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I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Fourth Chamber)

of 8 June 2000

in Case C-258/98 (reference for a preliminary ruling from the Pretore di Firenze): criminal proceedings against Giovanni Carra and Others [1]

(Dominant position — Public undertakings — Placement of workforce — Statutory monopoly)

(2000/C 273/01)

(Language of the case: Italian)

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

In Case C-258/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Pretore di Firenze, Italy, for a preliminary ruling in the criminal proceedings before that court against Giovanni Carra and Others — on the interpretation of Articles 86 and 90 of the EC Treaty (now Articles 82 EC and 86 EC) — the Court (Fourth Chamber), composed of: D. A. O. Edward, President of the Chamber, P. J. G. Kapteyn (Rapporteur) and H. Ragnemalm, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 8 June 2000, in which it has ruled:

Even within the framework of Article 90 of the EC Treaty (now Article 86 EC), Article 86 of the EC Treaty (now Article 82 EC) has direct effect and confers on individuals rights which the national courts must protect.

Public placement offices are subject to the prohibition contained in Article 86 of the Treaty, so long as the application of that provision does not obstruct the particular task conferred on them. A Member State which prohibits any activity as intermediary between supply and demand on the employment market, unless it is carried on by those offices, is in breach of Article 90(1) of the Treaty where it creates a situation in which those offices cannot avoid infringing Article 86 of the Treaty. That is the case, in particular, in the following circumstances:

— *the public placement offices are manifestly unable to satisfy demand on the market for all types of activity; and*

— *the actual placement of employees by private companies is rendered impossible by the maintenance in force of statutory provisions under which such activities are prohibited and non-observance of that prohibition gives rise to penal and administrative sanctions; and*

— *the placement activities in question could extend to the nationals or to the territory of other Member States.*

A national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means.

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[1] OJ C 299 of 26.9.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 June 2000

in Case C-375/98 (reference for a preliminary ruling from the Supremo Tribunal Administrativo): Ministério Público and Fazenda Pública v Epson Europe BV [1]

(Harmonisation of tax laws — Parent companies and subsidiaries — Exemption, in the Member State of the subsidiary, from withholding tax on profits distributed by the subsidiary to the parent company)

(2000/C 273/02)

(Language of the case: Portuguese)

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

In Case C-375/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Supremo Tribunal Administrativo, Portugal, for a preliminary ruling in the proceedings pending before that court between Ministério Público, Fazenda Pública and Epson Europe BV — on the interpretation of Article 5(4) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — the Court (Fifth Chamber), composed of: D. A. O. Edward, President of the Chamber, L. Sevón, P. J. G. Kapteyn, P. Jann (Rapporteur) and M. Wathelet, Judges; G. Cosmas, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 June 2000, in which it has ruled:

Article 5(4) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, in so far as it limits to 15 % and 10 % the amount of the withholding tax on profits distributed by subsidiaries established in Portugal to their parent companies in other Member States, must be interpreted as meaning that that derogation relates not only to corporation tax but also to any taxation, of whatever nature or however described, which takes the form of a withholding tax on dividends distributed by such subsidiaries.

[1] OJ C 378 of 5.12.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 June 2000

in Case C-396/98 (reference for a preliminary ruling from the Bundesfinanzhof): Grundstückgemeinschaft Schloßstraße GbR v Finanzamt Paderborn [1]

(Turnover taxes — Common system of value added tax — Article 17 of the Sixth Directive 77/388/EEC — Deduction of input tax — Deduction precluded by an amendment to national legislation removing the possibility of opting for taxation of the letting of immovable property)

(2000/C 273/03)

(Language of the Case: German)

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

In Case C-396/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Bundesfinanzhof (Germany), for a preliminary ruling in the proceedings pending before that court between Grundstückgemeinschaft Schloßstraße GbR and Finanzamt Paderborn — on the interpretation of Article 17 of the 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: J. C. Moitinho de Almeida (Rapporteur), President of the Chamber, R Schintgen, G. Hirsch, V. Skouris and F. Macken, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgement on 8 June 2000 in which it has ruled:

Article 17 of the 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 must be interpreted as meaning that a taxable person's right to deduct VAT paid in respect of goods or services supplied to him with a view to his carrying out certain letting operations is retained where a legislative amendment post-dating the supply of those goods or services but pre-dating the commencement of such operations deprives the taxable person concerned of the right to waive exemption thereof, even if the VAT was assessed subject to subsequent review.

[1] OJ C 1 of 4.1.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 June 2000

in Case C-400/98 (reference for a preliminary ruling from the Bundesfinanzhof): Finanzamt Goslar v Brigitte Breitsohl [1]

(Turnover taxes — Common system of value added tax — Articles 4, 17 and 28 of the Sixth Directive 77/388/EEC — Status as taxable person and exercise of the right to deduct in the event of failure of the economic activity envisaged, prior to the first VAT determination — Supplies of buildings and the land on which they stand — Whether possible to limit the option for tax to buildings only, thereby excluding the land)

(2000/C 273/04)

(Language of the case: German)

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

In Case C-400/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundesfinanzhof, Germany, for a preliminary ruling in the proceedings pending before that court between Finanzamt Goslar and Brigitte Breitsohl — on the interpretation of Articles 4, 17 and 28 of the 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: J. C. Moitinho de Almeida, (Rapporteur), President of the Chamber, R. Schintgen, G. Hirsch, V. Skouris and F. Macken, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 8 June 2000, in which it has ruled:

1. *Articles 4 and 17 of the 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 are to be interpreted as meaning that the right to deduct the value added tax paid on transactions carried out with a view to the realisation of a planned economic activity still exists even where the tax authority is aware, from the time of the first tax assessment, that the economic activity envisaged, which was to give rise to taxable transactions, will not be taken up.*

2. *Article 4(3)(a) of the Sixth Directive 77/388 is to be interpreted as meaning that the option for taxation exercised at the time of the supply of buildings or parts of buildings and the land on which they stand must relate inseparably to the buildings or parts of buildings and the land on which they stand.*

[1] OJ C 1 of 4.1.1999.

