(1999/C 100/10)

(Language of the case: Italian)

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

In Case C-366/97: reference to the Court under Article 177 of the EC Treaty from the Tribunale Civile e Penale, Florence (Italy), for a preliminary ruling in the criminal proceedings pending before that court against Massimo Romanelli, Paolo Romanelli — on the interpretation of Article 3 of the Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ L 386, 30.12.1989, p. 1) — the Court (Sixth Chamber), composed of: P. J. G. Kapteyn (Rapporteur), President of the Chamber, G. Hirsch, J. L. Murray, H. Ragnemalm and R. Schintgen, Judges; N. Fennelly, Advocate-General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 11 February 1999, in which it has ruled:

The term 'other repayable funds' in Article 3 of the Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC refers not only to financial instruments which possess the intrinsic characteristic of repayability, but also to those which, although not possessing that characteristic, are the subject of a contractual agreement to repay the funds paid.

(1) OJ C 370, 6.12.1997.

JUDGMENT OF THE COURT

of 23 February 1999

in Case C-42/97: European Parliament v. Council of the European Union (1)

(Council Decision 96/664/EC — Promotion of linguistic diversity of the Community in the information society — Legal basis)

(1999/C 100/11)

(Language of the case: French)

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

In Case C-42/97: European Parliament (Agents: Johann Schoo and Norbert Lorenz) v. Council of the European Union (Agents: Bjarne Hoff-Nielsen and Frédéric Anton) — Application for annulment of Council Decision 96/664/EC of 21 November 1996 on the adoption of a multiannual programme to promote linguistic diversity of the Community in the information society (OJ L 306, 28.11.1996, p. 40) — the Court, composed of: P. J. G. Kapteyn, President of the Fourth and Sixth Chambers, actig as President, G. Hirsch and P. Jann (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, L. Sevón (Rapporteur), M. Wathelet, R. Schintgen and K. M. Ioannou, Judges;

Advocate-General: A. La Pergola, Registrar: H. von Holstein, Assistant Registrar, has given a judgment on 23 February 1999, in which it:

1. *Dismisses the application;*

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

(1) OJ C 74, 8.3.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 25 February 1999

in Case C-86/97 (reference for a preliminary ruling from the Bundesfinanzhof): Reiner Woltmann, trading as 'Trans-Ex-Import' v. Hauptzollamt Potsdam (1)

(Theft of goods — Customs duties — Remission — Special situation)

(1999/C 100/12)

(Language of the case: German)

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

In Case C-86/97: reference to the Court under Article 177 of the EC Treaty from the Bundesfinanzhof, Germany, for a preliminary ruling in the proceedings pending before that court between Reiner Woltmann, trading as 'Trans-Ex-Import', and Hauptzollamt Potsdam — on the interpretation of Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1) — the Court (Sixth Chamber), composed of: G. Hirsch, President of the Second Chamber, acting as President of the Sixth Chamber, G. F. Mancini, J. L. Murray (Rapporteur), H. Ragnemalm and R. Schintgen, Judges; G. Cosmas, Advocate-General; R. Grass, Registrar, has given a judgment on 25 February 1999, in which it has ruled:

Factors which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, within the meaning of Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code exist, necessitating examination of the file by the Commission, where, having regard to the objective of fairness underlying Article 239 of Regulation (EEC) No 2913/92 factors liable to place the applicant in an exceptional situation as compared with other operators engaged in the same business are found to exist and the conditions laid down in Article 900(1)(a) of Regulation No 2454/93, for remission of customs duties in favour of an applicant, are not fulfilled.

(1) OJ C 131, 26.4.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 25 February 1999

in Case C-195/97: Commission of the European Communities v. Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 91/676/EEC)

(1999/C 100/13)

(Language of the case: Italian)

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

In Case C-195/97: Commission of the European Communities (Agent: Paolo Stancanelli) v. Italian Republic (Agent: Professor Umberto Leanza, assisted by Pier Giorgio Ferri) — application for a declaration that, by failing to adopt and communicate within the prescribed period the provisions necessary to transpose into domestic law Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1), and in particular by failing to comply with the obligation laid down in Article 3(2) of the Directive, the Italian Republic has failed to fulfil its obligations under Community law — the Court (Sixth Chamber), composed of: P. J. G. Kapteyn, President of the Chamber, G. F. Mancini, J. L. Murray (Rapporteur), H. Ragnemalm and K. M. Ioannou, Judges; P. Léger, Advocate-General; R. Grass, Registrar, has given a judgment on 25 February 1999, in which it:

1. *Declares that, by failing to adopt and communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to implement Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, and in particular by failing to comply with the obligation laid down in Article 3(2) thereof, the Italian Republic has failed to fulfil its obligations under Article 12(1) thereof.*

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

(1) OJ C 212, 12.7.1997.

Action brought on 5 February 1999 by the Commission of the European Communities against the Council of the European Union

(Case C-29/99)

(1999/C 100/14)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 5 February 1999 by the Commission of the European Communities, represented by Thomas F. Cusack and Lena Ström, Legal Advisers, acting as agents, with an address for service in Luxembourg at the Office of Carlos Gómez de la Cruz, member of the Legal Service of the Commission, Centre Wagner.

The applicant claims that the Court should:

— order that the final paragraph of the Declaration by the European Atomic Energy Community according to the provisions of Article 30(4)(iii) of the Convention on Nuclear Safety attached to the Council's Decision of 7 December 1998 be annulled;

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

Pleas in law and main arguments adduced in support

By limiting the terms of the final paragraph of the Declaration attached to its Decision of 7 December 1998 in relation to Community competence, the Council seeks to establish that the competence of the Community in the fields covered by the Convention on Nuclear Safety is limited to Article 15 and Article 16(2) and that it does not extend to the fields covered by Articles 1 to 5, Article 7, Article 14, Article 16(1) and (3) and Articles 17 to 19.

