ISSN 0378–6986

Official Journal

of the European Communities

C 6

Volume 43

8 January 2000

English edition

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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 September 1999

in Case C-22/98 (reference for a preliminary ruling from the Hof van Beroep te Gent): criminal proceedings against Jean Claude Becu, Annie Verweire, Smeg NV, Adia Interim NV [1]

(Competition — National legislation allowing only 'recognised dockers' to perform certain dock duties — Meaning of 'undertaking' — Special or exclusive rights)

(2000/C 6/01)

(Language of the case: Dutch)

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

In Case C-22/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Hof van Beroep (Court of Appeal), Ghent, Belgium, for a preliminary ruling in the criminal proceedings pending before that court against Jean Claude Becu, Annie Verweire, Smeg NV, Adia Interim NV — on the interpretation of Article 90(1) and (2) of the EC Treaty (now Article 86(1) and (2) EC), read in conjunction with Article 6 of the EC Treaty (now, after amendment, Article 12 EC) and Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, J.L. Murray and R. Schintgen (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 16 September 1999, in which it has ruled:

Article 90(1) of the EC Treaty (now Article 86(1) EC), read in conjunction with the first paragraph of Article 6 of the EC Treaty (now, after amendment, the first paragraph of Article 12 EC), and Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC), must be interpreted as meaning that it does not confer on individuals the right to oppose the application of legislation of a Member State which requires them to have recourse, for the performance of dock work, exclusively to recognised dockers such as those referred to in the Belgian Law of 8 June 1972 organising dock work, and to pay those dockers remuneration far in excess of the wages of their own employees or the wages which they pay to other workers.

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[1] OJ No C 94 of 28.3.1998.

JUDGMENT OF THE COURT

of 21 September 1999

in Case C-67/96 (reference for a preliminary ruling from the Kantongerecht, Arnhem): Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie [1]

(Compulsory affiliation to a sectoral pension scheme — Compatibility with competition rules — Classification of a sectoral pension fund as an undertaking)

(2000/C 6/02)

(Language of the case: Dutch)

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

In Case C-67/96: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Kantongerecht, Arnhem, Netherlands, for a preliminary ruling in the proceedings pending before that court between Albany International BV and Stichting Bedrijfspensioenfonds Textielindustrie — on

the interpretation of Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC) — the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann, Presidents of Chambers, J.C. Moitinho de Almeida (Rapporteur), C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; F.G. Jacobs, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

1. *Article 3(g) of the EC Treaty (now, after amendment, Article 3(1)(g) EC) and Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC) do not prohibit a decision by the public authorities to make affiliation to a sectoral pension fund compulsory at the request of organisations representing employers and workers in a given sector.*

2. *A pension fund charged with the management of a supplementary pension scheme set up by a collective agreement concluded between organisations representing employers and workers in a given sector, to which affiliation has been made compulsory by the public authorities for all workers in that sector, is an undertaking within the meaning of Article 85 et seq. of the Treaty.*

3. *Articles 86 and 90 of the EC Treaty (now Articles 82 EC and 86 EC) do not preclude the public authorities from conferring on a pension fund the exclusive right to manage a supplementary pension scheme in a given sector.*

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(1) OJ No C 133 of 4.5.1996.

JUDGMENT OF THE COURT

of 21 September 1999

in Joined Cases C-115/97, C-116/97 and C-117/97 (references for a preliminary ruling from the Kantongerecht, Roermond): Brentjens' Handelsonderneming BV v Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen (1)

(Compulsory affiliation to a sectoral pension scheme — Compatibility with competition rules — Classification of a sectoral pension fund as an undertaking)

(2000/C 6/03)

(Language of the case: Dutch)

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

In Joined Cases C-115/97, C-116/97 and C-117/97: references to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Kantongerecht, Roermond, Netherlands, for a preliminary ruling in the proceedings pending before that court between Brentjens' Handelsonderneming BV and Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen — on the interpretation of Article 3(g) of the EC Treaty (now, after amendment, Article 3(1)(g) EC) and Articles 5, 85, 86 and 90 of the EC Treaty (now Articles 10 EC, 81 EC, 82 EC and 86 EC) — the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann, Presidents of Chambers, J.C. Moitinho de Almeida (Rapporteur), C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; F. G. Jacobs, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

1. *A decision taken by organisations representing employers and workers in a given sector, in the context of a collective agreement, to set up in that sector a single pension fund responsible for managing a supplementary pension scheme and to request the public authorities to make affiliation to that fund compulsory for all workers in that sector does not fall within the scope of Article 85 of the EC Treaty (now Article 81 EC).*

2. *Article 3(g) of the EC Treaty (now, after amendment, Article 3(1)(g) EC), Article 5 of the EC Treaty (now Article 10 EC) and Article 85 of the Treaty do not prohibit a decision by the public authorities to make affiliation to a sectoral pension fund compulsory at the request of organisations representing employers and workers in a given sector.*

3. *A pension fund charged with the management of a supplementary pension scheme set up by a collective agreement concluded between organisations representing employers and workers in a given sector, to which affiliation has been made compulsory by the public authorities for all workers in that sector, is an undertaking within the meaning of Article 85 et seq. of the Treaty.*

4. *Articles 86 and 90 of the EC Treaty (now Articles 82 EC and 86 EC) do not preclude the public authorities from conferring on a pension fund the exclusive right to manage a supplementary pension scheme in a given sector.*

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(1) OJ No C 142 of 10.5.1997.

JUDGMENT OF THE COURT

of 21 September 1999

in Case C-124/97 (reference for a preliminary ruling from the Vaasan Hovioikeus): Markku Juhani Läärä, Cotswold Microsystems Ltd, Oy Transatlantic Software Ltd v Kihlakunnansyyttäjä (Jyväskylä), Suomen Valtio (Finnish State) [1]

(Freedom to provide services — Exclusive operating rights — Slot machines)

(2000/C 6/04)

(Language of the case: Finnish)

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

In Case C-124/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Vaasan Hovioikeus for a preliminary ruling in the proceedings pending before that court between Markku Juhani Läärä, Cotswold Microsystems Ltd, Oy Transatlantic Software Ltd and Kihlakunnansyyttäjä (Jyväskylä), Suomen Valtio (Finnish State) — on the interpretation of the judgment of the Court of Justice of 24 March 1994 in Case C-275/92 Schindler [1994] ECR I-1039 and of Articles 30, 36, 56 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 30 EC, 46 EC and 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) — the Court, composed of: P.J.G. Kapteyn, President of the Fourth and Sixth Chambers, acting for the President, J.-P. Puissochet (Rapporteur) and P. Jann (Presidents of Chambers), C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; A. La Pergola, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

The Treaty provisions relating to freedom to provide services do not preclude national legislation such as the Finnish legislation which grants to a single public body exclusive rights to operate slot machines, in view of the public interest objectives which justify it.

[1] OJ No C 166 of 31.5.1997.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 21 September 1999

in Case C-44/98 (reference for a preliminary ruling from the Bundespatentgericht): BASF AG v Präsident des Deutschen Patentamts [1]

(Free movement of goods — Measures having equivalent effect — European patent ruled void ab initio for failure to file a translation)

(2000/C 6/05)

(Language of the case: German)

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

In Case C-44/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundespatentgericht, Germany, for a preliminary ruling in the proceedings pending before that court between BASF AG and Präsident des Deutschen Patentamts — on the interpretation of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — the Court (Fifth Chamber), composed of: J.-P. Puissochet, President of the Chamber, P. Jann, J.C. Moitinho de Almeida, C. Gulmann (Rapporteur) and D.A.O. Edward, Judges; A. La Pergola, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

Article 30 of the EC Treaty (now, after amendment, Article 28 EC) does not preclude the application of provisions such as Article II(3) of the Gesetz über internationale Patentübereinkommen, according to which a patent granted by the European Patent Office with effect in a Member State which is drafted in a language other than the official language of that Member State is to be deemed void ab initio if the patent holder does not file with the patent office of the Member State in question a translation of the patent specification in the official language of that Member State within three months of the publication in the European Patent Bulletin of the mention of the grant of the patent.

[1] OJ No C 137 of 2.5.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 October 1999

in Case C-308/95: Kingdom of the Netherlands v Commission of the European Communities [1]

(European Regional Development Fund — Projects co-financed by the ERDF — Closure decision)

(2000/C 6/06)

(Language of the case: Dutch)

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

In Case C-308/95: Kingdom of the Netherlands (Agents: J.S. van den Oosterkamp and M.A. Fierstra) v Commission of the European Communities (Agents: E. Mennens and P. Oliver) — application for annulment of the Commission's letter dated 28 July 1995 on the closure of projects co-financed by the European Regional Development Fund — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, G. Hirsch, J.L. Murray (Rapporteur), H. Ragnemalm and R. Schintgen, Judges; A. La Pergola, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 5 October 1999, in which it:

1. *Dismisses the application as inadmissible;*

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

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[1] OJ No C 299 of 11.11.1995.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 October 1999

in Case C-240/97: Kingdom of Spain v Commission of the European Communities [1]

(EAGGF — Clearance of accounts — 1993 — Export refunds for butter, beef and veal — Aid for processing of citrus fruit)

(2000/C 6/07)

(Language of the case: Spanish)

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

In Case C-240/97: Kingdom of Spain (Agent: S. Ortiz Vaamonde) v Commission of the European Communities (Agents: M. Díaz-Llanos La Roche and C. Gómez de la Cruz) — application for the partial annulment of Commission Decision 97/333/EC of 23 April 1997 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1997 L 139, p. 30) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, G. Hirsch and J.L. Murray (Rapporteur), Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 5 October 1999, in which it:

1. *Annuls Commission Decision 97/333/EC of 23 April 1997 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) to the extent to which it failed to charge definitively to the EAGGF the sum of ESP 58 804 012 in respect of financial compensation advanced by the Kingdom of Spain in respect of processing of citrus fruit;*

2. *Dismisses the remainder of the action;*

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

---

[1] OJ C 271 of 6.9.1997.

JUDGMENT OF THE COURT

of 5 October 1999

in Case C-251/97: French Republic v Commission of the European Communities [1]

(Article 92 of the EC Treaty (now, after amendment, Article 87 EC) — Concept of aid — Relief on social security contributions in consideration for the costs arising for undertakings from collective agreements concerning the reorganisation and reduction of working time)

(2000/C 6/08)

(Language of the case: French)

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

In Case C-251/97: French Republic (Agents: K. Rispal-Bellanger and G. Mignot) v Commission of the European Communities (Agent: G. Rozet) — application for annulment of Commission Decision 97/811/EC of 9 April 1997 concerning aid granted by France to the textile, clothing, leather and footwear

industries (OJ 1997 L 334, p. 25), — the Court, composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, G. Hirsch (Rapporteur) (Presidents of Chambers), J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, L. Sevón, M. Wathelet and R. Schintgen, Judges; N. Fennelly, Advocate General; R. Grass, Registrar; has given a judgment on 5 October 1999, in which it:

1. *Dismisses the application;*

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

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(1) OJ C 295 of 27.9.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 October 1999

in Case C-305/97 (reference for a preliminary ruling from the Court of Appeal (England and Wales)): Royscot Leasing Ltd and Royscot Industrial Leasing Ltd, Allied Domecq plc, T.C. Harrison Group Ltd v Commissioners of Customs & Excise (1)

(VAT — Article 11(1) and (4) of the Second Directive — Article 17(2) and (6) of the Sixth Directive — Right of deduction — Exclusions by national rules predating the Sixth Directive)

(2000/C 6/09)

(Language of the case: English)

In Case C-305/97, reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Court of Appeal (England and Wales) (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Royscot Leasing Ltd and Royscot Industrial Leasing Ltd, Allied Domecq plc, T.C. Harrison Group Ltd and Commissioners of Customs & Excise — on the interpretation of Article 11(4) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16) and of Article 17(6) of 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 1977 L 145, p. 1) — the Court (Sixth Chamber), composed of: G. Hirsch (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, J.L. Murray and R. Schintgen, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 5 October 1999, in which it has ruled:

1. *Article 11(4) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax, authorised Member States to introduce or retain, and Article 17(6) of 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, authorises them to retain, general exclusions from the right to deduct the value added tax payable on the purchase of motor cars used by a taxable person for the purposes of his taxable transactions, even though*

   — *those cars were essential tools in the business of the taxable person concerned, or*

   — *those cars could not, in a specific case, be used for private purposes by the taxable person concerned.*

2. *On a proper construction of Article 17(6) of Sixth Directive 77/388, Member States may retain the exclusions from the right to deduct value added tax referred to in its second subparagraph, even though the Council did not decide, before the expiry of the period laid down in the first subparagraph, which expenditure should not be eligible for deduction of value added tax.*

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(1) OJ C 318 of 18.10.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 October 1999

in Case C-327/97 P: Christos Apostolidis and Others v Commission of the European Communities (1)

(Appeal — Remuneration — Weighting coefficient — Compliance with a judgment of the Court of First Instance)

(2000/C 6/10)

(Language of the case: French)

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

In Case C-327/97 P: Christos Apostolidis and Others, officials and members of the temporary staff of the Commission of the

European Communities, employed in the European Institute for Transuranic Elements, Karlsruhe (Germany), represented by J.-N. Louis, T. Demaseure and A. Tornel, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30, Rue de Cessange — appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 10 July 1997 in Case T-81/96 Apostolidis and Others v Commission [1997] ECR-SC I-A-207 and II-607, seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities (Agents: G. Valsesia and J. Currall), supported by the Council of the European Union (Agents: M. Bishop and D. Canga Fano) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, G. Hirsch, J.L. Murray (Rapporteur), H. Ragnemalm and R. Schintgen, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 5 October 1999, in which it:

1. *Dismisses the appeal in its entirety;*

2. *Orders the applicants, the Commission of the European Communities and the Council of the European Union to bear their own costs.*

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(1) OJ No C 357 of 22.11.1997.