JUDGMENT OF THE COURT

(Second Chamber)

of 8 June 2000

in Case C-46/99: Commission of the European Communities v French Republic [1]

(Failure by a Member State to fulfil its obligations — Directive 93/104/EC — Organisation of working time — Failure to transpose)

(2000/C 273/05)

(Language of the case: French)

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

In Case C-46/99: Commission of the European Communities (Agent: D. Gouloussis) v French Republic (Agents: K. Rispal-Bellanger and C. Bergeot) — application for a declaration that, by failing to adopt and, in the alternative, by failing to communicate to the Commission within the prescribed period, the laws, regulations and administrative provisions necessary fully to comply with Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) the French Republic has failed to fulfil its obligations under the EC Treaty and that directive — the Court (Second Chamber), composed of: R. Schintgen, President of the Chamber, G. Hirsch and V. Skouris (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 8 June 2000, in which it:

1. *Declares that, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions necessary to comply with Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, the French Republic has failed to fulfil its obligations under that directive;*

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

(1) OJ C 100 of 10.4.1999.

JUDGMENT OF THE COURT

(First Chamber)

of 8 June 2000

in Case C-91/99: Commission of the European Communities v Portuguese Republic (1)

(Failure by a Member State to fulfil its obligations — Directive 96/43/EC — Failure to transpose within the prescribed period)

(2000/C 273/06)

(Language of the case: Portuguese)

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

In Case C-91/99: Commission of the European Communities (Agent: A. M. Alves Vieira) v Portuguese Republic (Agents: L. Fernandes and M. J. Carvalho) — application for a declaration that, by failing to adopt, within the prescribed period, all the measures necessary fully to comply with Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (OJ 1996 L 162, p. 1), the Portuguese Republic has failed to fulfil its obligations under the EC Treaty — the Court (First Chamber), composed of: L. Sevón, President of the Chamber, P. Jann (Rapporteur) and M. Wathelet, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 8 June 2000, in which it:

1. *Declares that, by failing to adopt, within the prescribed periods, all the laws, regulations and administrative provisions necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC, the Portuguese Republic has failed to fulfil its obligations under that subparagraph;*

2. *Dismisses the remainder of the action;*

3. *Orders the Portuguese Republic to pay the costs.*

(1) OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 8 June 2000

in Case C-264/99: Commission of the European Communities v Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Articles 12 EC, 43 EC and 49 EC — Haulage by operators established in other Member States — National rules requiring enrolment on the register of undertakings)

(2000/C 273/07)

(Language of the case: Italian)

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

In Case C-264/99: Commission of the European Communities (Agents: A. Aresu and M. Patakia) v Italian Republic (Agent: Professor Umberto Leanza, assisted by I. M. Braguglia) — application for a declaration that, by maintaining rules requiring that Community nationals who carry on business as hauliers in Italy as service providers be entered on the professional register kept by Chambers of Commerce following authorisation by the Ministry for the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12 EC, 43 EC and 49 EC — the Court (Fourth Chamber), composed of: D. A. O. Edward (Rapporteur), President of the Chamber, A. La Pergola and H. Ragnemalm, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 8 June 2000, in which it:

1. *Declares that, by maintaining rules requiring Community nationals who pursue haulage activities in Italy as service providers to be entered on the professional register of the Chambers of Commerce following authorisation by the Ministry for the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12 EC, 43 EC and 49 EC;*

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

(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 June 2000

in Case C-237/98 P: Dorsch Consult Ingenieurgesellschaft mbH v Council of the European Union and Commission of the European Communities (1)

(Appeal — Non-contractual liability — Embargo on trade with Iraq — Lawful act — Damage)

(2000/C 273/08)

(Language of the case: German)

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

In Case C-237/98 P: Dorsch Consult Ingenieurgesellschaft mbH, established in Munich, Germany, represented by Professor K. M. Meessen, with an address for service in Luxembourg at the chambers of P. Kinsch, 100 Boulevard de la Pétrusse — appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 28 April 1998 in Case T-184/95 Dorsch Consult v Council and Commission [1998] ECR II-667, seeking to have that judgment set aside and the same form of order as that sought by the appellant at first instance, the other parties to the proceedings being: Council of the European Union (Agents: S. Marquardt and A. Tanca and Commission of the European Communities (Agents: A. Rosas and J. Sack) — the Court (Fifth Chamber), composed of: L. Sevón (President of the First Chamber), acting for the President of the Fifth Chamber, P. J. G. Kapteyn (Rapporteur), P. Jann, H. Ragnemalm and M. Wathelet, Judges; A. La Pergola, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 15 June 2000, in which it:

1. *Dismisses the appeal;*

2. *Orders Dorsch Consult Ingenieurgesellschaft mbH to pay the costs.*

(1) OJ C 278 of 5.9.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 June 2000

in Joined Cases C-418/97 and C-419/97 (reference for a preliminary ruling from the Nederlandse Raad van State): ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (C-418/97) and Vereniging Dorpsbelang Hees and Others v Directeur van de dienst Milieu en Water van de provincie Gelderland (C-419/97) (1)

(Environment — Directives 75/442/EEC and 91/156/EEC — Concept of 'waste')

(2000/C 273/09)

(Language of the case: Dutch)

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

In Joined Cases C-418/97 and C-419/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Nederlandse Raad van State, The Netherlands, for a preliminary ruling in the proceedings pending before that court between ARCO Chemie Nederland Ltd and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (C-418/97) and between Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt+, Vereniging Stedelijk Leefmilieu Nijmegen and Directeur van de dienst Milieu en Water van de provincie Gelderland, joined party: Elektriciteitsproductiemaatschappij Oost- en Noord-Nederland NV (Epon) (C-419/97) — 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 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) — the Court (Fifth Chamber), composed of: D. A. O. Edward, President of the Chamber, J. C. Moitinho de Almeida, L. Sevón (Rapporteur), C. Gulmann and J.-P. Puissochet, Judges; S. Alber, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 15 June 2000, in which it has ruled:

Case C-418/97

1. *It may not be inferred from the mere fact that a substance such as LUWA-bottoms undergoes an operation listed in Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, that that substance has been discarded so as to enable it to be regarded as waste for the purposes of that directive.*

2. *For the purpose of determining whether the use of a substance such as LUWA-bottoms as a fuel is to be regarded as constituting discarding, it is irrelevant that that substance may be recovered in an environmentally responsible manner for use as fuel without substantial treatment.*

   The fact that that use as fuel is a common method of recovering waste and the fact that that substance is commonly regarded as waste may be taken as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442, as amended by Directive 91/156. However, whether it is in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.

   The fact that a substance used as fuel is the residue of the manufacturing process of another substance, that no use for that substance other than disposal can be envisaged, that the composition of the substance is not suitable for the use made of it or that special environmental precautions must be taken when it is used may be regarded as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of that directive. However, whether it is in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.

Case C-419/97

1. *It may not be inferred from the mere fact that a substance such as wood chips undergoes an operation listed in Annex IIB to Directive 75/442, as amended by Directive 91/156, that that substance has been discarded so as to enable it to be regarded as waste for the purposes of the directive.*

2. *The fact that a substance is the result of a recovery operation within the meaning of Annex IIB to that directive is only one of the factors which must be taken into consideration for the purpose of determining whether that substance is still waste, and does not as such permit a definitive conclusion to be drawn in that regard. Whether it is waste must be determined in the light of all the circumstances, by comparison with the definition set out in Article 1(a) of Directive 75/442, as amended by Directive 91/156, that is to say the discarding of the substance in question or the intention or requirement to discard it, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.*

   For the purpose of determining whether the use of a substance such as wood chips as fuel is to be regarded as constituting discarding, it is irrelevant that that substance may be recovered in an environmentally responsible manner for use as fuel without substantial treatment.

   The fact that that use as fuel is a common method of recovering waste and the fact that that substance is commonly regarded as waste may be taken as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442, as amended by Directive 91/156. However, whether it is in fact waste within the meaning of that directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.

(1) OJ C 41 of 7.2.1998. OJ C 55 of 20.2.1998.

Reference for a preliminary ruling by the Hessisches Finanzgericht by order of that court of 21 February 2000 in the case of Lohmann GmbH & Co. KG v Oberfinanzdirektion Koblenz

(Case C-262/00)

(2000/C 273/10)

Reference has been made to the Court of Justice of the European Communities by order of the Hessisches Finanzgericht (Finance Court, Hessen) of 21 February 2000, received at the Court Registry on 28 June 2000, for a preliminary ruling in the case of Lohmann GmbH & Co. KG v Oberfinanzdirektion Koblenz (Principal Revenue Office, Koblenz) on the following questions:

1. Does the description 'orthopaedic appliances' within the meaning of CN Code No 9021 cover an elbow bracelet, called *epX Elbow Basic*, and an elbow support, called *epX Elbow Dynamic*, made of 1 mm-thick three-layer material in a single colour, with a synthetic central layer enclosed between two elastic membranes; tubular in shape and manufactured by sewing together, with a length of 8 cm (elbow bracelet) and 22 cm (elbow support, the latter being also anatomically sewn), each being pulled over the lower arm below the elbow and worn as a sleeve, with an integrated insert, over which is passed a circular strap with an elastic and a non-elastic part and a Velcro fastening?

2. Does the term 'solely', used in Note 1(b) to CN Chapter 90 and in Note 2(b) to CN Chapters 61 and 62 allow the elasticity of the material to be regarded as the sole relevant criterion even if the supportive function is strengthened by other factors (in this case the insert)?

3. If Question 2 is answered in the affirmative:

   Is General Rule A.3(b) in the General rules for the interpretation of the combined nomenclature suitable for determining the question when the supportive function of the other factors, not made of elastic material, is predominant, or what other criteria should be used to determine the question?