This view is, it is submitted, wrong in law in that it is:

— contrary to the Treaty; and

— inconsistent with the legislative action taken over the years by the Council itself, on proposals from the Commission.

Reference for a preliminary ruling by the House of Lords, by order of that court of 1 February 1999, in the case of Commissioners of Customs and Excise against Primback Ltd

(Case C-34/99)

(1999/C 100/15)

Reference has been made to the Court of Justice of the European Communities by an order of the House of Lords of 1 February 1999, which was received at the Court Registry on 8 February 1999, for a preliminary ruling in the case of Commissioners of Customs and Excise against Primback Ltd, on the following questions:

1. Where a retailer offers, at a single price, goods and the option of a period of extendes credit to pay that price — the credit to be provided by a person other than the retailer, and at no additional cost to the customer — what is the taxable amount for which the retailer must account in respect of the goods supplied, having regard to Articles 11A(1)(a) and 13B(d)(1) of Council Directive 77/388/EEC (1)? In particular, is the taxable amount:

   (a) the full amount payable by the customer;

   (b) the full amount payable by the customer, less the value of the credit;

   (c) (if different from (b) above) the amount actually received by the retailer; or

   (d) an amount calculated on some other, and if so what, basis?

2. If the taxable amount is the full amount payable by the customer, less the value of the credit (see question 1(b) above), how is that credit to be valued?

3. Is the anwer to question 1 above affected by the fact that:

   (a) the supply of goods to the customer is described as being on 'interest free' credit terms;

   (b) the customer signs a loan agreement with a finance house at the time of the sale transaction, the terms of which include:

      (i) a promise by the finance house to pay the retailer a sum equal to the loan (which was for amount equal to the advertised price of the goods);

      (ii) a statement that the interest rate applying to the loan is '0 %'; and

      (iii) an authorisation by the customer to the finance house for it to pay the full amount of the loan to the retailer and an agreement by the finance house to do so; and

   (c) as a result of a separate agreement between the retailer and the finance house (the existence and terms of which are not disclosed to the customer), the sum received by the retailer is a sum less than the full amount of the advertised price for the goods?

(1) Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

Reference for a preliminary ruling by the Pretura Circondariale di Pinerolo (TO) by order of 13 January 1999 in the criminal proceedings against Manuele Arduino, with the intervention of Diego Dessi, plaintiff in the civil action, and the parties with civil liability, Giovanni Bertolotto and Compagnia Assicuratrice RAS SpA, having its registered office in Milan

(Case C-35/99)

(1999/C 100/16)

Reference has been made to the Court of Justice of the European Communities by order of 13 January 1999 from the Pretura Circondariale di Pinerolo (TO) (District Magistrate's Court, Pinerolo (Turin)), which was received at the Court Registry on 9 February 1999, for a preliminary ruling in the criminal proceedings against Manuele Arduino, with the intervention of Diego Dessi, plaintiff in the civil action, and the parties with civil liability, Giovanni Bertolotto and Compagnia Assicuratrice RAS SpA, having its registered office in Milan, on the following questions:

(a) Does the decision of the CNF (1), approved by Ministerial Decree No 585/94, fixing binding tariffs for the professional activity of lawyers, come within the scope of the prohibition in Article 85(1) of the EC Treaty?

If the answer to (a) is in the affirmative:

(b) Does the case none the less correspond to one of the situations envisaged in Article 85(3) of the Treaty to which that prohibition does not apply?

(1) Consiglio Nazionale Forense (National Legal Council).

Reference for a preliminary ruling by the Tribunal de Première Instance, Liège (Seventh Chamber), by judgment of that court of 8 February 1999 in the case of Idéal Tourisme SA against the Belgian State

(Case C-36/99)

(1999/C 100/17)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Première Instance (Court of First Instance), Liège (Seventh Chamber) of 8 February 1999, received at the Court Registry on 10 February 1999, for a preliminary ruling in the case of Idéal Tourisme against the Belgian State on the following questions:

Does Council Directive 77/388/EEC (1), and in particular Article 12(3) and Article 28(3)(b) thereof, permit Member States to introduce, to the detriment of motor-coach passenger transport undertakings, discrimination whixh is counter to the principles of equal treatment and non-discrimination contained in Community law?

Can a VAT regime which favours a given sector of economic activity, such as the one in issue in the present case, constitute State aid within the meaning of Article 92 of the Treaty of Rome, even where it does not exclusively protect the interests of national industry?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

Appeal brought on 12 February 1999 by Sadam Zuccherifici Divisione della SECI SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA against the order made on 8 December 1998 by the Fourth Chamber (Extended Composition) of the Court of First Instance of the European Communities in Case T-39/98 Sadam Zuccherifici Divisione della SECI SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA v. Council of the European Union

(Case C-41/99 P)

(1999/C 100/18)

An appeal has been brought before the Court of Justice of the European Communities on 12 February 1999 by Sadam Zuccherifici Divisione della SECI SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA, represented by Vincenzo Cerulli Irelli, Gualtiero Pittalis and Giancarlo Fanzini, of the Bologna Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 22 Rue Marie-Adélaïde, against the order made on 8 December 1998 by the Fourth Chamber (Extended Composition) of the Court of First Instance of the European Communities in Case T-39/98 Sadam Zuccherifici Divisione della SECI SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA v. Council of the European Union.

The appellants claim that the Court should set aside the Court of First Instance's order of 8 December 1998 in Case T-39/98 by declaring the application to be admissible and refer the case back to the Court of First Instance for a decision on the substance.

Pleas in law and main arguments adduced in support

The contested regulation [1] has direct, not indirect, detrimental effects on the four plants of the appellant sugar-producing undertakings operating in southern Italy.

Those four plants are effectively the sole specific addressees of Article 2 of Regulation (EC) No 2613/97 and have individually been adversely affected.

It follows that the application must be declared admissible.