JUDGMENT OF THE COURT

of 5 October 1999

in Case C-420/97 (reference for a preliminary ruling from the Hof van Cassatie): Leathertex Divisione Sintetici SpA v Bodetex BVBA (1)

(Brussels Convention — Interpretation of Articles 2 and 5(1) — Commercial agency agreement — Action founded on separate obligations arising from the same contract and regarded as equal in rank — Jurisdiction of the court seised to hear the whole action)

(2000/C 6/11)

(Language of the case: Dutch)

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

In Case C-420/97: 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, Belgium, for a preliminary ruling in the proceedings pending before that court between Leathertex Divisione Sintetici SpA and Bodetex BVBA on the interpretation of Articles 2 and 5(1) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), 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 1978 L 304, p. 1 and — amended text — p. 77) — the Court composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), J.C. Moitinho de Almeida (Rapporteur), D.A.O. Edward, H. Ragnemalm and L. Sevón, M. Wathelet and R. Schintgen, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 5 October 1999, in which it has ruled:

On a proper construction of Article 5(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, the same court does not have jurisdiction to hear the whole of an action founded on two obligations of equal rank arising from the same contract when, according to the conflict rules of the State where that court is situated, one of those obligations is to be performed in that State and the other in another Contracting State.

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(1) OJ C 41 of 7.2.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 October 1999

in Case C-433/97 P: IPK-München GmbH v Commission of the European Communities (1)

(Appeal — Annulment of a decision of the Commission to refuse to pay the balance of financial assistance)

(2000/C 6/12)

(Language of the case: German)

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

In Case C-433/97 P: IPK-München GmbH, established in Munich (Germany), represented by H.-J. Priess, of the Brussels Bar, 13 Place des Barricades, B-1000 Brussels — appeal against the judgment of the Court of First Instance of the European Communities (First Chamber) of 15 October 1997 in Case T-331/94 IPK v Commission [1997] ECR 11-1665, seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities (Agent:

J. Grunwald) — the Court (Sixth Chamber), composed of: P.J.G. Kapteyn, President of the Chamber, J.L. Murray (Rapporteur) and H. Ragnemalm, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 5 October 1999, in which it:

1. *Sets aside the judgment of the Court of First Instance of 15 October 1997 in Case T-331/94 IPK v Commission in so far as it dismissed the claim of IPK-München GmbH for annulment of the Commission's decision of 3 August 1994 to refuse to pay the balance of financial assistance granted to support a project to create a database of information on ecological tourism in Europe, and ordered the applicant to pay the costs;*

2. *Refers the case back to the Court of First Instance for it to give judgment on the claim of IPK-München GmbH for annulment of the decision of 3 August 1994;*

3. *Orders the costs to be reserved.*

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(1) OJ No C 55 of 20.2.1998.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 5 October 1999

in Joined Cases C-175/98 and C-177/98 (references for a preliminary ruling from the Pretore di Udine): Criminal proceedings against Paolo Lirussi (C-175/98) and Francesca Bizzaro (C-177/98) (1)

(Waste — Directives 75/442/EEC and 91/689/EEC — Definition of temporary storage, pending collection, on the site where it is produced — Definition of waste management)

(2000/C 6/13)

(Language of the case: Italian)

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

In Joined Cases C-175/98 and C-177/98: references to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Pretore di Udine (Italy) for a preliminary ruling in the criminal proceedings pending before that court between Paolo Lirussi (Case C-175/98) and Francesca Bizzaro (Case C-177/98) — on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive (EEC) 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), as amended by Council Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28) — the Court (Fourth Chamber), composed of: J.L. Murray, acting as President of the Fourth Chamber, H. Ragnemalm (Rapporteur) and R. Schintgen, Judges; P: Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 5 October 1999 in which it has ruled:

1. *'Temporary storage' of waste must be distinguished from 'storage pending' further operations and is not a 'management operation' within the meaning of Article 1(d) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991.*

2. *The competent national authorities are required, with regard to temporary storage operations, to ensure that the obligations arising from Article 4 of Directive 75/442 are complied with.*

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(1) OJ C 209 of 4.7.1998.

JUDGMENT OF THE COURT

(Third Chamber)

of 12 October 1999

in Case C-213/98: Commission of the European Communities v Ireland (1)

(Failure by a Member State to fulfil its obligations — Directive 92/100/EEC)

(2000/C 6/14)

(Language of the case: English)

In Case C-213/98: Commission of the European Communities (Agent: K. Banks) v Ireland (Agent: M.A. Buckley) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61) and/or by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under the EC Treaty — the Court (Third Chamber), composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann (Rapporteur) and J.-P. Puissochet, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 12 October 1999, in which it:

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, Ireland has failed to fulfil its obligations under that directive.*

2. *Orders Ireland to pay the costs.*

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(1) OJ No C 258 of 15.8.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 14 October 1999

in Case C-439/97 (reference for a preliminary ruling from the Verwaltungsgerichtshof): Sandoz GmbH v Finanzlandesdirektion für Wien, Niederösterreich und Burgenland (1)

(Loan agreements — Stamp duty — Rules governing imposition — Discrimination)

(2000/C 6/15)

(Language of the case: German)

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

In Case C-439/97: Reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Verwaltungsgerichtshof, Austria, for a preliminary ruling in the proceedings pending before that court between Sandoz GmbH v Finanzlandesdirektion für Wien, Niederösterreich und Burgenland — on the interpretation of Articles 73b and 73d of the EC Treaty (now Articles 56 EC and 58 EC), and of Articles 1 and 4 of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5) — the Court (Sixth Chamber), composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn (Rapporteur) and G. Hirsch, Judges; P. Léger, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 14 October 1999, in which it held that:

1. *Articles 73b(1) and 73d(1)(b) and (3) of the EC Treaty [now Articles 56(1) EC and 58(1)(b) and (3) EC] are to be interpreted as not precluding the imposition of duty, under a national provision such as the first subparagraph of Article 33 Tarifpost 8 of the Gebührengesetz, on loans contracted in another Member State.*

2. *Articles 73b(1) and 73d(1)(b) of the Treaty preclude a provision of national law such as the first sentence of the fourth subparagraph of Article 33 Tarifpost 8 of the Gebührengesetz.*

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(1) OJ C 72 of 7.3.1998.

Action brought on 23 September 1999 by the Commission of the European Communities against Hitesys SpA

(Case C-356/99)

(2000/C 6/16)

An action against Hitesys SpA, whose registered office is in Aprilia, Latina (Italy), was brought before the Court of Justice of the European Communities on 23 September 1999 by the Commission of the European Communities, represented by Eugenio de March, Legal Adviser, acting as Agent, and Mr Dal Ferro, of the Vicenza Bar, 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. Order Hitesys SpA, the defendant company, to repay EUR 132 500 by way of principal amount and EUR 61 032,8 by way of interest at 8,25 %, for the period running from 8 January 1994 to 8 September 1999, totalling EUR 194 443,7, to which must be added EUR 30 364 in default interest in respect of each additional day of delay until full payment is made with respect to the financing under contract No JOU2-CT93-0417;

2. order Hitesys to pay the costs.

Pleas and main arguments

The action, brought under an arbitration clause, seeks the repayment of monies advanced in view of contract No JOU2-CT93-0417 for a research project in the field of the non-nuclear energy-Joule II (1991-1994) programme adopted by the Council of Ministers of the European Union (1). The Commission decided to terminate the contract, governed by Italian law, on the ground of breach of contract by the defendant.

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(1) Council Decision 91/484/EEC of 9 September 1991 (OJ 1991 L 257, p. 37).

Reference for a preliminary ruling by the Landesgericht für Zivilrechtssachen Wien by order of that court of 6 September 1999 in the case of Dr Silveria Gäng against Republic of Austria

(Case C-361/99)

(2000/C 6/17)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) of 6 September 1999, received at the Court Registry on 27 September 1999, for a preliminary ruling in the case of Dr Silveria Gäng against Republic of Austria on the following questions:

1. Has Council Directive 76/207/EEC of 9 February 1976 [1] (the Equal Treatment Directive) been properly transposed into Austrian national law by the current version of the Austrian Bundes-Gleichbehandlungsgesetz (Federal Law on Equal Treatment), BGBl 100/1993, as regards the upper limit for damages claimed (Paragraph 15(2) of the Federal Law on Equal Treatment) and as regards the requirement that public sector employees of the Republic of Austria bring such claims within six months by application to the administrative authority with jurisdiction over them (Paragraph 19(2) of the Federal Law on Equal Treatment)?

2. If the answer to Question 1 is in the negative, is that Directive intended to confer an individual right on the claimant in the main proceedings in this case?

3. If the answer to Question 2 is in the affirmative, does this reference for a preliminary ruling contain all the information the Court of Justice needs to determine itself whether the Austrian Federal Law on Equal Treatment is manifestly incompatible with the wording and purpose of Council Directive 76/207/EEC of 9 February 1976 or is the determination of that question in this case to be left to the Austrian court which has made the reference?

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[1] OJ L 39 of 14.2.1976, p. 40.

Action brought on 4 October 1999 by the Kingdom of Spain against the Commission of the European Communities

(Case C-369/99)

(2000/C 6/18)

An action against the Commission of the European Communities was brought before the Court of Justice on 4 October 1999 by the Kingdom of Spain, represented by R. Silva de Lapuerta, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais.

The applicant claims that the Court of Justice should:

1. annul the Commission's decision of 8 July 1999 concerning the application by the Spanish Government for a transitional regime in accordance with Article 24 of Directive 96/92/EC [1] of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, and

2. order the defendant institution to pay the costs.

Pleas in law and main arguments

— Infringement of Article 24(1) of Directive 96/92/EC: while the decision refusing to allow the application is based on the fact 'that the nature of the measure notified is more important than its objective', in its decision the Commission does not adduce any evidence to support the conclusion that it has considered the substance of the matter. The Commission therefore acknowledges in its statement contained in the Council's minutes (12851/96 ADD 1) that recovery of investments constitutes an appropriate basis for the application of Article 24. It should be noted that the so-called 'Costs of Transition to Competition' ('CTC') constitute a method the nature of which is similar to that wider concept of the recovery of investments, dealing with indemnification in part with regard to the additional effort, in terms of investments, made by undertakings in order to comply with a policy of public intervention, the purpose of which was to guarantee diversification in the electricity sector and security of supply of electricity. It must, therefore, be concluded that the CTC system does indeed constitute a derogation, which the Commission may accept in accordance with Article 24 of the Directive, from Article 8(2) thereof, a derogation which has not been assessed or examined in the Commission's decision.