Action brought on 11 July 2000 by the Federal Republic of Germany against the Commission of the European Communities

(Case C-277/00)

(2000/C 273/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 11 July 2000 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 Dr Michael Schütte, Rechtsanwalt, of Bruckhaus Westrick Heller Löber, 99-101 Rue de la Loi, B-1040 Brussels.

The applicant claims that the Court should:

1. Annul Commission Decision C(2000) 1063 fin. of 11 April 2000 on aid to System Microelectronic Innovation GmbH of Frankfurt an der Oder;

2. Order the Commission to pay the costs.

Pleas in law and main arguments

Procedural errors

— Breach of the principle of the right to a hearing and of the procedural rule in Article 88(2) EC in so far as the Federal Republic of Germany is required to recover aid of DEM 140.1 million also from Silicium Microelectronic Integration GmbH (SiMI), Microelectronic Design and Development GmbH (MD&D) and other unnamed undertakings: at no time was an inquiry procedure carried out against aid in favour of those undertakings. The inquiry procedure which led up to the contested decision was at no time extended by the Commission to the other undertakings described in the contested decision as 'recipients'. They could not therefore be aware, on the basis of the decision of 5 August 1997 opening the inquiry procedure, that they would one day be regarded in a Commission decision as 'recipients' of aid which certainly never flowed to them directly.

Compatibility with the common market of the aid granted to System Microelectronic Innovation GmbH i.GV (SMI) and Silicium Microelectronic Integration GmbH (SiMI)

— Breach of essential procedural requirements (errors in ascertaining the facts, defective statement of reasons): findings that Synergy Semiconductor Corporation (Synergy) was to take over, and did take over, management and control of Halbleiterelektronik Frankfurt/Oder GmbH (HEG), later renamed SMI, cannot be found at all in the contested decision, since the Commission incorrectly assumed that the acquisition of 49 % of the shares excluded acquisition of control.

  The Commission failed to find that the loan by the Land of Brandenburg to SMI is based on the privatisation agreement and is to be regarded as part of the consideration from the public authorities on the occasion of privatisation.

  The decision is also vitiated by considerable defects in the reasoning. In particular there are no reasons at all for the Commission's failure to take account of the statutory exception in Article 87(2)(c) EC. There are no findings whatever as regards the effects of possible aid on the relevant market. The Commission incorrectly assumes only that there is a 'semiconductor market'. However, SMI operated only in a very restricted market for customer-specific and application-specific circuits.

— Breach of Article 87(1) EC: the decision infringes *substantive law*, in so far as it declares the financial measures of the Treuhandanstalt and its successor BvS to be incompatible with the common market. The Commission incorrectly considered that the Treuhand scheme, that is, an existing aid scheme, did not apply to the payments by the Treuhandanstalt of DEM 64,8 million, because it obviously made a wrong assessment of the privatisation. In fact Synergy, by acquiring its holding in SMI, took over management of the undertaking and comprehensive rights of control over the company. In addition, the agreements also include all the other elements of a typical privatisation agreement, such as a jobs guarantee, know-how transfer, surplus earnings transfer, excess profit transfer and an environmental contamination clause.

The loan by the Land of Brandenburg of DEM 70,3 million cannot be treated differently from corresponding payments by the Treuhandanstalt. Provision of DEM 35 million finance by the Land of Brandenburg was promised as part of the privatisation agreement. That measure in the framework of privatisation is justified under the Treuhand scheme because the promise was a component and a condition of the privatisation agreement and it cannot matter which State source payments which were permitted under the Treuhand scheme were actually made from. After taking over the shares from the Treuhandanstalt, the Land of Brandenburg gave a further DEM 35,3 million as a loan. That constituted a contract management measure on the part of the Land of Brandenburg, which was permitted in accordance with the Treuhand scheme, and in any event capable of being approved. The Commission did not, however, examine the compatibility of the loan against that background.

Recovery of the aid

— Lack of competence of the Commission and exceeding its powers: the order to recover the aid from third parties who did not receive the aid and had no opportunity to take part in the procedure constitutes exceeding of its powers by the Commission. The Commission has no jurisdiction to issue such an order (lack of competence of the Commission, second paragraph of Article 230 EC). Under Article 88 EC the Member State has exclusive competence to recover aid, and the Commission does not have jurisdiction under Article 5(2) EC.

The Commission furthermore by the contested decision intervenes impermissibly in the legal order of the Member State, since the instruction to make recovery from third parties disapplies the provisions of the judicially supervised insolvency procedure.

The decision is also unlawful because the Commission does not state what specific conduct or what specific measures could constitute circumvention of the claim for recovery and restricts itself instead to groundless suppositions, allegations and fears. The Commission also misunderstands the nature of the German insolvency procedure, which on the basis of judicial control does not allow unlawful actions to take place without sanctions in national law. In the present case the assumption that the insolvency administrator carried out the movements of assets alleged by the Commission (and thereby not only incurred personal liability but possibly even committed a criminal offence) is not tenable.

— Unlawful extension of the character of recipient on the ground of alleged evasion of the recovery of the aid: the contested decision also infringes Article 87(1) EC, since there was no benefit to the undertakings not involved in the procedure, not even indirectly by means of any misapplication of aid.

— Breach of the principle of legal certainty: the decision is not definite enough, in that it claims aid back from every undertaking 'to which the assets of ... (SMI), ... (SiMI) or ... (MD&D) have been or will be transferred in a form intended to evade the consequences of the decision'.

Breach of the principle of proportionality.