[1] Article 2 of Council Regulation (EC) No 2613/97 of 15 December 1997 authorising Portugal to grant aid to sugar beet producers and abolishing all State aid from the 2001/2002 marketing year (OJ L 353, 24.12.1997, p. 3).

Reference for a preliminary ruling by the Supremo Tribunal Administrativo, Second Chamber, by judgment of that court of 13 January 1999, in the case of Fábrica de Queijo Eru Portuguesa Lda and Tribunal Técnico de 2a Instância

(Case C-42/99)

(1999/C 100/19)

Reference has been made to the Court of Justice of the European Communities by an judgment of the Second Chamber of the Supremo Tribunal Administrativo (Supreme Administrative Court) of 13 January 1999, which was received at the Court Registry on 12 February 1999, for a preliminary ruling in the case of Fábrica de Queijo Eru Portuguesa Lda and Tribunal Técnico de 2a Instância, on the following questions:

1. Are the Explanatory Notes to the combined nomenclature [1], where they state that caseins containing by weight more than 15 % water are included under heading 0406 (cheese and curd) contrary to Commission Regulation (EEC) No 3174/88 [2] according to which (Chapter IV) they are to classified under heading 0406, as cheese, provided that:

   (a) they have a fat content of 5 % or more;

   (b) they have a dry matter content, by weight, of at least 70 % but not exceeding 85 %; and

   (c) they are moulded or capable of being moulded?

2. Having regard to Commission Regulation (EEC) No 3174/88 are the imported goods (which have the following composition: 54 % water, 0,9 % fat, 5,7 % phosphorus, 2 % salt and casein) to be classified under customs heading 3501 10 90 0 00 000 as casein — other — or under customs heading 0406 90 11 01 0 000 as other cheeses?

[1] OJ C 342, 5.12.1994, p. 1.
[2] OJ L 298, 31.10.1998, p. 1.

Reference for a preliminary ruling by the Conseil Supérieur des Assurances Sociales du Grand-Duché de Luxembourg, by judgment of that body of 10 February 1999 in the case of Ghislain Leclere and Alina Deaconescu against Caisse Nationale des Prestations Familiales

(Case C-43/99)

(1999/C 100/20)

Reference has been made to the Court of Justice of the European Communities by judgment of the Conseil

Supérieur des Assurances Sociales du Grand-Duché de Luxembourg (Supreme Council of Social Insurance of the Grand Duchy of Luxembourg), received at the Court Registry on 16 February 1999, for a preliminary ruling in the case of Ghislain Leclere and Alina Deaconescu against Caisse Nationale des Prestations Familiales (National Family Benefits Fund) on the following questions:

1. Are Articles 1(u)(i) and 10a and Annexes II and IIa to Regulation (EEC) No 1408/71 ([1]), which lay down the principle of the non-transferability of childbirth and maternity allowances, consistent with Article 48 and 51 of the EC Treaty?

2. Is Regulation (EEC) No 1408/71 to be interpreted as meaning that, in respect of dependant children, it grants workers in receipt of an invalidity pension who reside in a different country from that which pays the invalidity pension, family allowances only, to the exclusion of the child-raising allowance which is not granted by reference to the number of children?

3. Is Article 73 of Regulation (EEC) No 1408/71 to be interpreted as meaning that the recipient of an invalidity pension who continues to make compulsory sickness insurance contributions in the country which provides the pension, may, notwithstanding his pension, be considered in that country as an employee who is entitled to receive family benefits, including the child-raising allowance, and — in the event that the non-transferability clause is held to be incompatible with the Treaty — childbirth allowances?

4. Does the concept of 'worker' within the meaning of Regulation (EEC) No 1612/68 ([2]) include the recipient of an invalidity penison who resides in a different country from that which provides the pension?

5. Is Article 7 of Regulation (EEC) No 1612/68 to be interpreted as meaning that the recipient of an invalidity pension or his spouse may, on the basis of that article, enjoy social advantages which are denied him by Regulation (EEC) No 1408/71, notwithstanding the principle of non-transferability laid down therein in the event that that principle is found by the Court to be compatible with the EC Treaty?

([1]) 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 L 149, 5.7.1971, p. 2).

([2]) Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2).

Action brought on 16 February 1999 by the Commission of the European Communities against the French Republic

(Case C-44/99)

(1999/C 100/21)

An action against the French Republic was brought before the Court of Justice of the European Communities on 16 February 1999 by the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, 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:

1. declare that, by incorrectly applying the provisions of Article 68(1) and Article 71(1)(b)(ii) of Council Regulation No 1408/71 ([1]) to employed persons other than frontier workers who, during their last employment, were residing in a Member State other than the competent Member State, and, in particular, by calculating unemployment benefits on the basis of the normal wage or salary corresponding, in the place where the unemployed person is residing or staying, to an equivalent or similar employment to his last employment in the territory of another Member State, and not on the basis of the wage or salary actually received by the person concerned in his last employment in the Member State where he was working immediately prior to becoming unemployed, the French Republic has failed to fulfil its obligations under Article 68(1) and Article 71(1)(b)(ii) of Council Regulation No 1408/71 and under Article 48 and Article 51 of the EC Treaty;

2. order the French Republic to pay the costs.

Pleas in law and main arguments adduced in support

The French institutions have conferred entitlement to unemployment benefit on persons other than frontier workers who are regarded as employed and who, during their last employment, were risiding in a Member State (France) other than the competent Member State (Germany), but who cannot, nevertheless, be regarded as frontier workers.

For the purposes of calculating that benefit, the competent authority has taken as the reference wage or salary a wage or salary corresponding to that which the person concerned would have received if he had worked in France in an employment equivalent to his employment in

Germany, and not that received by him in his last employment in Germany.

That method of calculation clearly penalises the worker concerned on account of the fact that he is resident in a Member State other than that in which he has worked, and is incompatible with the main objective of Regulation (EEC) No 1408/71, which is to facilitate freedom of movement for workers.