— Infringement of Article 24(3) of Directive 96/92/EC: the derogation from Article 8(2) of the Directive, requested by the Spanish authorities, for isolated networks, necessarily entails either a higher supply price for consumers using those isolated systems or, if the criterion of equal treatment for all national customers is used, the introduction of compensation for those extra costs. The latter is the solution chosen by the Spanish legislation, which neither affects intra-Community trade nor is capable of distorting competition, which does not exist in isolated systems. Accordingly, in the contested decision the Commission was wrong to apply Article 24(3) of Directive 96/92/EC, given that the 'sistemas insulares y extrapeninsulares' (systems in the islands and outside Iberia) must give rise to the derogations provided for by that provision, and has failed to comply with Article 8(2) of the Directive.

— Breach of the principle of protection of legitimate expectations: the Commission had publicly, constantly and firmly maintained that compensation schemes for non-commercial prices in the electricity sector must be notified and, where appropriate, authorised pursuant to Article 24

of the Directive, even adopting draft directives in that field which it communicated to the Member States. The sudden change of mind by the Commission, now considering that compensation schemes for non-commercial prices and the 'sistemas insulares y extrapeninsulares' in the electricity sector cannot fall within the scope of Article 24 because they do not involve formal derogations from the obligations imposed by the Directive, damages the expectations of both Spain and the economic operators which the Commission itself had raised.

— Breach of the duty to provide a statement of reasons.

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(1) OJ No L 27, p. 20 of 30.1.1997.

Action brought on 7 October 1999 by the Hellenic Republic against the Commission of the European Communities

(Case C-373/99)

(2000/C 6/19)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 7 October 1999 by the Hellenic Republic, represented by Vasilios Kontolaimos, Legal Adviser in the State Legal Service, and Ioannis-Konstantinos Khalkias, Member of that Service, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix.

The applicant claims that the Court should: annul or, in the alternative, amend Commission Decision C (1999) 2476 of 28 July 1999 amending Decision 99/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (1), as regards the chapters thereof specifically contested, which concern the financial corrections to fruit and vegetables, to arable crops, to the 2 % deduction for administrative expenditure, to cotton and to olive oil.

Grounds for annulment and main arguments

The main grounds for annulment advanced by the Hellenic Republic are as follows:

— incorrect assessment by the Commission of the facts;

— infringement of Article 5 of Regulation (EEC) No 729/70 (2), as amended by Regulation (EC) No 1287/95 (3);

— overstepping by the Commission of the limits of its discretion;

— defective or no statement of grounds;

— infringement of an essential procedural requirement for imposing the corrections;

— infringement/misinterpretation of Article 12(6) of Regulation (EEC) No 2677/85; (4)

— lack of competence ratione temporis for the Commission to impose penalties.

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(1) Decision 99/596/EC, OJ No L 226, 27.8.1999, p. 26.
(2) OJ, English Special Edition 1970 (I), p. 218.
(3) OJ No L 125, 8.6.1995, p. 1.
(4) OJ No L 254, 25.9.1985, p. 5.

Action brought on 7 October 1999 by the Federal Republic of Germany against the Commission of the European Communities

(Case C-376/99)

(2000/C 6/20)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 7 October 1999 by the Federal Republic of Germany, represented by Wolf-Dieter Plessing, Ministerialrat in the Federal Ministry of Financial Affairs, 108 Graurheindorfer Straße, D-53117 Bonn, and Holger-Friedrich Wissel, Rechtsanwalt, c/o Pünder, Volhard, Weber & Axster, 6 Cecilienallee, D-40474 Düsseldorf.

The applicant claims that the Court should:

1. Annul the Commission decision of 8 July 1999 concerning a measure taken by the Federal Republic of Germany in favour of Westdeutsche Landesbank Girozentrale, reference COM (1999) 2265 fin., notified on 4 August 1999;

2. Order the defendant to pay the costs.

Pleas in law and main arguments

— Irregular composition of the Commission [see Case C-334/99 (1)].

— Infringement of the right to a fair hearing: The Commission, even despite having promised in the meantime to do so, did not make it possible for the applicant to comment on a report on which the decision is essentially based. Documents which had been transmitted to the Commission by the Bundesverband deutscher Banken were also not made .available to the applicant.

— Defective statement of reasons: The Commission's sources of information have not been sufficiently explained; in particular, only isolated statements from the report used by the Commission are adduced and not their overall context. Finally, the Commission relies on its own relevant experience, without really possessing any such experience.

— Infringement of the Treaty or of a legal provision to be applied in its implementation: The Commission applied the concept of aid incorrectly and thus infringed Article 87 EC. The incorporation of the Wohnungsbauförderungsanstalt des Landes Nordrhein-Westfalen (Wfa) into the Westdeutsche Landesbank Girozentrale (WestLB) does not constitute aid. The payment of 1,1 % before tax or 0,6 % after tax payable annually by WestLB to the Land of Nordrhein-Westfalen is reasonable. The relevant principle of the investor of capital operating in market-economy conditions has been applied, in the case-law to date of the Court of Justice, exclusively to cases of reorganisation and restructuring. Since WestLB is a sound undertaking operating at a profit, it is doubtful whether the principle of the capital investor in market-economy conditions is applicable at all in the present case. Even supposing that it is applicable, the Commission's decision is defective factually and legally, since it contradicts the criteria which according to the Court's case-law make up the principle of the capital investor acting in market-economy conditions. By fastening on average return, the Commission excludes the wide spectrum of other legitimate motives, common in practice, of a public and/or private investor in making an investment. Contrary to previous practice and the case-law of the Court, the Commission thus places itself in the position of a private investor and sets itself up as a planning authority which fixes investments from public funds at a defined expected return and thereby deprives public investors of the possibility of behaving like a private investor in the market. Moreover, the principle of the capital investor acting in market-economy conditions may not — as happened here — be applied without modification to the present investment in a profitable undertaking. The contested decision is also defective factually. The expected return of '12 % after tax' on which the decision is based is incorrect. It has no factual basis whatever. Finally, there is also no distortion of competition and no adverse affect on trade between States.

(1) OJ No C 366 of 18.12.1999, p. 14.

Action brought on 7 October 1999 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-378/99)

(2000/C 6/21)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 7 October 1999 by the Commission of the European Communities, represented by Marie Wolfcarius, Legal Adviser, and Gerald Braun, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing by the due date to adopt all the legislative, regulatory and administrative measures necessary in order to transpose into national law Council Directive 96/53/EEC(1) of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

(2) order the defendant to pay the costs.

Pleas in law and main arguments

The mandatory nature of the provisions of the third paragraph of Article 249 EC and of the first paragraph of Article 10 EC is such as to oblige Member States to which directives are addressed to adopt the measures necessary in order fully to transpose those directives into national law before the expiration of the time-limit prescribed for so doing. The time-limit laid down in Article 11 of the directive expired on 17 September 1997 but Germany has not yet adopted all the necessary measures.

(1) OJ L 235 of 17.9.1996, p. 59.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 5 August 1999 in the case of Bertelsmann AG against Finanzamt Wiedenbrück

(Case C-380/99)

(2000/C 6/22)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 5 August 1999, received at the Court Registry on 8 October 1999, for a preliminary ruling in the case of Bertelsmann AG v Finanzamt Wiedenbrück on the following question:

Is Article 11(A)(1)(a) of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (77/388/EEC) [1] to be interpreted as meaning that the taxable amount in respect of the supply of a bonus payable in kind, which is sent to the recipient in exchange for recruiting a new client, includes not only the purchase price of the bonus but also the delivery costs?

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[1] OJ 1977 L 145, p. 1.

Reference for a preliminary ruling by the Oberlandesgericht Wien (Austria) by order of that court of 15 June 1999 in the case of Dr Susanna Brunnhofer v Bank der österreichischen Postsparkasse Aktiengesellschaft

(Case C-381/99)

(2000/C 6/23)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht Wien (Regional Court of Appeal, Vienna) (Austria) of 15 June 1999, received at the Court Registry on 8 October 1999, for a preliminary ruling in the case of Dr Susanna Brunnhofer v Bank der österreichischen Postsparkasse Aktiengesellschaft on the following questions:

1a) With regard to the question whether work is 'equal work' or 'the same job' within the meaning of Article 119 (now Article 141) of the EC Treaty or is 'the same work' or 'work to which equal value is attributed' within the meaning of Directive 75/117/EEC [1], is it sufficient, in connection with the stipulation in an individual contract of employment of supplements to the pay determined by a collective agreement, to ascertain whether the two workers being compared are classified in the same professional category under the collective agreement?

1b) If the reply to Question 1a) is in the negative: In the situation described in Question 1a), is the same classification in the collective agreement an indication of the same work or work of equal value within the meaning of Article 119 (now Article 141) of the Treaty and of Directive 75/117/EEC, with the result that it is for the employer to prove that the activities in question are different?

1c) Can the employer rely on circumstances not taken into account in collective agreements in order to justify a difference in pay?

1d) If the reply to Question 1a) or 1b) is in the affirmative: Does this also apply if the classification in the professional category under the collective agreement is based on a job description in very general terms?

2a) Is there a definition of 'worker' underlying Article 119 (now Article 141) of the Treaty and Directive 75/117/EEC which is uniform at least in so far as the worker's obligation under the contract of employment depends not only on generally defined standards, but also on the individual capability of the worker himself?

2b) Are Article 119 (now Article 141) of the Treaty and Article 1 of Directive 5/117/EEC to be interpreted as meaning that a difference in pay may be objectively justified by circumstances which can be established only *ex post facto*, particularly the result of the work of a specific employee?

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[1] OJ 1975 L 45, p. 19.

Appeal brought on 8 October 1999 by The Procter & Gamble Company against the judgment delivered on 8 July 1999 by the Second Chamber of the Court of First Instance of the European Communities in Case T-163/98 between The Procter & Gamble Company and the Office for Harmonisation in the Internal Market (trade marks and designs)

(Case C-383/99 P)

(2000/C 6/24)

An appeal against the judgment delivered on 8 July 1999 by the Second Chamber of the Court of First Instance of the European Communities in Case T-163/98 between The Procter & Gamble Company and the Office for Harmonisation in the Internal Market (trade marks and designs) was brought before the Court of Justice of the European Communities on 8 October 1999 by The Procter & Gamble Company, represented by Thierry van Innis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Katia Manhaeve, 56-58 Rue Charles Martel.

The appellant claims that the Court should:

(1) set aside the judgment delivered by the Court of First Instance on 8 July 1999 in Case T-163/98 Procter & Gamble v Office for Harmonisation in the Internal Market (trade marks and designs), inasmuch as the Court of First Instance held that the First Board of Appeal of the Office for Harmonisation in the Internal Market (trade marks and designs) had not infringed Article 7(1)(c) of Regulation (EC) No 40/94 [1] by adopting its decision of 31 July 1998 in Case R 35/1998-1;

(2) order the Office for Harmonisation in the Internal Market (trade marks and designs) to pay the costs.

Pleas in law and main arguments

Infringement of Community law, in that, by the contested judgment, the Court of First Instance applied an excessively wide meaning to Article 7(1)(c) of Regulation No 40/94 on the Community trade mark: the Court of First Instance merely found that the term 'Baby-Dry' simply contained, indications which may serve in trade to designate the intended purpose of the goods concerned, without determining the question whether that term is capable of distinguishing the goods concerned as being produced by a particular undertaking. On a proper interpretation of the ground of nullity laid down in Article 7(1)(c), registration as an individual trade mark cannot be refused in respect of a sign the descriptive nature of which is such that it can only be understood as describing the product concerned or one of its characteristics. That is the teleological or synthetic interpretation, excluding any presumption of unfitness for purpose which may affect descriptive signs, which has been upheld by leading case-law in various Member States, such as the Benelux States, France and Germany, in which a trade mark right is not regarded as a monopoly right, as is confirmed by, *inter alia*, the effect of First Council Directive 88/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks [2].

[1] OJ 1994 L 11, p. 1.
[2] OJ L 40 of 11.2.1989, p. 1.