Reference for a preliminary ruling from the Bundesverwaltungsgericht by order of that court of 6 April 2000 in the case of Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, interested party: Oberbundesanwalt beim Bundesverwaltungsgericht

(Case C-280/00)

(2000/C 273/12)

Reference has been made to the Court of Justice of the European Communities by an order of the Bundesverwaltungsgericht (Federal Administrative Court) of 6 April 2000, which was received at the Court Registry on 14 July 2000, for a preliminary ruling in the case of Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, interested party: Oberbundesanwalt beim Bundesverwaltungsgericht, on the following question:

Do Articles 73 EC and 87 EC, read in conjunction with Regulation (EEC) No 1191/69,[1] as amended by Regulation (EEC) No 1893/91,[2] preclude the application of a national provision which permits licences to operate regular local public transport services to be awarded in respect of services completely dependent on public grants without regard being had to Sections II, III and IV of the abovementioned regulation?

(1) OJ, English Special Edition 1969 (I), p. 276.
(2) OJ No L 169 of 29.6.1991, p. 1.

Action brought on 20 July 2000 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-287/00)

(2000/C 273/13)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 20 July 2000 by the Commission of the European Communities, represented by Günter Wilms and Kilian Gross, 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 C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by exempting the research activities of State universities and higher education establishments from turnover tax pursuant to Paragraph 4(21a) of the Umsatzsteuergesetz (Law on Turnover Taxes) of 12 December 1996, the Federal Republic of Germany has failed to fulfil its obligations under Article 2 of the Sixth Council Directive 77/388/EEC [1] 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, as most recently amended;

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

Pleas in law and main arguments

The exemption from turnover tax of research activities which State universities and higher-education establishments are commissioned to carry out, pursuant to Paragraph 4(21a) of the Umsatzsteuergesetz (Law on Turnover Taxes), in the version thereof introduced by Paragraph 4(5) of the Umsatzsteuer-Änderungsgesetz (Law amending the legislation on turnover taxes) of 12 December 1996 (BGBI. 1996, Part I, p. 1851 et seq.), is contrary to Article 2(1) of the Sixth Directive. In the context of research activities which they are commissioned to undertake (i.e. research projects normally based on an agreement specifying inter alia the type and scope of the services and consideration to be furnished), State universities and higher-education establishments provide services and are thus, in principle, taxable persons within the meaning of Article 4 of the Sixth Directive. According to Article 5 of the directive, bodies governed by public law are not, however, to be regarded as taxable persons in so far as they are engaged in activities as public authorities.

In undertaking research which they have been commissioned to carry out, State universities and higher-education establishments are clearly not engaged in activities as public authorities. On the contrary, such activities are based on a private-law commercial relationship between the university or higher-education establishment concerned and the party by whom the research in question is commissioned. In the Commission's view, the effect of Part A of Article 13 of the Sixth Directive is to preclude exemption from tax in respect of research which State universities and higher-education establishments are commissioned to carry out. It maintains that the argument advanced by the (German) Federal Government, to the effect that it is not possible in practice to draw a distinction between research activities and teaching activities (the latter being exempt from tax under Article 13(A)(1)(i), is based — as is apparent from the situation in other Member States — on domestic factors which cannot be invoked by a Member State.

[1] OJ L 145 of 13 June 1977, p. 1.

Reference for a preliminary ruling by the Tribunal de grande instance de Paris (Third Chamber — Second section) by decision of that court of 23 June 2000 in the case of S.A. LTJ Diffusion v S.A. Sadas Vertbaudet

(Case C-291/00)

(2000/C 273/14)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal de grande instance de Paris (Regional Court, Paris), received at the Court Registry on 23 June 2000, for a preliminary ruling in the case of S.A. LTJ Diffusion v S.A. Sadas Vertbaudet on the following question:

Does the prohibition contained in Article 5(1) of Directive 89/104 of 21 December 1988 to approximate the laws of the Member States relating to trade marks [1] only cover identical reproduction — with no element being added or omitted — of the sign or signs constituting a mark, or can it extend to:

(1) reproduction of the distinctive feature of a mark composed of a number of elements?

(2) reproduction of all the constituent elements of the mark where new elements are added?

[1] OJ L 40 of 11.2.1989, p. 1.

Action brought on 3 August 2000 by the Commission of the European Communities against the Grand-Duchy of Luxembourg

(Case C-297/00)

(2000/C 273/15)

An action against the Grand-Duchy of Luxembourg was brought before the Court of Justice of the European Communi-

ties on 3 August 2000 by the Commission of the European Communities represented by Bernard Mongin, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, a member of the same service, Wagner Centre, Kirchberg.

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

1. Declare that, by failing to implement within the prescribed period the laws, regulations and administrative provisions, including any penalties, necessary to comply with Council Directive 98/35/EC of 25 May 1998 amending Directive 94/58/EC on the minimum level of training for the seafarers [1], the Luxembourg Government has failed to fulfil its obligations under the Treaty and that directive;

2. Order the Luxembourg Government to pay the costs.

Pleas in law and main arguments

By reason of the mandatory nature of the provisions in Articles 1(10) and 226(3) EC, the Member States are required to take the necessary measures to transpose directives into domestic law before expiry of the period prescribed for. The period, which is laid down in Article 2(1), of the directive expired on 25 May 1999 without the Grand-Duchy of Luxembourg having adopted the necessary measures.