(1) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of security schemes to employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

Action brought on 16 February 1999 by the Commission of the European Communities against the French Republic

(Case C-45/99)

(1999/C 100/22)

An action against the French Republic was brought before the Court of Justice of the European Communities on 16 February 1999 by the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, 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, alternatively to communicate to the Commission, the laws, regulations and administrative measures necessary in order fully to comply with Council Directive 94/33/EC of 22 June 1994 on the protection of young persons at work (1), the French Republic has failed to fulfil its obligations under the EC Treaty and under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments adduced in support

Under Article 189 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. The time-limit in the present case expired on 22 June 1996 without the French Republic having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

(1) OJ L 216, 20.8.1994, p. 12.

Action brought on 16 February 1999 by the Commission of the European Communities against the French Republic

(Case C-46/99)

(1999/C 100/23)

An action against the French Republic was brought before the Court of Justice of the Euroepan Communities on 16 February 1999 by the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, 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, alternatively to communicate to the Commission, the laws, regulations and administrative measures necessary in order fully to comply with Council Directive 93/104/EEC of 23 November 1993 concerning certain aspects of the organisation of working time (1), the French Republic has failed to fulfil its obligations under the Treaty and under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments adduced in support

Under Article 189 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. The time-limit in the present case expired on 23 November 1996 without the French Republic having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

(1) OJ L 307, 13.12.1993, p. 18.

Action brought on 16 February 1999 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-47/99)

(1999/C 100/24)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 16 February 1999 by the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, 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, alternatively to communicate to the Commission, the laws, regulations and administrative measures necessary in order fully to comply with Council Directive 94/33/EC of 22 June 1994 on the protection of young persons at work [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty and under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments adduced in support

Under Article 189 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. The time-limit in the present case expired on 22 June 1996 without the Grand Duchy of Luxembourg having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

[1] OJ L 216, 20.8.1994, p. 12.

Action brought on 16 February 1999 by the Commission of the Europan Communities against the Grand Duchy of Luxembourg

(Case C-48/99)

(1999/C 100/25)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 16 February 1999 by the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, 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, alternatively to communicate to the Commission, the laws, regulations and administrative measures necessary in order fully to comply with Council Directive 93/104/EEC of 23 November 1993 concerning certain aspects of the organisation of working time [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Treaty and under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments adduced in support

Under Article 189 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. The time-limit in the present case expired on 23 November 1996 without the Grand Duchy of Luxembourg having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

[1] OJ L 307, 13.12.1993, p. 18.

Appeal brought on 12 February 1999 by Associazione Nazionale Bieticoltori (ANB), Francesco Coccia and Vincenzo Di Giovine against the order made on 8 December 1998 by the Fourth Chamber (Extended Composition) of the Court of First Instance of the European Communities in Case T-38/98 Associazione Nazionale Bieticoltori (ANB), Francesco Coccia and Vincenzo Di Giovine v. Council of the European Union

(Case C-49/99 P)

(1999/C 100/26)

An appeal has been brought before the Court of Justice of the European Communities on 12 February 1999 by Associazione Nazionale Bieticoltori (ANB), Francesco Coccia and Vincenzo Di Giovine, represented by Luigi Filippo Paolucci and Gian Piero Galletti, of the Bologna Bar, with an address for service in Luxembourg at the

Chambers of Arsène Kronshagen, 22 Rue Marie-Adélaïde, against the order made on 8 December 1998 by the Fourth Chamber (Extended Composition) of the Court of First Instance of the European Communities in Case T-38/98 Associazione Nazionale Bieticoltori (ANB), Francesco Coccia and Vincenzo Di Giovine v. Council of the European Union.

The appellants claim that the Court should set aside the Court of First Instance's order of 8 December 1998 in Case T-39/98 by declaring the application to be admissible and refer the case back to the Court of First Instance for a decision on the substance.

Pleas in law and main arguments adduced in support

The legal effects of the contested regulation [1] are direct inasmuch as its operative provision does not require any subsequent measure of implementation by a Community institution or a national authority.

That provision adversely affects the appellants 'individually' and in a manner which distinguishes them from any other producer.

It follows that the application must be declared admissible.

[1] Council Regulation (EC) No 2613/97 of 15 December 1997 authorising Portugal to grand aid to sugar beet producers and abolishing all State aid from the 2001/2002 marketing year (OJ L 353, 24.12.1997, p. 3).

Reference for a preliminary ruling from the Tribunal de Grande Instance (First Chamber), Paris, by judgment of that court of 12 January 1999 in the case of Jean-Marie Podesta v. Caisse de Retraite par répartition des Ingénieurs Cadres & Assimilés (CRICA), Association Générale des Institutions de Retraite des Cadres (AGIRC), Union Interprofessionnelle de Retraite de l'Industrie et du Commerce (UIRIC), Caisse Générale Interprofessionnelle de Retraite pour Salariés (CGIS), Association des Régimes de Retraite Complémentaire (ARRCO)

(Case C-50/99)

(1999/C 100/27)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Grande Instance (Regional Court) (First Chamber), Paris, of 12 January 1999, which was received at the Court Registry on 16 February 1999, for a preliminary ruling in the case of Jean-Marie Podesta v. Caisse de Retraite par répartition des Ingénieurs Cadres & Assimilés (CRICA), Association Générale des Institutions de Retraite des Cadres (AGIRC), Union Interprofessionnelle de Retraite de l'Industrie et du Commerce (UIRIC), Caisse Générale Interprofessionnelle de Retraite pour Salariés (CGIS), Association des Régimes de Retraite Complémentaire (ARRCO) on the following question:

Is Article 119 of the Treaty of Rome, which asserts the principle of equal pay for men and women, applicable to the supplementary retirement pension schemes of AGIR and ARRCO and does it prohibit them from discriminating between men and women in respect of the age at which they are entitled to a survivor's pension following the death of their spouse?