Action brought on 8 October 1999 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-384/99)

(2000/C 6/25)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 8 October 1999 by the Commission of the European Communities, represented by Barry Doherty, of 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 failing correctly to transpose Article 5 of Directive 97/33/EC [1] in conjunction with Annex I to that directive, and to adopt all the measures necessary in order to implement Article 5 of Directive 97/33/EC in conjunction with Annexes I and III to that directive, the Kingdom of Belgium has failed to fulfil its obligations under those provisions and under the Treaty establishing the European Community;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

Under the third paragraph of Article 249 and the first paragraph of Article 10 of the EC Treaty, together with Article 23 of Directive 97/33/EC, Belgium was required to adopt, by no later than 31 December 1997, the measures necessary in order to comply with that directive. The Commission claims that Belgium has failed to fulfil its obligations under Article 5 of the directive, in that it has:

— extended the scope of services which may be financed in respect of universal service to cover the provision of services at preferential rates in favour of the press media;

— provided for a method of calculating the contributions of operators to the financing of the net cost of universal service which is incomplete and does not reflect the transparency obligations defined in Article 5(1) of Directive 97/33/EC: the decree intended to specify the method of calculating the net cost of universal service and the method of calculating the basis on which operators are to contribute to its financing has not yet been adopted and published; at all events, it has not been notified to the Commission;

— provided for an incorrect method of calculating the net cost of universal service: in particular, this does not take into account the 'intangible' benefits linked to the provision of universal service (thus failing to comply with Article 5(4) of the directive); nor does it take into account all the accounting principles laid down in Annex III to Directive 97/33/EC: the concept of avoidable net cost, the taking into account of forecast, not historic, costs and receipts, the taking into account of direct and indirect receipts inherent in the provision of each of the services financed in respect of universal service.

[1] OJ L 199 of 26.7.1997, p. 32.

Reference for a preliminary ruling from the Lapin Lääninoikeus by order of that court of 5 October 1999 in the case of Sulo Rundgren

(Case C-389/99)

(2000/C 6/26)

Reference has been made to the Court of Justice of the European Communities by an order of the Lapin Lääninoikeus (Lapland Administrative Court) of 5 October 1999, which was received at the Court Registry on 11 October 1999, for a preliminary ruling in the case of Sulo Rundgren on the following questions:

1. Is the EC Treaty or Regulation No (EEC) 1408/71 on social security [1] or Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community [2] applicable in the situation at issue even though Mr Rundgren already moved from Sweden to Finland on 29 September 1989, that is, before the Agreement on the European Economic Area entered into force with respect to Finland?

2. If the answer to Question 1 is affirmative, is the expression 'nor is any pension payable' in Article 28a of Regulation No 1408/71 then to be interpreted as already being fulfilled

   (a) if Mr Rundgren is not entitled to a national pension, or

   (b) if he is not entitled to a pension based on gainful employment, or

   (c) is it fulfilled only if both point (a) and point (b) hold good for him at the same time?

   In interpreting the aforesaid expression, is it also to be taken that entitlement to a pension means in this case Mr Rundgren's right in principle to a pension in Finland, in which case no account is taken of his actual circumstances, such as the effect on the acquisition of a pension in Finland of the pension and annuity income received by him from Sweden, or does entitlement to a pension mean the specific circumstances, in which case the effect of the income received by him from Sweden on the acquisition of a pension in Finland is taken into account in interpreting the expression?

3. Do the contributions and similar payments referred to in Article 33(2) of Regulation (EEC) No 1408/71 include, besides contributions charged for the receipt of social security in respect of sickness and maternity (in Finland, sickness insurance contributions), also contributions charged in respect of old age, invalidity and unemployment (in Finland, national pension insurance contributions)? If the answer to that question is negative, are the latter contributions possibly to be waived under some other article of the regulation, regard being had in particular to the scope of the regulation apparent from Article 4(1)(b), (c) and (g) thereof?

4. What effect, in the interpretation of Articles 28a and 33(2) of Regulation (EEC) No 1408/71, does the fact have that Finland and Sweden have agreed, together with the other Nordic States, in accordance with Article 36(3) of the said regulation and Article 23 of the Nordic Social Security Convention, to waive *inter alia* all reimbursement of the costs of care?

5. If Articles 28a and 33(2) of the aforesaid regulation apply so that Mr Rundgren may be charged national pension and sickness insurance contributions in Finland, may he nevertheless apply under Article 17a of the regulation retrospectively to be exempted from the scope of the legislation of his State of residence, Finland, or must the application have been made before determination of his contribution obligations under Finnish legislation? In the latter case, what importance does the fact have that Mr Rundgren was possibly not aware of the possibility given by Article 17a of the regulation?

6. Are Article 39 EC (formerly Article 48 of the EC Treaty) and in particular Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community to be interpreted as meaning that Finland is not entitled in the present case to charge Mr Rundgren national pension insurance contributions and sickness insurance contributions in accordance with its own national legislation?

7. Is Article 3 of Regulation (EEC) No 1408/71 or Article 12 EC (formerly Article 6 of the EC Treaty) to be interpreted as meaning that Mr Rundgren has in the present case become the object of prohibited discrimination?

8. May Mr Rundgren rely directly on the EC Treaty or on other Community law on the ground that he has possibly had to pay contributions of a tax nature on the same basis both to Finland and to Sweden as a result of the different methods adopted by Finland and Sweden in financing social security schemes?

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[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 (II), p. 416).

[2] Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (11), p. 475).

Reference for a preliminary ruling from the Sección Tercera de la Sala Tercera del Tribunal Supremo by order of that court of 22 September 1999 in the case of Canal Satélite Digital S.L. and Administración General del Estado, the other party to the proceedings being DTS Distribuidora de Televisión Digital S.A.

(Case C-390/99)

(2000/C 6/27)

Reference has been made to the Court of Justice of the European Communities by order of 22 September 1999 from the Sección Tercera de la Sala Tercera del Tribunal Supremo (Third Section of the Third Chamber of the Supreme Court), which was received at the Court Registry on 12 October 1999, for a preliminary ruling in the case of Canal Satéllite Digital S.L. and Administración General del Estado, the other party to the proceedings being DTS Distribuidora de Televisión Digital S.A. on the following questions:

1. Does Article 30 of the EC Treaty, in conjunction with the provisions of Articles 1 to 5 of Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals [1], preclude national rules which impose on operators of conditional-access services, as a condition of their being permitted to market apparatus, equipment, decoders or systems for the digital transmission and reception of television signals by satellite — including those lawfully manufactured or marketed in other Member States — the following cumulative requirements:

   — the obligation to register details of themselves and of the aforementioned apparatus, equipment, decoders and systems in a compulsory official register, such registration being conditional not only on a solemn declaration by the operator concerned that he has complied with the technical specifications, but also on a prior technical report from the national authorities on compliance with the technical and other requirements laid down in the national legislation;

   — the obligation, following completion of the registration procedure referred to above, to obtain the appropriate administrative 'certification' attesting to compliance with the aforementioned technical and other requirements laid down in the national legislation?

2. Does Article 59 of the EC Treaty, in conjunction with Articles 1 to 5 of Directive 95/47/EC, preclude national legislation which imposes the administrative requirements set out above on operators of conditional-access services?

3. Is a national legislative provision which prescribes compliance with such requirements to be regarded as a 'technical regulation' for the purposes of the duty to notify the Commission referred to in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations? [2]

(1) OJ L 281 of 23.11.1995, p. 1.
(2) OJ L 109 of 26.4.1993, p. 8.

Action brought on 13 October 1999 by the Commission of the European Communities against the Hellenic Republic

(Case C-396/99)

(2000/C 6/28)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 13 October 1999 by the Commission of the European Communities, represented by Dimitris Triantafillou and Barry Doherty, of its Legal Service, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The Commission claims that the Court should:

— declare that, by not adopting within the time-limit laid down all the measures necessary in order to comply with Article 2(1) of Directive 96/2/EC [1] with regard to mobile and personal communications, in conjunction with the second and third paragraphs of Article 3a of Directive 90/388/EEC on competition in the markets for telecommunications services, as amended by Directive 96/2/EC, the Hellenic Republic has failed to fulfil its obligations under the Treaty and those directives;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Member States are required by the binding character of the third paragraph of Article 249 and Article 10 EC (ex third paragraph of Article 189 and Article 5 of the EC Treaty) to adopt the measures needed to transpose directives into national law before the expiry of the period laid down for that purpose and to communicate those measures immediately to the Commission.

Up until now the Hellenic Republic has not adopted the measures necessary in order to implement fully Article 2(1) of Directive 96/2/EC and the second and third paragraphs of Article 3a of Directive 90/388/EEC, as amended by Directive 96/2/EC, which had to be implemented no later than 1 January 1998; it has thereby failed to fulfil its obligations under the Treaty and those directives.

(1) OJ L 20, 26.1.1996, p. 59.

Reference for a preliminary ruling by the VAT and Duties Tribunal, Manchester Tribunal Centre, by decision of that court of 12 October 1999, in the case of Yorkshire Co-operatives Ltd against Commissioners of Customs and Excise

(Case C-398/99)

(2000/C 6/29)

Reference has been made to the Court of Justice of the European Communities by a decision of the VAT and Duties Tribunal, Manchester Tribunal Centre, of 12 October 1999, which was received at the Court Registry on 14 October 1999, for a preliminary ruling in the case of Yorkshire Co-operatives Ltd against Commissioners of Customs and Excise, on the following questions:

(1) On the proper construction of Article 11A.1(a) and 11C.1 of the Sixth Directive [1], what is the taxable amount, in relation to a supply of goods by a retailer in the position of the Appellant to a customer, where —

(a) the manufacturer of the goods has sold them to the retailer (or, hypothetically, to a wholesaler who has sold them to the retailer),

(b) in the course of a sales promotion the manufacturer procures the issue of a coupon, the terms of which are:

(i) that the holder, on presenting the coupon to the retailer, may buy the goods from the retailer at a price which is less than the retailer's normal selling price by an amount ('the reduction') specified in or ascertainable in accordance with the terms of the coupon, and

(ii) that the manufacturer, when the retailer has sold the goods in accordance with the terms of the coupon and has presented the coupon to the manufacturer, will pay to the retailer a sum equal to the reduction,

(c) the retailer sells the goods to a customer on presentation of the coupon and on payment of the reduced price, and

(d) the retailer presents the coupon to the manufacturer and is paid a sum equal to the reduction?

Is the taxable amount —

(i) the cash sum paid by the customer, or

(ii) the cash sum paid by the customer together with the sum equal to the reduction paid by the manufacturer?

(2) If the answer to question (1) is in sense (i), must the retailer adjust his input tax in his returns of VAT in relation to the supply of the goods by the manufacturer (or, as the case may be, by the wholesaler) to him, where the manufacturer or other supplier has not issued a credit note to the retailer for the reimbursement of the reduction?

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[1] Directive 77/388/EEC of the Council 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 L 145, 13.6.1977, p. 1).

Reference for a preliminary ruling by the Schleswig-Holstein Oberverwaltungsgericht by order of that court of 22 September 1999 in the case of Peter Heinrich Thomsen against Amt für ländliche Räume, Husum, joined as parties: 1. Helga Henningsen, 2. Ute Henningsen, 3. Peter Henningsen

(Case C-401/99)

(2000/C 6/30)

Reference has been made to the Court of Justice of the European Communities by order of the Schleswig-Holstein Oberverwaltungsgericht (Higher Regional Court) of 22 September 1999, received at the Court Registry on 18 October 1999, for a preliminary ruling in the case of Peter Heinrich Thomsen against Amt für ländliche Räume (Office for Rural Areas), Husum, joined as parties: 1. Helga Henningsen, 2. Ute Henningsen, 3. Peter Henningsen on the following questions:

(a) Is Article 7(2) of Council Regulation (EEC) No 3950/92 [1] of 28 December 1992 establishing an additional levy in the milk and milk products sector to be construed as meaning that, on the expiry of rural leases, the reference quantities available on the holdings in question may be transferred in whole or in part in accordance with provisions adopted or to be adopted by the Member States, taking account of the legitimate interests of the parties, only if at the time of surrender the lessors are producers as defined in Article 9(c) of Regulation No 3950/92?

(b) If the notion of producer in Article 7(2) is to be understood in a broader sense, is a transfer in such cases also possible where the lessors do not envisage taking up the marketing of milk but are desirous of transferring the reference quantities together with the land to third parties?

(c) If the answer to (b) is affirmative, must the third parties to whom the reference quantities are to be transferred be producers as defined in Article 9(c) of Regulation No 3950/92?

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[1] OJ L 405 of 31.12.1992, p. 1.