(1) OJ L 172 of 17.06.1998, p. 1.

Appeal brought on 7 August 2000 by Karl Meyer against the judgment delivered on 27 June 2000 by the Third Chamber of the Court of First Instance of the European Communities in Case T-72/99 between K. Meyer and the Commission of the European Communities

(Case C-301/00 P)

(2000/C 273/16)

An appeal against the judgment delivered on 27 June 2000 by the Third Chamber of the Court of First Instance of the European Communities in Case T-72/99 between K. Meyer and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 7 August 2000 by Karl Meyer represented by Jean-Dominique des Arcis, Advocate, with an address for service in Luxembourg at the office of Horst Pakowski, Ambassador of the Federal Republic of Germany.

The appellant claims that the Court should:

— uphold his appeal against the judgment handed down and dated and declare it to be well founded;

— overturn that judgment, annul it and determine the matter anew as the first instance court should have done;

— order the Commission of the European Communities to pay the costs including those incurred before the Court of First Instance.

Pleas in law and main arguments

— Procedural defect:

  The judgment delivered does not contain the slightest mention of the wholly irregular manner in which the procedure was conducted or of the Commission's unacceptable conduct in, after having denied all knowledge of the contested drafts, submitting 20 voluminous documents at the last minute. By its refusal to examine all aspects of this case, and to collect all the existing documentation before giving its decision, the Court of First Instance manifestly deprived the appellant of his right to defend himself and of legal certainty. The judgment handed down also infringes the principle of the right to a hearing because the Court of First Instance manifestly failed to comply with its obligation of strict impartiality.

— Confused, biased and contradictory reasoning.

— Infringement of general principles of law (the protection of legitimate expectations, the prohibition on retroactively withdrawing or deferring acts which confer rights or benefits on individuals, the rights of the defence and the right to legal certainty).

— Infringement of higher rules on fundamental rights protecting individuals.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 July 2000

in Case T-62/98: Volkswagen AG v Commission of the European Communities (1)

(Competition — Distribution of motor vehicles — Partitioning of the market — Article 85 of the EC Treaty (now Article 81 EC) — Regulation (EEC) No 123/85 — Disclosure to the press — Business secrets — Good administration — Fines — Gravity of the infringement)

(2000/C 273/17)

(Language of the case: German)

In Case T-62/98: Volkswagen AG, established in Wolfsburg (Germany), represented by R. Bechtold, Stuttgart, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe v Commission of the European Communities (Agents: K. Wiedner and H.J. Freund) — application for annulment of Commission Decision 98/273/EC of 28 January 1998 relating to a proceeding under Article 85 of the EC Treaty (Case IV/35.733 — VW) (OJ 1998 L 124, p. 60) or, in the alternative, for reduction of the fine imposed on the applicant in that decision — the Court (Fourth Chamber), composed of: R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges; B. Pastor, Administrator, for the Registrar, has given a judgment on 6 July 2000, in which it:

1. *Annuls Commission Decision 98/273/EC of 28 January 1998 relating to a proceeding under Article 85 of the EC Treaty (Case IV/35.733 — VW) in so far as it finds that:*

   (a) *a split margin system and termination of certain dealership contracts by way of penalty were measures adopted in order to hinder re-exports of Volkswagen and Audi vehicles from Italy by final consumers and authorised dealers in those makes in other Member States;*

   (b) *the infringement had not completely ceased between 1 October 1996 and the adoption of the decision;*

2. *Reduces the amount of the fine imposed on the applicant by Article 3 of the contested decision to Euro 90 000 000;*

3. *Dismisses the remainder of the application;*

4. *Orders the applicant to bear its own costs and to pay 90 % of the costs incurred by the Commission;*

5. *Orders the Commission to bear 10 % of its own costs.*

(1) OJ C 184 of 13.6.98.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 27 June 2000

in Case T-72/99: Karl L. Meyer v Commission of the European Communities (1)

(OCTs — Project financed by the EDF — Action for damages — Legitimate expectations — Commission's duty to exercise control)

(2000/C 273/18)

(Language of the case: French)

In Case T-72/99: Karl L. Meyer, residing at Uturoa (island of Raiatea, French Polynesia), represented by J.-D. des Arcis, of the Papeete Bar, and C.A. Kupferberg, of the Paris Bar, with an address for service in Luxembourg at the office of Mr H. Pakowski, Ambassador of the Federal Republic of Germany, 20-22 Avenue Emile Reuter, v Commission of the European Communities (agent: X. Lewis) — application for compensation for the damage allegedly suffered by the applicant as a result of the European Development Fund having refrained from paying a subsidy which it had undertaken to grant in the context of a programme concerning the planting of trees and tropical fruit plants on the island of Raiatea — the Court of First Instance (Third Chamber), composed of: K. Lenaerts, President, and J. Azizi and M. Jaeger, Judges; G. Herzig, Administrator, for the Registrar, has given a judgment on 27 June 2000, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 July 2000

in Case T-139/99: Alsace International Car Services (AICS) v European Parliament ([1])

(Public services contract — Passenger transport by chauffeur-driven vehicles — Invitation to tender — Compliance with national law — Principles of sound administration and of the duty to cooperate in good faith — Rejection of a tender)

(2000/C 273/19)

(Language of the case: French)