Reference for a preliminary ruling from the Tribunale Amministrativo per la Basilicata (Administrative Tribunal of the Basilicata region) by order of that court of 22 October 1998, in the case of Massimo Triumbari v. Questore della provincia di Potenza (Chief of Police of the province of Potenza) and the Minister of Finance and the Minister of the Interior

(Case C-51/99)

(1999/C 100/28)

Reference has been made to the Court of Justice of the European Communities by order of 22 October 1998, which was received at the Court Registry on 16 February 1999, for a preliminary ruling in the case of Massimo Triumbari v. Questore della provincia di Potenza and the Minister of Finance and the Minister of the Interior on the following questions:

Do the Treaty provisions on the provision of services preclude rules such as the Italian betting legislation in view of the social policy concerns and of the concern to prevent fraud that justify it?

References for preliminary rulings from the Cour du Travail de Liège (13th Chamber) by judgments of that court of 2 February 1999 in the cases of Office National des Pensions v. Gioconda Camarotto and Office National des Pensions v. Giuseppina Vignone

(Case C-52/99 and C-53/99)

(1999/C 100/29)

Reference has been made to the Court of Justice of the European Communities by judgments of the 13th Chamber of the Cour du Travail (Higher Labour Court), Liège, of 2 February 1999, which were received at the

Court Registry on 17 February 1999, for preliminary rulings in the cases of Office National des Pensions v. Gioconda Camarotto and Office National des Pensions v. Giuseppina Vignone on the following questions:

1. Does Article 95a of Council Regulation (EEC) No 1408/71 [1] as amended by Council Regulation (EEC) No 1248/92, refer solely to recipients of pensions where the decision granting the pension was final at the time of the entry into force of the amendment, or does it relate also to recipients of pensions who before the entry into force of the amendments introduced by the new regulation had already brought proceedings before a national court seeking to obtain precisely the right to the pension by contesting the application of the national rules against overlapping, a final decision in those proceedings not yet having been given at the time of the entry into force of the new provisions?

2. If Article 95a applies to all recipients without distinction, must the application referred to in Article 95a(4) be made to the competent social security institution in accordance with the formalities required by national legislation for the bringing of an application for review, or may it be made to the court before which the dispute has been brought in accordance with the applicable rules of procedure, and in the latter case must the period of two years referred to in Article 95a(5) and (6) likewise be complied with?

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

Reference for a preliminary ruling by the French Conseil d'Etat by decision of 6 January 1999 in the case of Association 'Eglise de Scientologie de Paris' and Scientology International Reserves Trust v. French Republic

(Case C-54/99)

(1999/C 100/30)

Reference has been made to the Court of Justice of the European Communities by decision of 6 January 1999 by the French Conseil d'Etat, which was received at the Court Registry on 16 February 1999, for a preliminary ruling in the case of Association 'Eglise de Scientologie de Paris' and Scientology International Reserves Trust v. French Republic on the following question:

Do the provisions of Article 73d of the Treaty of 25 March 1957 establishing the European Community, as amended, according to which the prohibition of all restrictions on movements of capital between Member States is without prejudice to the right of Member States 'to take measures which are justified on grounds of public policy or public security', allow a Member State, in derogation from the system of full freedom or the declaration system applicable to foreign investments within its territory, to maintain a system of prior authorisation for such investments as may adversely affect public order, public health or public security, it being specified that this authorisation is deemed to have been obtained one month after receipt of the investment declaration submitted to the Minister unless the latter, within the same period, declares that the transaction in question has been deferred?

Action brought on 18 February 1999 by the Commission of the European Communities against the French Republic

(Case C-55/99)

(1999/C 100/31)

An action against the French Republic was brought before the Court of Justice of the European Communities on 18 February 1999 by the Commission of the European Communities, represented by Richard Wainwright, Principal Legal Adviser, and Olivier Couvert-Castéra, a national civil servant on secondment to its Legal Service, 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 establishing, in Decree No 96—351 of 19 April 1996 [1], a procedure for the registration of medical reagents, and by imposing in that decree the obligation to state the registration number on the external packaging and the notice accompanying each reagent, the French Republic has failed to fulfil its obligations under Article 30 of the EC Treaty;

— order the French Republic to pay the costs.

Pleas in law and main arguments adduced in support

1. In the Commission's view, the application to all reagents covered by Decree No 96—351 of 19 April 1996, without distinction as to the level of the

potential risk to public health involved in the event of their proving to be unreliable, of a registration procedure which necessitates the compilation of a substantial amount of documentation by the manufacturer, the importer or the distributor and which delays the placing of the reagent on the market, constitutes a measure having equivalent effect to a quantitative restriction on imports which, having regard to its disproportionate nature, is not justified on grounds of the protection of health and life of humans under Article 36 of the EC Treaty.

2. Article 5 of the Decree provides that the accompanying notice, the primary packaging and the external packaging of each reagent are to state the registration with the medicinal products agency. The Commission considers that that requirement constitutes an unjustified restriction on intra-Community trade within the meaning of Article 30 of the EC Treaty.

(1) JORF of 26.4.1996, p. 6386.

Reference for a preliminary ruling by the Tribunal Administratif de Paris by decision of 9 December 1998 in the case of Gascogne Limousin Viandes SA v. Office National Interprofessionnel des Viandes, de l'Élevage et de l'Aviculture (OFIVAL)

(Case C-56/99)

(1999/C 100/32)

Reference has been made to the Court of Justice of the European Communities by decision of 9 December 1998 by the Tribunal Administratif de Paris (Administrative Court, Paris), which was received at the Court Registry on 19 February 1999, for a preliminary ruling in the case of Gascogne Limousin Viandes SA v. Office National Interprofessionel des Viandes, de l'Élevage et de l'Aviculture (OFIVAL) on the following question:

Do the provisions in Article 40 of the Treaty of 25 March 1957 preclude the adoption of aid measures benefiting products distinguished according to criteria established at national level where those products may be marketed in all of the Community Member States?