Action brought on 19 October 1999 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-402/99)

(2000/C 6/31)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 19 October 1999 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, and Olivier Couvert-Castéra, a national civil servant seconded to its Legal Service, acting as Agents, with an address for service in Luxembourg at the Chambers of Carlos Gómez de la Cruz, a member of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to adopt the measures necessary to implement properly and in full Article 3(2) and (4) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

— As regards transposition of Article 3(2) of Directive 90/313/EEC, the Commission considers that the present position under Belgian law does not ensure that the competent authorities can never justify refusing access to environmental information on the basis of the exceptions in subparagraph 6 of Article 6(1) (protection of a federal economic or financial interest, of the currency, or of public funds) or subparagraph 2 of Article 6(2) (duty of confidentiality) of the Federal Law of 11 June 1994 on public notices of the administrative authorities.

— As regards transposition of Article 3(4) of Directive 90/313/EEC, the Commission points out that the Belgian legal system does not provide a clear guarantee that any body bearing an appeal will automatically consider unlawful an implied refusal where reasons are not formally provided.

[1] OJ L 158 of 23.6.1990, p. 56.

Action brought on 25 October 1999 by the Commission of the European Communities against Ireland

(Case C-408/99)

(2000/C 6/32)

An action against Ireland was brought before the Court of Justice of the European Communities on 25 October 1999 by the Commission of the European Communities, represented by Marie Wolfcarius, Legal Adviser, acting as Agent, 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:

— declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 94/55/EC [1] of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road and Commission Directive 96/86/EC [2] adapting to technical progress Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road, or in any event by failing to inform the Commission of those measures, Ireland has failed to fulfil its obligations under those Directives;

— order Ireland to pay the costs.

Pleas in law and main arguments

Article 249 EC (ex Article 189 of the EC Treaty), under which a directive shall be binding, as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired on 1 January 1997 without Ireland having enacted the provisions necessary to comply with the directives referred to in the conclusions of the Commission.

[1] OJ L 319 of 12.12.1994, p. 7.
[2] OJ L 335 of 24.12.1996, p. 43.

Reference for a preliminary ruling by the Immigration Appeal Tribunal, London, by order of that court of 28 May 1999, in the case of Baumbast and 'R' against Secretary of State for the Home Department

(Case C-413/99)

(2000/C 6/33)

Reference has been made to the Court of Justice of the European Communities by an order of the Immigration Appeal Tribunal, London, of 28 May 1999, which was received at the Court Registry on 28 October 1999, for a preliminary ruling in the case of Baumbast and 'R' against Secretary of State for the Home Department, on the following questions:

Question 1

(a) Are children of a citizen of the European Union who are themselves such citizens and who have installed themselves in primary education during the exercise by their father (or parent) of rights of residence as a worker in another member state of which he is not a national ('the host state') entitled to reside in the host state in order to undergo general educational courses there, pursuant to article 12 of Council Regulation 1612/68? [1]

(b) Insofar as the answer to the preceding question may vary in circumstances where:

(i) their parents are divorced;

(ii) only one parent is a citizen of the European Union and that parent has ceased to be a worker within the host state;

(iii) the children are not themselves citizens of the European Union;

what criteria are to be applied by the national authorities?

Question 2

Where children have the right to reside in a host state in order to undergo general education courses pursuant to article 12 of Council Regulation 1612/68, is the obligation of the host state to 'encourage all efforts to enable such children to attend these courses under the best possible conditions' to be interpreted as entitling their primary carer, whether or not a citizen of the Union, to reside with them in order to facilitate such a right notwithstanding:

(i) their parents are divorced; or

(ii) the father who is a citizen of the European Union ceases to be a worker within the host state?

The questions exclusive to the Baumbast case

Question 3

(a) On the facts of Mr. Baumbast's case, does he, as an EU citizen, enjoy a directly effective right of residence in another EU Member State pursuant to article 18 (ex article 8a) of the Treaty of Rome in circumstances where he no longer enjoys rights of residence as a worker under article 39 (ex article 48) of the Treaty of Rome, and does not qualify for residence in the host state under any other provision of EU law?

(b) If so, are his wife and children consequently able to enjoy derivative residence, employment and other rights?

(c) If so, do they do so on the basis of articles 11 and 12 of Regulation 1612/68 or some other (and if so, which) provision of EU law?

Question 4

(a) Assuming that the preceding question is answered in the EU citizen's disfavour, do that person's family members retain the derivative rights that they, as such members, originally acquired upon being installed in the UK with a worker?

(b) If so, what are the conditions that apply?

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[1] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257 of 19.10.1968, p. 2) (SE SER1 68/II) p. 475).

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Chancery Division (Patent Court), by order of that court of 24 June 1999, in the case of Zino Davidoff SA against A & G Imports Ltd

(Case C-414/99)

(2000/C 6/34)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Chancery Division (Patent Court), of 24 June 1999, which was received at the Court Registry on 29 October 1999, for a preliminary ruling in the case of Zino Davidoff SA against A & G Imports Ltd, on the following questions:

(A) Insofar as the Directive [1] refers to goods being put on the market in the Community with the consent of the proprietor of a mark, is it to be interpreted as including consent given expressly or implicitly and directly or indirectly.

(B) Where:

(i) a proprietor has consented to or allowed goods to be placed in the hands of a third party in circumstances where the latter's rights to further market the goods are determined by the law of the contract of purchase under which that party acquired the goods, and

(ii) said law allows the vendor to impose restrictions on the further marketing or use of the goods by the purchaser but also provides that, absent the imposition by or on behalf of the proprietor of effective restrictions on the purchaser's right to further market the goods, the third party acquires a right to market the goods in any country, including the Community,

then, if restrictions effective according to that law to limit the third party's rights to market the goods have not been imposed, is the Directive to be interpreted so as to treat the proprietor as having consented to the right of the third party acquired thereby to market the goods in the Community.

(C) If the answer to question (B) is in the affirmative, is it for the national courts to determine whether, in all the circumstances, effective restrictions were imposed on the third party.

(D) Is Article 7(2) of the Directive to be interpreted. in such a way, that legitimate reasons for the proprietor to oppose further commercialisation of his goods include any actions by a third party which affect to a substantial extent the value, allure or image of the trade mark or the goods to which it is applied.

(E) Is Article 7(2) of the Directive to be interpreted in such a way that legitimate reasons for the proprietor to oppose further commercialisation of his goods include the removal or obliteration by third parties (in whole or in part) of any markings on the goods where such removal or obliteration is not likely to cause any serious or substantial damage to the reputation of the trade mark or the goods bearing the mark.

(F) Is Article 7(2) of the Directive to be interpreted in such a way that legitimate reasons for the proprietor to oppose further commercialisation of his goods include the removal or obliteration by third parties (in whole or in part) of batch code numbers on the goods where such removal or obliteration results in the goods in question

(i) offending against any part of the criminal code of a Member State (other than a part concerned with trade marks) or

(ii) offending against the provisions of Directive 76/768/EEC [2].

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[1] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11.2.1989, p. 1).

[2] Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ L 262, 27.9.1976, p. 169).

Action brought on 29 October 1999 by the Commission of the European Communities against the Republic of Austria

(Case C-424/99)

(2000/C 6/35)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 29 October 1999 by the Commission of the European Communities, represented by Josef Christian Schieferer, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply in full with Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems [1], and by failing to inform the Commission thereof, the Republic of Austria has failed to fulfil its obligations under that directive;

2. Order the Republic of Austria to pay the costs of the proceedings.

Pleas in law and main arguments

Contrary to the view taken by Austria, the Commission submits that the bodies responsible for operating the Austrian health service (Hauptverband der Sozialversicherungsträger) (Principal Association of Social Insurance Institutions) must be treated as being State authorities for the purposes of the directive and that the inventory of medicines published by the abovementioned Hauptverband pursuant to Paragraph 31(3), no 12, in conjunction with Paragraph 133(2), of the Allgemeines Sozialversicherungsgesetz (General Law on Social Security Insurance) ('ASVG') is a positive list within the

meaning of Article 6 of Directive 89/105/EEC. For reimbursement in respect of a medicinal product not included in the inventory of medicines, approval of a head doctor or controlling doctor is required under Paragraph 31(3), no 12, of the ASVG. The statutorily defined criteria (suitability, necessity) governing the granting of approval by a head doctor or controlling doctor are *so imprecise* that no reliable determination as to whether a medicinal product is reimbursable can be made directly on the basis of the Law.

The Austrian legislature has failed to adopt the implementing measures required

— to ensure compliance with the time-limit laid down in Article 6 for the decision as to inclusion on the positive list;

— to provide an effective legal remedy against negative decisions;

— to comply with the obligation to state reasons for negative decisions.

(1) OJ 1989 L 40 of 11.2.1989, p. 8.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 October 1999

in Case T-210/95: European Fertilizer Manufacturers' Association (EFMA) v Council of the European Union [1]

(Anti-dumping duties — Elimination of injury — Target price — Profit margin on the costs of production)

(2000/C 6/36)

(Language of the case: English)

In Case T-210/85: European Fertilizer Manufacturers' Association (EFMA), established in Zurich (Switzerland), represented by Dominique Voillemot and Olivier Prost, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Carlos Zeyen, 67 Rue Ermesinde, supported by French Republic (Agents: Catherine de Salins, Gautier Mignot, and, in the oral procedure, Sujiro Seam) v Council of the European Union (Agents: initially by Yves Cretien and Antonio Tanca, then solely by Mr Tanca, assisted by Hans-Jürgen Rabe and Georg Berrisch), supported by Commission of the European Communities (Agent: Nicholas Khan) — application for the annulment of Article 1 of Council Regulation (EC) No 2022/95 of 16 August 1995 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ 1995 L 198, p. 1) — the Court (Second Chamber, Extended Composition), composed of: A. Potocki, President, K. Lenaerts, C.W. Bellamy, J. Azizi and A.W.H. Meij, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 28 October 1999, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to bear its own costs and pay the costs of the Council. The Commission and the French Republic shall bear their own costs.*

[1] OJ C 31 of 3.2.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 9 November 1999

in Case T-102/98: Christina Papadeas v Committee of the Regions of the European Union [1]

(Officials — Internal competition — Non-admission to the oral tests — Assessment by the Selection Board — Principle of non-discrimination — Principle of sound administration and the duty to have due regard for the welfare of officials)

(2000/C 6/37)

(Language of the case: French)

In Case T-102/98: Christina Papadeas, a former member of the temporary staff of the Committee of the Regions, residing in Brussels, represented by Georges Vandersanden, and Laura Levi, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 2-4 Rue Beck, v Committee of the Regions of the European Union (Agents: Jordi Garcia-Petit and Denis Waelbroeck) — application for annulment of the decision of the Selection Board in Internal Competition C/01/97 not to admit the applicant to the oral tests in that competition — the Court of First Instance (Fifth Chamber), composed of J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgement on 9 November 1999, the operative part of which is as follows:

1. *The decision of the Selection Board in Internal Competition C/01/97 not to admit the applicant to the oral tests is annulled.*

2. *The Committee of the Regions is ordered to pay the costs in their entirety.*

[1] OJ C 278 of 5.9.1998.

ORDER OF THE COURT OF FIRST INSTANCE

of 15 October 1999

in Case T-94/96 (92): Martin Hagleitner v Commission of the European Communities [1]

(Taxation of costs)

(2000/C 6/38)

(Language of the case: German)

In Case T-94/96 (92): Martin Hagleitner, residing in Vienna, represented by Harald Svoboda, Rechtsanwalt, Vienna, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume, v Commission of the European Communities (Agents: Julian Currall and Bertrand Wägenbaur) — application for taxation of the costs payable by the defendant to the applicant pursuant to the judgment of the Court of First Instance of 15 September 1998 — the Court of First Instance (Second Chamber), composed of: A. Potocki, President, and C.W. Bellamy and A.W.H. Meij, Judges; H. Jung, Registrar, made an order on 15 October 1999, the operative part of which is as follows:

The total amount of the costs to be reimbursed by the Commission to the applicant is fixed in the sum of 9 500 euro, together with any VAT payable on the fees of the applicant's lawyer.

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[1] OJ C 247 of 24.8.1996.