In Case T-139/99: Alsace International Car Services (AICS), established in Strasbourg (France), represented by C. Imbach and A. Dissler, of the Strasbourg Bar, with an address for service in Luxembourg at the Chambers of P. Schiltz, 4 Rue Béatrix de Bourbon, v European Parliament (agents: P. Runge Nielsen and O. Caisou-Rousseau) — application, first, for annulment of the Parliament's decision not to accept the tender submitted by the applicant in the context of invitation to tender No 99/S 18-8765/FR relating to a contract for passenger transport by chauffeur-driven vehicles during the Parliamentary sessions in Strasbourg and, second, for compensation for the damage allegedly suffered by the applicant as a result of that decision — the Court of First Instance (Fifth Chamber), composed of: R. García-Valdecasas, President, and P. Lindh and J.D. Cooke, Judges; G. Herzig, Administrator, for the Registrar, has given a judgment on 6 July 2000, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs and to pay the Parliament's costs.*

([1]) OJ C 246 of 28.8.1999.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 28 June 2000

in Case T-191/98 R II, Cho Yang Shipping Co. Ltd v Commission of the European Communities

(Competition — Payment of fine — Bank guarantee — Urgency — Balance of interests)

(2000/C 273/20)

(Language of the case: English)

In Case T-191/98 R II: Cho Yang Shipping Co. Ltd, established in Seoul, South Korea, represented by N. Bromfield and C. Thomas, of the Brussels Bar, with an address for service in Luxembourg at the chambers of De Bandt, Van Hecke, Lagae and Loesch, 11 Rue Goethe, v Commission of the European Communities (Agent: R. Lyal) — Application for suspension of the operation of Commission Decision 1999/243/EC of 16 September 1998 relating to a proceeding pursuant to Articles 85 and 86 of the EC Treaty (Case No IV/35.134 — Trans-Atlantic Conference Agreement) (OJ 1999 L 95, p. 1) in so far as, in Article 8, it imposes a fine of EUR 13 750 000 on the applicant, the President of the Court of First Instance has given an order on 28 June 2000, in which:

1. *The application for interim relief is dismissed.*

2. *The applicant is given 15 days in which to lodge at the Registry a request for confidential treatment.*

3. *Costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 28 June 2000

in Case T-74/00 R: Artegodan GmbH v Commission of the European Communities

(Procedure for interim relief — Withdrawal of authorisation for medicinal products for human use which contain 'amfepramon' — Directive 75/319/EEC — Urgency — Balancing of interests)

(2000/C 273/21)

(Language of the case: German)

In Case T-74/00 R: Artegodan GmbH, established in Lüchow, Germany, represented by U. Doepner, Rechtsanwalt, Düssel-

dorf, with an address for service in Luxembourg at the Chambers of Bonn and Schmidt, 7 Val Sainte-Croix, v Commission of the European Communities (Agents: H. Støvlbæk and B. Wägenbaur) — application for suspension of operation of the Commission's decision of 9 March 2000 on withdrawal of authorisation for medicinal products for human use which contain 'amfepramon' (C(2000) 453) — the President of the Court of First Instance made an order on 28 June 2000, the operative part of which is as follows:

1. *Operation of the Commission's decision of 9 March 2000 on withdrawal of authorisation for medicinal products for human use which contain 'amfepramon' (C(2000) 453) is suspended with regard to the applicant.*

2. *Costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 18 May 2000

in Case T-75/00 R: Augusto Fichtner v Commission of the European Communities

(Proceedings for interim relief — Urgency — None)

(2000/C 273/22)

(Language of the case: Italian)

In Case T-75/00 R: Augusto Fichtner, an official of the Commission of the European Communities, in service at the Joint Research Centre (JRC), Ispra, residing at Besozzo (Italy), represented by V. Salvatore, of the Pavia Bar, of Via Speroni 14, Varese, v Commission of the European Communities (Agent: G. Valsesia) — application for interim measures in the form of suspension of operation of the decision removing him from his post, adopted by the Commission on 30 September 1999 — the President of the Court of First Instance made an order on 18 May 2000, the operative part of which is as follows:

1. *The application for interim measures is dismissed.*

2. *The costs are reserved.*

Action brought on 30 June 2000 by Koninklijke Philips Electronics N.V. against the Council of the European Union.

(Case T-177/00)

(2000/C 273/23)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 30 June 2000 by Koninklijke Philips Electronics N.V., represented by Clive Stanbrook Q.C. and Filip Ragolle of Stanbrook-Hooper, Brussels.

The applicant claims that the Court should:

— declare void, pursuant to Articles 230 and 231 EC, the Council's decision to reject the Commission proposal for a Council Regulation imposing a definitive anti-dumping duty on imports of certain parts of television camera systems originating in Japan;

— order, pursuant to Articles 235 and 288(2) EC, the Council to make good any damage caused to the applicant by its unlawful rejection of the Commission's proposal for a Regulation or, alternatively, its failure to impose adequate protective measures before the expiry of the 15 month deadline;

— order that the costs of the proceedings be borne by the Council.

Pleas in law and main arguments

The present application arises out of the fact that the Council did not adopt the Commission's proposal of 7 April 2000 for a Council Regulation imposing a definitive anti-dumping duty on imports of certain parts of television camera systems originating in Japan (COM(2000) 195 final). According to the applicant, the Council's failure to achieve a simple majority in support of the Commission's proposal combined with the expiry of the 15-month time limit of Article 6(9) of the Basic Regulation [1] amounts to a definitive negative decision, which it challenges in the present case.