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 February 1999

in Case T-86/96, Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen v. Commission of the European Communities (1)

(State aid — Air transport — Tax measure — Action for annulment — Inadmissible)

(1999/C 100/33)

(Language of the case: German)

In Case T-86/96: Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen, established in Bonn and comprising the following members: Aero Lloyd Flugreisen GmbH & Co. Luftverkehrs-KG, established in Oberursel (Germany), Air Berlin GmbH & Co. Luftverkehrs KG, established in Berlin, Condor Flugdienst GmbH, established in Kelsterbach (Germany), Germania Fluggesellschaft mbH, established in Berlin, Hapag-Lloyd Fluggesellschaft mbH, established in Langenhagen (Germany), LTU Lufttransport Unternehmen GmbH & Co. KG, established in Düsseldorf (Germany), and Hapag-Lloyd Fluggesellschaft mbH, established in Langenhagen, represented by Gerrit Schohe, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the Chambers of Marc Baden, 34b Rue Philippe II, v. Commission of the European Communities (Agents: Anders Jessen, Paul Nemitz, Hans-Jürgen Rabe and Georg M. Berrisch) — application for annulment of Commission Decision 96/369/EC of 13 March 1996 concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ L 146, 20.6.1996, p. 42) — the Court of First Instance (Fifth Chamber, Extended Composition), composed of: J. D. Cooke, President, R. García-Valdecasas, P. Lindh, J. Pirrung and M. Vilaras, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 11 February 1999, in which it:

1. *Dismisses the action as inadmissible.*

2. *Orders the applicants jointly and severally to pay the costs.*

(1) OJ C 233, 10.8.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 February 1999

in Case T-244/97: Chantal Mertens v. Commission of the European Communities [1]

(Officials — Competitions — Conditions for admission — Evidence)

(1999/C 100/34)

(Language of the case: French)

In Case T-244/97: Chantal Mertens, an official of the Commission of the European Communities, residing at Zellik (Belgium), represented by Lucas Vogel, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Christian Kremer, 8-10 Rue Mathias Hardt, v. Commission of the European Communities (Agent: Christine Berardis-Kayser) — application for annulment of the implicit decision rejecting the complaint lodged by the applicant on 28 January 1997 and, in so far as may be necessary, of the decisions of the selection board in competition COM/C/3/95, notified to the applicant on 13 January and 22 August 1997, refusing to include her name in the list of suitable candidates for that competition, together with annulment of the decision notified to the applicant on 9 June 1997 by the Director-General of the Directorate-General for Personnel and Administration — the Court of First Instance (Third Chamber), composed of: M. Jaeger, President, and K. Lenaerts and J. Azizi, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 11 February 1999, in which it:

1. *Dismisses the application.*

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

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[1] OJ C 331, 1.11.1997.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 February 1999

in Case T-21/98: Carlos Alberto Leite Mateus v. Commission of the European Communities [1]

(Officials — Compatibility of the status of an official with that of a member of the temporary staff — Resignation — Obligation to state reasons — Call for expressions of interest)

(1999/C 100/35)

(Language of the case: French)

In Case T-21/98: Carlos Alberto Leite Mateus, an official of the Commission of the European Communities, represented by Jean-Noël Louis and Françoise Parmentier, of the Brussels Bar, with an address for service in Luxembourg at the Offices of Fiduciaire Myson SARL, 30 Rue de Cessange, v. Commission of the European Communities (Agents: Gianluigi Valsesia and Julian Currall) — application for annulment of the Commission's decision of 11 March 1997 rejecting the candidature of the applicant, an official of the institution, for a post advertised in the context of a procedure for the selection of temporary staff — the Court of First Instance (Third Chamber), composed of: M. Jaeger, President, and K. Lenaerts and J. Azizi, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 11 February 1999, in which it:

1. *Annuls the Commission's decision of 11 March 1997 rejecting the candidature of Carlos Alberto Leite Mateus for the vacant post advertised under reference No NPPR/2002/96.*

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

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[1] OJ C 94, 28.3.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 February 1999

in Case T-79/98: Manuel Tomás Carrasco Benítez v. European Agency for the Evaluation of Medicinal Products (EMEA) [1]

(Temporary staff — Grading — Professional experience — Manifest error of assessment — Acquired rights — Duty to have regard for the welfare and interests of staff — Reasonable career prospects — Equality of treatment and non-discrimination — Absence of a statement of reasons)

(1999/C 100/36)

(Language of the case: French)

In Case T-79/98: Manuel Tomás Carrasco Benítez, a member of the temporary staff of the European Agency for the Evaluation of Medicinal Products, residing in London, represented by Jean-Noël Louis and Françoise Parmentier, of the Brussels Bar, with an address for service in Luxembourg at the Offices of Fiduciaire Myson SARL, 30 Rue de Cessange, v. European Agency for the Evaluation of Medicinal Products (EMEA) (Agents: Marino Riva, Frances Nuttall, Denis Waelbroeck and Olivier Speltdoorn) — application for annulment of the decision fixing the applicant's grade as grade A 7, step 3, upon his engagement as a member of the temporary staff — the Court of First Instance (Third Chamber), composed of: M. Jaeger, President, and K.- Lenaerts and J. Azizi, Judges; J. Palacio González, Administrator, for the

Registrar, has given a judgment on 11 February 1999, in which it:

1. *Dismisses the application.*

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

(1) OJ C 234, 25.7.1998.

Action brought on 19 January 1999 by Marie-Jeanne Kraus against the Commission of the European Communities

(Case T-14/99)

(1999/C 100/37)

(Language of the case: French)

An action against the Commission of European Communities was brought before the Court of First Instance of the European Communities on 19 January 1999 by Marie-Jeanne Kraus, residing in Luxembourg, represented by Lex Thielen, of the Luxembourg Bar, with an address for service at his Chambers, 10 Rue Willy Goergen, Luxembourg.