ORDER OF THE COURT OF FIRST INSTANCE

of 27 October 1999

in Case T-106/99: Karl L. Meyer v Commission of the European Communities [1]

(Inadmissibility — Actionable measure — Access to documents of the institutions — Difference between information and documents)

(2000/C 6/39)

(Language of the case: French)

In Case T-106/99: Karl L. Meyer, residing at Uturoa, Raiatea (French Polynesia), represented by Jean-Dominique des Arcis, of the Papeete Bar, with an address for service in Luxembourg at the office of Horst Pakowski, Ambassador of the Federal Republic of Germany, 20-22 Avenue Emile Reuter, against Commission of the European Communities (Agents: Ulrich Wolker and Xavier Lewis) — application for annulment of the Commission decision of 30 March 1999 refusing a request from the applicant for information and for the Commission to be held liable — the Court of First Instance (Third Chamber), composed of K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; H. Jung, Registrar, made an order on 27 October 1999, the operative part of which is as follows:

1. *There is no need to reach a decision on the third form of order sought in the application, to the effect that the Commission should be ordered to provide the applicant with the information requested.*

2. *The application for annulment is dismissed as inadmissible.*

3. *The claim for damages is dismissed as inadmissible.*

4. *The applicant shall bear his own costs, together with those incurred by the Commission.*

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[1] OJ C 226 of 7.8.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 20 October 1999

in Case T-154/99 Stadtsportverband Neuss e.V. v Commission of the European Communities [1]

(Action for annulment — Withdrawal of the contested measure — No need to adjudicate)

(2000/C 6/40)

(Language of the case: German)

In Case T-154/99: Stadtsportverband Neuss e.V., established in Neuss (Germany), represented by Heinz Günther Hüsch, Rechtsanwalt, Neuss, v Commission of the European Communities (Agents: Karen Banks and Klaus Wiedner) — application for annulment of the Commission decision of 6 April 1999 ordering repayment of financial aid granted to the applicant — the Court of First Instance (Fourth Chamber), composed of: V. Tiili, President, R.M. Moura Ramos and P. Mengozzi, Judges; H. Jung, Registrar, has made an order on 20 October 1999, the operative part of which is as follows:

1. *It is unnecessary to adjudicate in the present action;*

2. *The Commission shall bear the costs.*

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[1] OJ C 265 of 18.9.1999.

Action brought on 20 September 1999 by J.H. Gankema, trading as Bovanda Oil, against the Commission of the European Communities

(Case T-210/99)

(2000/C 6/41)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 September 1999 by J.H. Gankema, trading as Bovanda Oil, of Veendam (Netherlands), represented by E. Maas, of the Groningen Bar.

The applicant claims that the Court should annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany, and declare that the subsidy granted to Bovanda Oil is not contrary to any European legislation.

Pleas in law and main arguments

The contested decision provides *inter alia* that the Netherlands should reclaim the subsidies granted to 450 service stations in the vicinity of the German border, including that of the applicant, by way of compensation for an increase in excise duty introduced in the Netherlands with effect from 1 July 1997. As regards certain of those service stations, the Commission took the view that the Netherlands had not provided any, or any sufficient, information concerning the relationships and links between owners and suppliers showing that the aid could have no appreciable effect on trade and competition between Member States.

The applicant operates, for his own account and at his own risk, a service station belonging to him. He states that he has no link with any particular fuel supplier, and that the subsidy granted to him therefore likewise falls within the *de minimis* rule [2].

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[1] OJ L 280 of 30.10.1999, p. 87.
[2] Commission notice, OJ 1996 C 68, p. 9.

Action brought on 22 September 1999 by Borrekuil B.V. against the Commission of the European Communities

(Case T-211/99)

(2000/C 6/42)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 September 1999 by Borrekuil B.V., of Beek (Netherlands), represented by P.W.A.M. van Roy, of the Beek Bar.

The applicant claims that the Court should:

— annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany, and order that no demand for repayment should be made;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-210/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 29 September 1999 by Autoservice Fermans Exclusive B.V. against the Commission of the European Communities

(Case T-215/99)

(2000/C 6/43)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 September 1999 by Autoservice Fermans Exclusive B.V., of Amstenrade (Netherlands), represented by H.F.A Bronneberg, of the Geelen Bar.

The applicant claims that the Court should:

— annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany, and order that no demand for repayment should be made;

— alternatively, decide the matter in such way as the Court shall consider to be fair and reasonable;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-210/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 30 September 1999 by Ter Huurne's Handelsmaatschappij B.V. against the Commission of the European Communities

(Case T-216/99)

(2000/C 6/44)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 September 1999 by Ter Huurne's Handelsmaatschappij B.V., of Haaksbergen (Netherlands), represented by H.C. van der Sijs, of the Enschede Bar, with an address for service in Luxembourg at the Registry of the Court of First Instance, Kirchberg.

The applicant claims that the Court should:

— annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-210/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 30 September 1999 by Anton Dürbeck GmbH against the Commission of the European Communities

(Case T-218/99)

(2000/C 6/45)

(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 30 September 1999 by Anton Dürbeck GmbH, Frankfurt am Main, Germany, represented by Gert Meier, Rechtsanwalt, Berrenrather Strasse 313, Cologne.

The applicant claims that the Court should:

1. annul, on the ground of infringement of the Treaty, the Commission decision of 28 July 1999 on the adoption of transitional measures in favour of A. Dürbeck within the framework of the common organisation of the market in bananas;

2. order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission refused to award the applicant additional licences for the import of 25 000 tonnes of bananas from third countries because a case of hardship was not present, the applicant's current situation was already to be regarded as balanced and that situation could, moreover, have been foreseen.

The applicant complains that Article 30 of Regulation No 404/93 [1] has been infringed.

According to the applicant, the hardship to be offset consists in its inability to import the bananas covered by the contract which it concluded in 1991 with the enterprise Consultban in Machala, Ecuador for the weekly marketing of 100 000 to 150 000 crates of bananas. It has also lost licences in respect of 14 312 tonnes of bananas as a result of the change in the reference period pursuant to Article 4(2) of Regulation No 2362/98 [2]. The ensuing loss of 75 % of its import rights has caused the applicant serious difficulties and has practically meant its elimination from the market. The loss amounts to DM 3 578 000, that is to say double its share capital. Under Article 30 of Regulation No 404/93 the defendant is obliged to compensate for the hardship which has been caused by Regulation No 2362/98.

The applicant states that the defendant is proceeding on the basis of incorrect facts when it assumes that the applicant's contract with Consultban was extended by seven years after Regulation No 2362/98 entered into force.

(1) OJ L 47 of 25.2.1993, p. 1.
(2) OJ L 293 of 31.10.1998, p. 33.

Action brought on 30 September 1999 by Joachim Behmer against the European Parliament

(Case T-220/99)

(2000/C 6/46)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 30 September 1999 by Joachim Behmer, residing in Luxembourg, represented by Jean-Noël Louis, Greta-Françoise Parmentier and Véronique Peere, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange.

The applicant claims that the Court should:

— annul the European Parliament's decision rejecting the application by the applicant for the grade LA 3 post of Deputy Head of the German language Translation Division;

— annul the European Parliament's decision appointing another person to that post;

— order the Parliament to pay the costs.

Pleas in law and main arguments

The applicant, a Grade LA 4 official, contests the appointing authority's refusal to appoint him to the post of Deputy Head of the German language Translation Division (career bracket: LA 3).

In support of his claims, he pleads infringement of:

— Articles 7, 29 and 45 of the Staff Regulations;

— the principle of equal treatment;

— the principle of career progression.

The applicant also pleads a manifest error of assessment in the present case, as well as failure by the defendant to comply with its obligation to provide a statement of reasons.

Action brought on 6 October 1999 by Luc Dejaiffe against the Office for Harmonisation in the Internal Market

(Case T-223/99)

(2000/C 6/47)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 6 October 1999 by Luc Dejaiffe, residing at Nivelles (Belgium), represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the offices of Société de Gestion Fiduciaire SARL, 2-4 Rue Beck.

The applicant claims that the Court should:

— annul the decision taken by the appointing authority of the Office on 21 December 1998 unilaterally terminating the applicant's employment contract;

— award the applicant, by way of compensation for the material and non-material damage suffered by him, a sum, to be assessed on an equitable basis, amounting to EUR 10 000 and a sum equivalent to the prejudice caused to his career and to the diminution in his pension rights and allowances;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant contests the decision taken on 21 December 1998 by the President of the defendant organisation providing for the early termination of the applicant's contract of employment, pursuant to Article 5(b) of that contract and the provisions of Article 47(1)(b) of the Conditions of employment of other servants ('the Conditions'), with effect from 15 February 1999.

According to the applicant's account of the facts, that termination constituted the appointing authority's response to the way in which, at a meeting of a working group, he had hotly contested the premature introduction of a software system, pointing out certain technical deficiencies which would, in his view, have an adverse effect on the proper execution of financial transactions and proposing technical steps to mitigate those deficiencies.

In support of his claim, the applicant pleads infringement of Article 26 of the Staff Regulations and of the right to a fair hearing, the commission in the present case of a manifest error of assessment, the unlawful nature of his dismissal, violation of the right to freedom of expression and of the principle of proportionality, and failure to observe the rules governing disciplinary proceedings (infringement of Article 50a of the Conditions).

Action brought on 7 October 1999 by the European Council of Transport Users ASBL against the Commission of the European Communities

(Case T-224/99)

(2000/C 6/48)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 October 1999 by the European Council of Transport Users ASBL, represented by Mark Clough QC, with an address for service in Luxembourg at the office of Aloyse May, 31 Grand Rue.

The applicant claims that the Court should:

— annul the Commission Decision;

— order the Commission to pay the applicant's costs;

— take any measures of preliminary enquiry that the Court may consider necessary.

Pleas in law and main arguments

The present application concerns the Commission's decision not to raise serious doubts under Article 12(3) of Regulation No 1017/68 in respect of the provisions in the revised Trans-Atlantic Conference Agreement (TACA) falling within the scope of Regulation No 1017/68. As a consequence of this act, the not-below-cost rule in Article 10 and related provisions of the revised TACA enjoy an individual exemption for three years until 5 May 2002. The exemption authorises the TACA lines to agree not to resell the inland transport services which they purchase in Europe below the out-of-pocket 'costs' of purchasing that transport.

The applicant submits first at all that the contested act does not satisfy any of the conditions for individual exemption contained in Article 5 of Regulation Nos 1017/68 and their equivalent in Article 81(3) of the EC Treaty. In particular, the Commission's decision is contrary to previous decisions and to the conclusions of the 1997 Multi-modal Group report presented to Commissioner Van Miert. These should have made clear that the liner Conference inland transport price fixing provides no economic benefits (in particular, the alleged stability of maritime transport liner conference tariffs) and that, even if there were to be such a benefit, the restrictions of competition would not be indispensable to its achievement.

It still submits that the exemption in question cannot satisfy the condition that shippers should enjoy a fair share of the alleged economic benefits since the clear intention of the revised TACA provisions is to increase prices for through transport and, in particular, maritime transport. Even if the exempted provisions were indispensable for the alleged stability benefit, they would have the effect of eliminating effective competition on through transport rates.

Moreover, the Multi-modal Group Report makes it clear, according to the applicant, that the Commission has to investigate a number of crucial issues and, in particular, ensure that there are sufficient safeguards for shippers before considering authorising any not-below-cost rule. However, the Commission has failed to consider these relevant issues and therefore, its reasoning in the contested decision is to be considered as defective.

The applicant further claims that the defendant institution has misused its powers or acted outside its competence by effectively granting an exemption under Regulation Nos 4056/86 for a form of price fixing intended to enhance the price fixing in the maritime transport, when inland transport should fall outside that regulation.

Finally, the contested decision should not have followed the procedure applicable to complaints under Articles 10 and 11(3) of Regulations 1017/68 and 4056/86.

Action brought on 8 October 1999 by Comafrica SpA and Dole Fresh Fruit Europe Ltd & Co. against the Commission of the European Communities

(Case T-225/99)

(2000/C 6/49)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 October 1999 by Comafrica SpA and Dole Fresh Fruit Europe Ltd & Co., represented by Bernard O'Connor, Solicitor, and Bonifacio García Porras, with an address for service in Luxembourg at the office of Arsene Kronshagen, 22 rue Marie Adelaide.

The applicants claim that the Court should:

— declare void, pursuant to Articles 230 and 231 EC, Commission Regulation (EC) No 1586/99 fixing the reduction coefficient for the determination of the quantity of bananas to be allocated to each operator for 1999;

— order the Commission, pursuant to Articles 235 and 288 EC, to make good any damage, and interest thereon, caused to the applicants, by the wrongful adoption of Regulation No 1586/99;

— declare that the Commission pay the cost incurred in the making of the application.