The applicant's case for annulment falls basically into two alternative parts. On the one hand, the applicant argues that, at the end of the 15-month time limit, the Council ultimately had no power to reject the Commission's proposal, since it had previously failed to involve itself in the fact finding and procedural aspects of the case. Under the current Basic Regulation, the Council has limited itself to the possibility of amending some of the modalities of the proposal, while

remaining within the limits of the findings of fact made by the Commission. On the other hand, in the assumption that the Council did have power to reject the proposal, such rejection was illegal in the present case, because it constituted

— a wilful disregard or manifest error of appreciation of the facts found by the Commission

— a denial of procedural rights and legitimate expectations of the complainants

— a failure to state adequate reasons as required by Article 253 EC

Finally, the applicant claims that the Council is liable under Article 288(2) EC because its failure to adopt protective measures amounts to unlawful conduct which caused and continues to cause damage to the applicant.

(1) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, OJ 1996 L 56, p. 1, as last amended by Council Regulation (EC) No 905/98 of 27 April 1998, OJ L 128, p. 18.

Action brought on 6 July 2000 by Carmelo Morello against the Commission of the European Communities

(Case T-181/00)

(2000/C 273/24)

(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 6 July 2000 by Carmelo Morello, residing in Brussels, represented by Jacques Sambon and Pierre Paul Van Gehuchten, of the Brussels Bar.

The applicant claims that the Court should:

— annul the Commission's decision rejecting his application for post COM/090/99 IV/C/1 as head of unit with responsibility for directing and coordinating the work of the 'Telecommunications and Postal Services' unit within the Information, Communications and Multimedia Directorate, and annul all preparatory acts adopted in anticipation of that decision which may themselves prove to be irregular;

— annul the Commission's decision to appoint another person to fill that post;

— in so far as may be necessary, annul the implicit decision of the appointing authority rejecting the pre-litigation claim made by the applicant;

— award the sum of 120 000 euro, subject to increase or decrease during the course of the proceedings, by way of compensation for the non-material damage suffered by the applicant as a result of the irregular or incomplete information gathered by the defendant in relation to the applicant's personal file and the state of uncertainty and worry in which he has been placed with regard to his future career;

— award the sum of 25 000 euro, subject to increase or decrease during the course of the proceedings, by way of compensation for the material damage suffered by the applicant as a result of his having been rejected as a candidate for the post to be filled and of his having thus lost an opportunity of promotion;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Cases T-135/00, T-136/00 and T-164/00.

Action brought on 13 July 2000 by S.A. Strabag Benelux N.V. against the Council of the European Union

(Case T-183/00)

(2000/C 273/25)

(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 July 2000 by S.A. Strabag Benelux N.V., established at Stabroek (Belgium), represented by André Delvaux, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decision of 12 April 2000 by which the Council awarded to another company the contract for general installation and maintenance works forming the subject-matter of Notice 107865 published in Official Journal S 145 of 30 July 1999;

— order the Council of the European Union to pay to Strabag, subject to increase, the sum of BEF 153 421 286 or EUR 3 803 214 together with interest thereon at the rate of 6 % from 12 April 2000;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant participated in the restricted tendering procedure relating to the installation and maintenance works to be carried out in the Council's buildings in Brussels.

In support of its action for annulment, it maintains:

— that the contested decision is vitiated by the absence of a statement of reasons or, at the very least, by inadequate reasoning;

— that by attaching the greatest weight to the price criterion, and by failing to consider the other criteria for the award of the contract as provided for in the tender specifications, the Council has infringed Articles 18 and 30 of Directive 93/37/EEC [1];

— that by awarding the contract to a company whose tender was not in conformity with the special tender specifications, the Council has infringed the terms of the latter document;

— that by classifying three tenderers as being of equal merit with regard to the first criterion and, probably, another company and Strabag as being of equal merit with regard to the fourth criterion, the Council committed manifest errors of assessment.

Lastly, the applicant claims compensation for the damage which, it claims, results from the fact of its having been unfairly turned down as a tenderer for the contract in question.

(1) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

Action brought on 24 July 2000 by Sabrina Tesoka against the Commission of the European Communities

(Case T-192/00)

(2000/C 273/26)

(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 24 July 2000 by Sabrina Tesoka, residing at Overijse (Belgium), represented by Jean-Noël Louis and Véronique Peere, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decision of the selection board in competition COM/A/12/98 awarding her, in her oral test, a mark lower than the minimum required and excluding her from the reserve list;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of her application, the applicant pleads:

— failure to comply with essential procedural requirements, violation of the principle of equal treatment and infringement of the rules governing the functioning of selection boards, in that the composition of the selection board varied during the course of the oral testing of the various candidates; and

— non-compliance with the obligation to provide a statement of reasons, in that it is not possible to determine from the overall mark awarded for the oral test whether the selection board fulfilled its obligation to carry out an assessment of the points set out in the competition notice.

Action brought on 24 July 2000 by Bernard Felix against the Commission of the European Communities

(Case T-193/00)

(2000/C 273/27)

(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 24 July 2000 by Bernard Felix, residing at Arlon (Belgium), represented by Jean-Noël Louis and Véronique Peere, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decision of the selection board in competition COM/A/12/98 awarding him, in his oral test, a mark lower than the minimum required and excluding him from the reserve list;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Case T-192/00.