The applicant claims that the Court should:

— annul the decisions requiring the applicant to repay the household allowance received by her during the period from November 1986 to February 1998;

— alternatively, annul the decisions requiring the applicant to repay the household allowance received by her during the period from November 1986 to October 1995;

— order the defendant to pay the costs.

Pleas in law and main arguments adduced in support:

The applicant contests the appointing authority's decision to recover the sum of LUF 793 292 allegedly paid to her in error by way of household allowance during the period from her entry into service in November 1986 to February 1998.

The applicant denies that she was aware of the irregularity of the payments in issue, and further denies that they were manifestly irregular. In her view, the administration committed its error without her having at any time been aware of it; nor could she reasonably have been expected to have known of it.

Consequently, she pleads infringement, in the present case, of Article 85 of the Staff Regulations.

Action brought on 21 January 1999 by Dansk Rørindustri A/S (Starpipe) against the Commission of the European Communities

(Case T-21/99)

(1999/C 100/38)

(Language of the case: Danish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 January 1999 by Dansk Rørindustri A/S (Starpipe), Fredericia, represented by Karen Dyekjær-Hansen and Katja Høegh, of the Copenhagen 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 Article 1 of Commission Decision C(1998) 3117 of 21 October 1998 (1), to the extent to which it concerns the applicant, in so far as it finds that the applicant participated in 'a complex of agreements and concerted practices' which lasted without interruption 'from about November/December 1990 to at least March or April 1996';

— annul, in relation to the applicant, the final indent in Article 1 of the Commission Decision, which states that the applicant, in conjunction with the other producers, 'in order to protect the cartel from competition from the only substantial non-member, Powerpipe AB (agreed) and (took) concerted measures to hinder its commercial activity, damage its business or drive it out of the market altogether';

— reduce the fine imposed on Dansk Rørindustri A/S;

— order the Commission to pay the costs of Dansk Rørindustri A/S.

Pleas in law and main arguments adduced in support

A fine of ECU 1 475 000 was imposed on Dansk Rørindustri A/S (hereinafter 'Starpipe') by Article 3(c) of the contested Commission Decision. The fine was imposed primarily on the ground that Starpipe, together with a number of other participants in the so-called 'pipe cartel', participated 'in a complex of agreements and concerted practices in the pre-insulated pipes sector which originated in about November/December 1990 among the four Danish producers, was subsequently extended to other national markets and ... by late 1994 consisted of a comprehensive cartel covering the whole of the common market', which, so far as Starpipe is concerned, is deemed to have lasted until 'at least March or April 1996'.

The applicant acknowledges that it infringed Article 85 of the Treaty in so far as the Decision states that the producers divided national markets on the basis of quotas, but not in so far as it states that the producers also eventually divided up the European market among themselves. The applicant further acknowledges the infringement confirmed in the Decision in so far as it is stated that the producers allocated national markets to particular producers and arranged the withdrawal of other producers, agreed on prices, and ensured allocation of individual projects to designated producers by manipulating the bidding procedure for those projects.

So far as the temporal and geographical scope of the acknowledged infringement is concerned, the applicant can admit only that it participated in the operation of the cartel relating to the Danish market during the period from November/December 1990 to mid-1993, in limited anti-competitive activities on the German market, and in one single instance on the Italian market, after which Starpipe's involvement in the operation of the cartel ceased entirely for one year before subsequently resuming in the late summer of 1994.

The applicant denies that it participated in concerted measures to protect the cartel against competition from the only significant outside competitor, Powerpipe AB.

In support of the forms of order which it seeks, the applicant submits that the Decision is contrary to Article 85 of the EC Treaty and to Articles 3 and 15 of Council Regulation No 17 inasmuch as it contains a misapplication of the law and an inaccurate assessment of the evidence so far as the parts of the Decision referred to in the first and second forms of order sought are concerned.

The applicant further submits that the Decision infringes procedural and substantive requirements, including the principle of equal treatment, which must be complied with when a fine is imposed under Regulation No 17.

([1]) Commission Decision 99/60/EC relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4: — Pre-Insulated Pipe Cartel), (OJ L 24, 30.1.1999, p. 1).

Action brought on 21 January 1999 by Gustave Rose against the Commission of the European Communities

(Case T-22/99)

(1999/C 100/39)

(Language of the case: French)

An action against the Commission of European Communities was brought before the Court of First Instance of the European Communities on 21 January 1999 by Gustave Rose, residing at Goutroux (Belgium), represented by Lucas Vogel, of the Brussels Bar, with an address for service at the Chambers of Christian Kremer, 6 Rue Heinrich Heine.

The applicant claims that the Court should:

— annul the express decision made on 9 October 1998 (and notified on 20 October 1998), rejecting the complaint submitted by the applicant to the appointing authority on 2 June 1998 by which he contested the decision not to promote him to grade C 1 in the 1998 promotions procedure (decision published in Administrative Notices No 1036 of a 6 April 1998);

— order the defendant to pay the costs.

Pleas in law and main arguments adduced in support

The applicant pleads, first, infringement of the rules contained in the 'Practical Guide to the Procedure for the Promotion of Officials of the Commission of the European Communities', as well as breach of the principles of non-discrimination (Article 5 of the Staff Regulations) and the

protection of legitimate expectations and of the duty to have inasmuch as he was refused promotion in 1998 despite the fact that, by virtue of his name having already been entered on the list of officials most deserving of promotion in 1997, his entitlement to promotion should have been given priority over that of other officials.

He also pleads infringement of Article 45(1) of the Staff Regulations, inasmuch as the appointing authority did not undertake, in a reasonable and duly justified way, an examination of the comparative merits of the eligible candidates.