Pleas in law and main arguments

The present application concerns the administration by the Commission of the rules governing the allocation of the annual licence entitlement to the applicants for the import of bananas within the third country tariff rate quotas established by Article 18 of Council Regulation (EEC) No 404/93 of 13 February 1993 and as substantially amended by EC Regulation No 1637/98 of 20 July 1998. The application arises actually out of the adoption, by the Commission, of a reduction coefficient based on a pretended incorrect reference quantity figure which reduces the applicants' licence entitlement for the 1999 marketing year.

The applicants put forward the following submissions:

— The definitive reference quantity for 1999 is incorrect. As a matter of fact, the Commission knew, when it adopted the definitive reduction coefficient for 1999, that the quantities of bananas actually imported or licences used were substantially lower than the reference quantities claimed by the operators;

— Allowing double counting or overclaims of 4 % or 3 % to occur is not a case of Commission exercising a discretion. It has no discretion, only a duty to determine the reduction coefficient in accordance with the law, and it has acted in breach of that duty;

— The Commission did not correctly apply the rules when it knowingly accepted a 4 % or 3 % overstatement of the reference quantity. Furthermore, the Commission cannot justify these errors by stating that it has difficulties in establishing the precise quantities of bananas which had been imported. The calculation of the 1999 reduction coefficient no longer refers to quantities of bananas marketed during the years preceding the common organisation of the market but on the basis of the bananas actually imported or on the basis of the licences used during 1994, 1995 and 1996.

Action brought on 11 October 1999 by Kvaerner Warnow Werft GmbH against the Commission of the European Communities

(Case T-227/99)

(2000/C 6/50)

(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 11 October 1999 by Kvaerner Warnow Werft GmbH, of Rostock-Warnemünde, Germany, represented by Dr Michael Schütte, of Bruckhaus Westrick Heller Löber, Brussels, with an address for service in Luxembourg at the Chambers of Bonn & Schmitt, 7 Val Ste Croix.

The applicant claims that the Court should:

1. Annul the Commission's decision of 8 July 1999,

   in the alternative: annul the Commission's decision in so far as the Commission wrongly used as basis of the calculation of the demand for repayment a total amount of aid approved of DEM 1 246,9 million (less 27 million aid on closure) instead of the total amount of the operating aid actually granted;

2. Order the Commission to pay the costs.

Pleas in law and main arguments

In the contested decision, addressed to Germany, aid by Germany in favour of the applicant in the amount of EUR 41,5 million was declared to be incompatible with the common market under Article 87(1) EC. In a number of previous decisions the Commission had made a restriction of the applicant's annual shipbuilding capacity a condition of the approval of the aid. It now reaches the conclusion that the applicant failed to comply with those restriction obligations. To the extent that the approved capacity was exceeded, therefore, the aid is no longer consistent with Community law.

The applicant contests the decision on the following grounds:

Breach of essential procedural requirements

— At the time when the contested decision was voted on, the Commission was irregularly composed, since there was no legal basis for the 'suspension' of Mr Bangemann. In addition, two members of the Commission, namely Commission President Santer and Mrs Bonino, had already been elected to the European Parliament, that being incompatible with their membership of the Commission.

— Moreover, the Commission made inadequate findings of fact and failed to comply with its obligation to state reasons within the meaning of Article 253 EC.

Infringement of substantive law

— The Commission applied the concept of reduction of capacity within the meaning of Article 10a(2)(c) of Directive 90/684/EEC [1] wrongly in law and contrary to its own previous decision-making practice as meaning a restriction of production. The provision is correctly to be understood, however, as meaning that only the technical installations of a shipyard are to be restricted, regardless of actual production. Moreover, by the departure from previous practice the principles of protection of legitimate expectations, equal treatment and proportionality were infringed.

— In addition, the Commission unlawfully based its decision on the total amount of aid approved, without ascertaining the amount of aid actually granted.

[1] Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding (OJ L 380 of 31.12.1990, p. 27), as amended by Council Directive 92/68/EEC of 20 July 1992 (OJ L 219 of 4.8.1992, p. 54).

Action brought on 12 October 1999 by Westdeutsche Landesbank Girozentrale against the Commission of the European Communities

(Case T-228/99)

(2000/C 6/51)

(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 October 1999 by Westdeutsche Landesbank Girozentrale, of Düsseldorf, Germany, represented by Dr Frank Montag, of Freshfields Deringer, Cologne, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand'Rue.

The applicant claims that the Court should:

1. Annul Commission Decision C(1999) 2265 fin. of 8 July 1999 concerning a measure taken by the Federal Republic of Germany in favour of Westdeutsche Landesbank Girozentrale;

2. Order the Commission to pay the costs.

Pleas in law and main arguments

The application is based on the following grounds:

The Commission, after its resignation, no longer had jurisdiction to adopt the decision, since its powers were limited to current and urgent business.

On 8 July 1999, the date when the decision was discussed and voted on, the Commission was irregularly composed, since Commission President Santer and Commissioner Bonino should no longer have been allowed to take part in the session, following their election to the European Parliament. In addition, Commissioner Bangemann had been wrongly 'suspended' by the Commission and excluded from the session.

The Commission infringed the applicant's right to a fair hearing by failing to give it an opportunity to comment either on the report of the Commission's advisers, first consulting limited, London, which was an essential basis of the reasons for the decision, or on the comments made by Bundesverband deutscher Banken.

The Commission infringed its obligation to state reasons under Article 253 EC, since it did not explain the calculation it used of the return on the Wohnungsbauförderungsanstalt ('Wfa') assets, nor showed that the other elements of Article 87(1) EC were present.

The decision infringes Article 87(1) EC because it extends the concept of aid too far, by applying the principle of the capital investor acting in market-economy conditions, developed for cases of restructuring, without differentiation to the applicant, which is a profitable undertaking. In the decision the Commission moreover requires for the first time that the undertaking must achieve an average return for the sector rather than merely a reasonable return.

The Commission overlooks, contrary to its previous decision-making practice and to the case-law of the Court of Justice, the fact that private investors too are not focused exclusively on achieving returns. The requirement of an at least average return discriminates against public undertakings and infringes the guarantee of the right to property in Article 295 EC.

The Commission applies the principle — which it misunderstands — of the capital investor acting in market-economy conditions incorrectly and arrives at illusory figures for returns for the Wfa assets.

The Commission wrongly assumes that the risk profile of the Wfa assets is comparable economically with share capital.

The Commission states, as sole reason for the rate of return it regards as usual in the market on the part of the Wfa assets which is economically usable for the applicant, that in its Crédit Lyonnais decision of 1995 it likewise regarded a return of 12 % after tax as reasonable. The Crédit Lyonnais decision is not applicable to the present case, however, because Crédit Lyonnais was a case of restructuring.

The Commission confuses return on equity from the point of view of the undertaking with return on investment from the point of view of the capital investor, and wrongly assumes that expectations as to returns are in principle to be understood as net return.

The rate of return of 12 % after tax for capital investments used by the Commission is not tenable. The Commission has confused pre-tax and after-tax figures.

The transfer of Wfa to Westdeutsche Landesbank Girozentrale does not have any special features which could justify an additional 1.5 % on top of the 12 % after tax.

The Commission wrongly assumes that the applicant also has to pay a consideration for the part of the Wfa assets which is not usable for it.

Finally, the Commission wrongly fails to take account of the synergy effects created by the merger of the two credit institutions in calculating the amount of the consideration to be paid.

Action brought on 13 October 1999 by Hans Mc Auley against the Council of the European Union

(Case T-230/99)

(2000/C 6/52)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 13 October 1999 by Hans Mc Auley, residing at Wezembeek-Oppem (Belgium), represented by Jean-Noël Louis, Greta-Françoise Parmentier and Véronique Peere, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange.

The applicant claims that the Court should:

— annul the Council's decisions rejecting his applications for the grade LA 3 posts of Head of the English Language Division and Legal Adviser in that division;

— annul the decisions appointing two other persons to the posts of Head of the English Language Division and Legal Adviser;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant contests the appointing authority's refusal to accept his applications for two grade LA 3 posts.

In support of his claims, he pleads infringement of:

— Articles 29 and 45 of the Staff Regulations;

— the promotions procedure;

— the principles of equal treatment and career progression.

Lastly, the applicant pleads misuse of powers in the present case.

Action brought on 12 October 1999 by Colin Joynson against the Commission of the European Communities

(Case T-231/99)

(2000/C 6/53)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 October 1999 by Colin Joynson, represented by Beeket Bedford, of the Middle Temple and by Messrs Ferdinand Kelly, Solicitors, 21 Bennetts Hill, Birmingham, B2 5QP, United Kingdom.

The applicant claims that the Court should:

— annul the decision of the Commission in Case IV/36.081/F3 — Bass dated 16 June 1999;

— declare that the Commission is required under Article 233 of the Treaty establishing the European Community to take the necessary measures to comply with the judgment to be delivered;

— order the Commission to pay the costs of this application.

Pleas in law and main arguments

The applicant states that on 3 February 1998, pursuant to Article 19(3) of Regulation No 17/62 the Commission gave notice [1] that it intended to take a favourable position in respect of certain agreements notified to it by Bass, by granting retroactive exemption pursuant to Article 81(3) EC. The agreements in question were a standard form of lease, the subject of which is a fully fitted-out, on-licensed public house in England and Wales with a tie for beer, together with certain related agreements, and the standard agreements for Scotland. Before taking a final decision on this matter, the Commission invited all interested parties to submit their observations.

On 31 March 1999, the applicant submitted observations together with an expert's report to the Commission. In those observations objection was made to the proposal to grant Bass an exemption.

On 16 June 1999, the Commission took a Decision relating to a proceeding pursuant to Article 81 EC (Case IV/36.081/F3 — Bass) (the contested decision) [2]. In its decision the Commission, overriding the objections made in the said observations, it granted Bass retroactive exemption in respect the notified agreements with effect from 1 March 1991 to 31 December 2002.

The applicant seeks relief from the Court of First Instance on the grounds that in granting exemption to the notified agreements the Commission:

(a) failed properly to evaluate the facts and law which establish that the notified agreements do not fulfil the conditions set out in Article 81(3);

(b) failed to give adequate reasons for its decision that the notified agreements fulfil the conditions set out in Article 81(3).

(1) OJ 1999 C 36, p. 5.
(2) OJ 1999 L 186, p. 1.

Action brought on 12 October 1999 by Land Nordrhein-Westfalen against the Commission of the European Communities

(Case T-233/99)

(2000/C 6/54)

(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 October 1999 by Land Nordrhein-Westfalen, represented by Dr Michael Schütte, of Bruckhaus Westrick Heller Löber, Berlin, with an address for service in Luxembourg at the Chambers of Bonn & Schmitt, 7 Val Ste Croix.

The applicant claims that the Court should:

1. Annul Commission Decision C(1999) 2265 fin. of 8 July 1999;

2. Order the Commission to pay the costs.

Pleas in law and main arguments

The subject-matter of the application is Commission Decision C(1999) 2265 fin. ('the Decision') of 8 July 1999 concerning a measure taken by the Federal Republic of Germany in favour of Westdeutsche Landesbank Girozentrale ('WestLB'), notified to the Federal Republic of Germany on 4 August 1999 by letter of the Commission SG (99) D/6112 of 4 August 1999.

The acting Commission had no jurisdiction to make the Decision, since because of its extent and importance it was not current business of the Commission, nor would the non-adoption of the Decision have run counter to the interests of the Community or of individuals.

The Commission was irregularly composed as a result of the 'suspension' of acting Commissioner Bangemann.

The Commission omitted to make available to the applicant essential documents which were material to the defence, in particular a report by consultants First Consulting, and thereby restricted the applicant's ability to defend itself.

The facts were stated incompletely and manifestly incorrectly on essential points, such as the structure of WestLB's business activity and its performance of public duties. WestLB is not a 'restructuring' case but a profitably operating undertaking. For that reason the Commission wrongly applied to WestLB the criteria of assessment developed for capital injections in undertakings in economic difficulties.

The Commission further infringed its duty to clarify the facts in a neutral and unprejudiced manner, by giving preference to Bundesverband deutscher Banken over other parties concerned and presenting the facts in a biased way. The Decision infringes the obligation to state reasons under Article 253 EC. A central part of the Decision, the determination of 'reasonable remuneration' at 12 % after tax, is not comprehensible and the bases of the calculation are not evident. The Commission also fails to distinguish between the indicative figures for return on equity (RoE) and return on investment (RoI) and confuses rates of return before tax with rates after tax. The reference to the Crédit Lyonnais decision as a starting-point for the rate of return used does not satisfy the requirement to state reasons. Finally, the Commission in the Decision fails to address essential arguments of the Federal Republic of Germany.

The Commission based the Decision on a fundamentally incorrect approach by applying for the first time the criterion of an 'average return' as the minimum expected return to a capital injection from public funds in a profitably operating public undertaking. It thus exceeded its powers to control aid. Article 295 EC protects the business activity of the public sector and thus restricts *inter alia* the Commission's jurisdiction with respect to the application of Article 87(1) EC. Business activity of the State excludes the presence of 'aid granted through State resources' within the meaning of Article 87(1) EC in the case of profitable undertakings. The Commission, extending the concept of aid too far, wrongly applies the criterion of the capital investor acting in market-economy conditions to capital injections in profitably operating undertakings. The public sector as investor is allowed a broad margin of discretion for capital injections in profitably operating undertakings.

The Commission impermissibly requires an average return as a minimum expected return for capital injections from public funds. In so doing the Commission disregards the particular structure and business activity of WestLB and the particular objectives and legal form of the Wfa assets. The Wfa assets absorbed are not comparable with capital which may be freely invested but are earmarked for public house-building support and are directed to the public good rather than to making a profit. By integrating the Wfa into WestLB, considerable synergy effects have been achieved.

Action brought on 15 October 1999 by P.C.P. van Oppen-Veger, trading as Service Station formerly operating as J.P. Veger, against the Commission of the European Communities

(Case T-238/99)

(2000/C 6/55)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 October 1999 by P.C.P. van Oppen-Veger, trading as Service Station formerly operating as J.P. Veger, of Maria Hoop (Netherlands), represented by P.J.M. Brouwers, of the Meerssen Bar.

The applicant claims that the Court should:

(a) annul, at least in part, the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany;

(b) order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-210/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 18 October 1999 by J.J.L. Alofs, trading as Auto Service Center Alofs, against the Commission of the European Communities

(Case T-239/99)

(2000/C 6/56)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 October 1999 by J.J.L. Alofs, trading as Auto Service Center Alofs, of Arnhem (Netherlands), represented by S.C. Struycken-Veenhoff, of the Nijmegen Bar.

The applicant claims that the Court should:

(a) annul Articles 2 and 3 of the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-210/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 19 October 1999 by Antonio Pernice against the Commission of the European Communities

(Case T-241/99)

(2000/C 6/57)

(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 19 October 1999 by Antonio Pernice, resident in Torre d'Isola, Italy, represented by Jean-Noël Louis, Greta-Françoise Parmentier and Véronique Peere, of the Brussels Bar, with an address for service in Luxembourg at the offices of Société de Gestion Fiduciaire, 'Um Piquet', 2-4 Rue Beck.

The applicant claims that the Court should:

— annul the Commission decision of 22 December 1998 imposing upon him the disciplinary measure of termination without notice of his contract as a temporary member of staff, with effect from 1 January 1999;

— order the Commission to pay him compensation assessed on an equitable basis at EUR 250 000 for the material and non-pecuniary damage suffered following a series of faults on the part of the institution;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant pleads, first of all, that he was denied his right to a fair hearing, submitting:

(a) that the third paragraph of Article 7 of Annex IX to the Staff Regulations has been infringed, in that the authority empowered to conclude contracts ('the Authority') failed to meet the time-limit laid down by that provision, without furnishing any explanation to justify that failure;

(b) that the rules of sound administration with regard to personnel management have been infringed, inasmuch as:

— one of the three members called on to exercise jointly, by delegation, the powers of the Authority had also acted when the Authority, exercising its powers by delegation, adopted an initial disciplinary measure which was subsequently withdrawn, so that his objectivity and impartiality was not beyond doubt;

— the contested decision was adopted without the Authority having studied either the applicant's comments on the draft minutes of the hearing held pursuant to the third paragraph of Article 7 of Annex IX to the Staff Regulations or the pleas and arguments in defence put forward both before the Disciplinary Board and in the course of the abovementioned hearing; and

(c) that Article 2 of Annex IX to the Staff Regulations and Article 25 of the Staff Regulations have been infringed, in that the alleged failures by the applicant to comply with his obligations under the first paragraph of Article 11 and the first paragraph of Article 12 of the Staff Regulations were not disclosed to him in due time, a fact which prevented him from putting forward his grounds of defence.

The applicant also submits that the contested decision is vitiated by a manifest error of assessment, inasmuch as the truth of the evidence against him was not established or, at the very least, the view taken as to the facts was manifestly exaggerated having regard to the circumstances. Furthermore, the Authority offended against the principle of proportionality by imposing a disciplinary measure on him which was out of proportion to the degree of seriousness of his alleged failures to comply with his obligations, failures which, in the unanimous opinion of the members of the Disciplinary Board, justify only a mild penalty, namely a reprimand.

Action brought on 19 October 1999 by Marie-Laurence Buisson against the Commission of the European Communities

(Case T-243/99)

(2000/C 6/58)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 October 1999 by Marie-Laurence Buisson, represented by Ian S. Forrester QC at the Scots Bar, Elisabethann Wright, Barrister of the Inn of Court of Northern Ireland, Fiona M. Murray, Barrister of the Middle Temple, and Fredrik Lindblom, Biträdande Jurist, with an address for service in Luxembourg at the Chambers of Maître Aloyse May, 31 Grand rue, BP 144.

The applicant claims that the Court should:

— annul the decision of the Commission of July 13, 1999 rejecting the applicant's appeal against her exclusion from the written tests in Open Competition COM/A/10/98;

— award pecuniary damages in the sum of BEF 100 000;

— order the Commission to pay the costs.

Pleas in law and main arguments

The purpose of the action is to challenge the legality of a decision by the Commission rejecting an appeal by the applicant against her exclusion from the second stage of the selection procedure in Open Competition COM/A/10/98. In support of her case, the applicant puts forward the following pleas in law:

— Breach of the applicant's legitimate expectation that she would be invited to participate in the written tests. That expectation is clearly established by the Commission's letter of 30 April 1999. According to the applicant, given that Point IV.5 of the Notice of Competition provided that a list of those candidates who had fulfilled the basic conditions for admission and obtained a mark which was one of the 200 highest in the pre-selection tests would be drawn up and that Point VIII.5 provided that those candidates would be admitted to the written tests. the letter could only be interpreted as meaning that she was among the 200 candidates to be admitted to the written tests and that the Commission was checking to ensure that her application fulfilled the basic conditions for admission laid down in Point III of the Notice of Competition.

— Breach by the Commission of its obligation concerning the time-limit and the manner of correction of the alleged error in its letter of 30 April 1999.

— Breach of the principle of good administration arising from the Commission's failure to take every care to ensure that the letter which it alleged was sent to the applicant on 5 May 1999 actually reached its intended destination.

Action brought on 18 October 1999 by Autobedrijf Diepenmaat V.O.F. against the Commission of the European Communities

(Case T-248/99)

(2000/C 6/59)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 October 1999 by Autobedrijf Diepenmaat V.O.F., of Borne (Netherlands), represented by H.W. Kesler, of the Enschede Bar, with an address for service in Luxembourg at the Chambers of K. Manhaeve, 56-58 Rue Charles Martel.

The applicant claims that the Court should:

(a) annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany;

(b) order the Commission to pay the costs.

Pleas in law and main arguments

This case is linked to Case T-210/99. The applicant claims, *inter alia*, that the Commission has misinterpreted the terms 'undertaking' and 'aid' in assuming that aid granted by the authorities and aid granted by a private individual are so similar in nature that the matter necessarily involves cumulation in accordance with the *de minimis* rule.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 22 October 1999 by Gebr. Jongste B.V. against the Commission of the European Communities

(Case T-249/99)

(2000/C 6/60)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 October 1999 by Gebr. Jongste B.V., of Ouderkerk aan den Ijssel (Netherlands), represented by R. van Gelder, of the Voorschoten Bar.

The applicant claims that the Court should:

(a) annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany, at least in so far as it concerns the applicant;

(b) order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-210/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 25 October 1999 by Oliehandel Van den Belt B.V. against the Commission of the European Communities

(Case T-253/99)

(2000/C 6/61)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 October 1999 by Oliehandel Van den Belt B.V., of Drachten (Netherlands), represented by J.F. Verwilligen, of the Drachten Bar.

The applicant claims that the Court should:

(a) declare the application admissible;

(b) annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany;

(c) order the Commission to pay the costs.

Pleas in law and main arguments

This case is linked to Case T-210/99. The applicant pleads, *inter alia*, infringement of the principle of the protection of legitimate expectations and claims that the reasons for the decision are incomprehensible, since it has passed the subsidy on to its customers, who are therefore the real recipients thereof.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 26 October 1999 by Tankstation Jagt B.V. against the Commission of the European Communities

(Case T-259/99)

(2000/C 6/62)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 October 1999 by Tankstation Jagt B.V., of Coevorden (Netherlands), represented by J.J.L.M. Johanninck, of the Coevorden Bar.

The applicant claims that the Court should annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany, in so far as it concerns the applicant.

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case T-210/99.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 27 October 1999 by Jean Dehon against the European Parliament

(Case T-261/99)

(2000/C 6/63)

(Language of the Case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 27 October 1999 by Jean Dehon, resident in Hagen, Luxembourg, represented by Jean-Noël Louis, Greta-Françoise Parmentier and Véronique Peere, of the Brussels Bar, with an address for service in Luxembourg at the offices of Société de Gestion Fiduciaire SGF, 2-4 Rue Beck.

The applicant claims that the Court should:

— annul the decision of the European Parliament rejecting his application for the post, at the grade of LA 3, of Deputy Head of the French Translation Division;

— annul the decision of the European Parliament to appoint another candidate to that post;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant submits that the European Parliament:

— failed to comply with the vacancy notice, Article 45 of the Staff Regulations and the principles of career progression and of equal treatment, by appointing a candidate who did not possess all the qualifications required by the vacancy notice;

— manifestly erred in its assessment in considering that the two candidates for the vacant post were of equivalent merit; and

— infringed Article 25 of the Staff Regulations by not providing the applicant with the information to enable him to examine the justification for the contested decision and in particular the reason why he was not appointed to the post which he had already occupied, to the very great satisfaction of his line management, on the occasions when the Head of Division was absent.

Action brought on 29 October 1999 by Algemene service- en verkoopmaatschappij Arnhemse Poort B.V. against the Commission of the European Communities

(Case T-265/99)

(2000/C 6/64)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 October 1999 by Algemene service- en verkoopmaatschappij Arnhemse Poort B.V., of Arnhem (Netherlands), represented by J.P.A. Greuters, of the Arnhem Bar.

The applicant claims that the Court should:

(a) annul the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany, or at least declare it partially void in so far as the applicant is classified in the 'dealer-owned/dealer-operated' category with a clause relating to a system of price controls;

(b) order the Commission to pay the costs.

Pleas in law and main arguments

This case is linked to Case T-210/99. The applicant pleads failure to comply with the obligation to provide a statement of reasons, on account of an essentially incorrect determination of the facts.

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[1] OJ L 280 of 30.10.1999, p. 87.

Action brought on 27 October 1999 by Autobedrijf Chr. Kerres B.V. against the Commission of the European Communities

(Case T-263/99)

(2000/C 6/65)

(Language of the Case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 October 1999 by Autobedrijf Chr. Kerres B.V., of Kerkrade (Netherlands), represented by W.C.G.J. Sterk, of the Heerlen Bar.

The applicant claims that the Court should:

(a) declare void, and consequently annul, the Commission's decision (C(1999) 2539 final) [1] of 20 July 1999 concerning State aid granted by the Netherlands to 633 service stations in the region bordering Germany;

(b) order the Commission to pay the costs.

Pleas in law and main arguments

This case is linked to Case T-210/99. The applicant pleads failure to comply with the obligation to provide a statement of reasons and infringement of the principle of proportionality, inasmuch as it has received no subsidy amounting to more than ECU 100 000, and the alleged inadequacy — according to the Commission — of the information supplied cannot constitute a ground for any assumption to the contrary.

[1] OJ L 280 of 30.10.1999, p. 87.