Action brought on 25 January 1999 by Garage Trabisco SA against the Commission of the European Communities

(Case T-26/99)

(1999/C 100/40)

(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 25 January 1999 by Garage Trabisco SA, established at Cognac (France), represented by Jean Claude Fourgoux, of the Paris Bar,with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon.

The applicant claims that the Court should:

— annul the decision of the Commission of 16/17 November 1998;

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support

By its action, the applicant company contests the decision of the Commission rejecting the complaint lodged by it concerning the steps taken by the Peugeot Group (PSA) and certain of its concessionaires to impede its activities as an independent agent/reseller, pursuant to an illegal agreement between PSA and its concessionaires covering the whole of the territory of France.

The complaint relates to the following conduct:

— concertation between PSA and its concessionaires at national and local level with a view to impeding parallel imports;

— obstruction of supplies by the exertion of pressure of foreign concessionaires to dissuade them from supplying vehicles to end-users domiciled in France;

— use of the so-called 'model-year date' sales technique; and

— the existence of measures accompanying so-called 'Balladur' State premiums.

The applicant considers that the Commission failed, both in its summary of the complaint and in the presentation of its statement of reasons, with a view to justifying the lack of a sufficient Community interest, to demonstrate the partitioning of the markets and the obstruction of supplies, such as the concerted efforts made to prevent access to the parallel imports market by the misuse of the national proedures. Consequently, the defendant institution has failed to fulfil its obligations relating to the examination of complaints submitted in competition matters.

Action brought on 25 January 1999 by Sigma Tecnologie di Rivestimento SRL against the Commission of the European Communities

(Case T-28/99)

(1999/C 100/41)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 January 1999 by Sigma Tecnologie di Rivestimento SRL, whose registered office is in Lonato (Italy), represented by Aurelio Pappalardo, of the Trapani Bar, and Massimo Merola, of the Rome Bar, with an adress for service in Luxembourg at the Chambers of Alain Lorang, Rue Albert 1er 51.

The applicant claims that the Court should:

— annul Article 1 of Commission Decision K(1998) 3117 final of 21 October 1998 (Case IV/35.691/E-4

Fernwärmetechnik Kartell), as amended by Commission Decision K(1998) 3415 final of 6 November 1998 (Case IV/35.691 — Vorisolierte Rohre), in so far as it refers to the applicant, holding it liable for participation in the 'overall agreement';

— in the alternative, annul Article 3 of the decision in so far as it sets the applicant's fine at ECU 400 000, or substantially reduce the fine;

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support

The pleas in law and main arguments are similar to those in Case T-9/99 HFB Holding and Others v. Commission ([1]).

The applicant pleads in particular that the Commission has failed to state adequate grounds in relation to the applicant's participation in the infringement at issue, and has erroneously assessed the role played by the European District Heating Pipe Manufacturers' Association in the context of the overall agreement.

Concerning the reduction in the basic amount of the fine owing to the secondary role played by the applicant in the infringement, the applicant maintains that only in the case of Sigma is it possible to dispute the company's membership of the contact grop for the market concerned, or at least knowledge that it formed part of an overall agreement, whereas Ke-Kelit had never denied such knowledge.

([1]) OJ C 86, 27.3.1999, p. 24.

Action brought on 22 February 1999 by max.mobil. Telekommunikation Service GmbH against the Commission of the European Communities

(Case T-54/99)

(1999/C 100/42)

(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 February 1999 by max.mobil. Telekommunikation Service GmbH, of Vienna, Austria, represented by Dr Stefan Köck, Rechtsanwalt, of Bruckhaus Westrick Heller Löber, Vienna, with an address for service in Luxembourg at the Chambers of Bonn & Schmitt, 62 Avenue Guillaume.

The apllicant claims that the Court should:

1. annul that part of the Commission's decision, notified to the applicant by letter (D 18497) of 11 December 1998,

1.1. by which the Commission rejected the applicant's application to the Commission to declare that the Republic of Austria had infringed Article 90(1) in conjunction with Article 86 of the EC Treaty,

— by placing Mobilkom in a more favourable position than the applicant, with respect both to determination of the amount and to the terms of payment of the concession fee, and

— be giving preference to the third network operator, Connect, over the applicant when determining the amount of the concession fee, and

1.2. by which the Commission rejected the applicant's application,

— to the Commission to require the Republic of Austria to create equal conditions of competition for mobile telephone operators, by prescribing additional concession fees or partially waiving concession fees; and

2. order the Commission to pay the costs.

Pleas in law and main arguments adduced in support

The applicant, which entered on the Austrian market in October 1996 as the second operator of a GSM mobile communications network after Mobilkom Austria AG, a company predominantly owned by the State, lodged a complaint with the Commission in October 1997. It complained that it had been treated less favourably than Mobilkom Austria and the third mobile network operator Connect Austria, which had in the meantime entered the market in August 1997, with respect to the determination and terms of collection of the fees for GSM concessions, and submitted that there had been a breach of Article 90(1) in conjunction with Article 86 of the EC Treaty.

By the decision contained in the Commission's letter of 11 December 1998 the applicant was assured that its

complaint would be pursued in part. As regards the contested amount of the concession fee, the Commission stated that the applicant had produced no evidence of an abuse of a dominant position and pointed out that in comparable cases, according to its practice hitherto, it had started proceedings for failure to fulfil obligations only when a Member State had imposed a higher concession fee on an undertaking newly entering the market than on the undertaking already active in the market.

According to the applicant, in its decision the Commission:

— unlawfully failed, at least in part, to apply Article 90 of the EC Treaty to the facts before it, interpreted that provision in a manifestly wrong way, and made an incorrect assessment of the facts;

— by giving an inadequate statement of reasons, infringed essential procedural requirements (Article 190 of the EC Treaty), since in its decision, in only two sentences, it restricted itself to describing the applicant's statements as insufficient and referred generally to its 'practice hitherto', which may not be regarded as sufficient.