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(Information)

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JUDGMENT OF THE COURT

(First Chamber)

of 19 October 2000

in Case C-155/99 (reference for a preliminary ruling from the Pretore di Treviso, Sezione Distaccata di Oderzo): Giuseppe Busolin and Others v Ispettorato Centrale Repressione Frodi — Ufficio di Conegliano — Ministero delle Risorse Agricole, Alimentari e Forestali [1]

(Agriculture — Common organisation of the agricultural markets — Market in wine — Compulsory distillation scheme)

(2001/C 28/01)

(Language of the case: Italian)

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

In Case C-155/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Pretore di Treviso, Sezione Distaccata di Oderzo (Treviso Magistrates' Court, Oderzo Division), Italy, for a preliminary ruling in the proceedings pending before that court between Giuseppe Busolin and Others and Ispettorato Centrale Repressione Frodi — Ufficio di Conegliano — Ministero, delle Risorse Agricole, Alimentari c Forestali — on the validity of Article 39(3), (4) and (11) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1), as amended by Council Regulation (EEC) No 1566/93 of 14 June 1993 (OJ 1993 L 154, p. 39), and of Commission Regulation (EC) No 343/94 of 15 February 1994 opening compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87 and derogating for the 1993/94 wine year from certain detailed rules for the application thereof (OJ 1994 L 44, p. 9) — the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, A. La Pergola, and P. Jann (Rapporteur), Judges; G. Cosmas, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 19 October 2000, in which it has ruled:

Examination of the questions raised has disclosed no factor of such a kind as to affect the validity of Article 39(3), (4) and (11) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine, as amended by Council Regulation (EEC) No 1566/93 of 14 June 1993, or of Commission Regulation (EC) No 343/94 of 15 February 1994 opening compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87 and derogating for the 1993/94 wine year from certain detailed rules for the application thereof.

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[1] OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(First Chamber)

of 7 November 2000

in Case C-168/98: Grand Duchy of Luxembourg v European Parliament [1]

(Action for annulment — Freedom of establishment — Mutual recognition of diplomas — Harmonisation — Obligation to state reasons — Directive 98/5/EC — Practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was acquired)

(2001/C 28/02)

(Language of the case: French)

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

In Case C-168/98: Grand Duchy of Luxembourg (Agents: originally represented by N. Schmit and subsequently by

P. Steinmetz, assisted by J. Welter) v European Parliament (Agents: originally represented by C. Pennera, and A. Baas, and subsequently by C. Pennera and J. Sant'Anna) and Council of the European Union (Agents: M.C. Giorgi and F. Anton), supported by Kingdom of Spain, (Agent: M. López-Monís Gallego, Abogado del Estado) by Kingdom of the Netherlands (Agent: M.A. Fierstra) by United Kingdom of Great Britain and Northern Ireland (Agents: J.E. Collins and D. Anderson, and by Commission of the European Communities (Agents: A. Caeiro and B. Mongin, — application for a annulment of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann (Rapporteur), A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and F. Macken, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 7 November 2000, in which it:

1. *Dismisses the application;*

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

3. *Orders the Kingdom of Spain, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 209 of 4.7.1998.

JUDGMENT OF THE COURT

of 7 November 2000

in Case C-312/98 (reference for a preliminary ruling from the Bundesgerichtshof): Schutzverband gegen Unwesen in der Wirtschaft eV v Warsteiner Brauerei Haus Cramer GmbH & Co. KG ([1])

(Protection of geographical indications and designations of origin — Regulation (EEC) No 2081/92 — Scope — Directive 79/112/EEC — National rules prohibiting the potentially misleading use of 'simple' geographical indications of source)

(2001/C 28/03)

(Language of the case: German)

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

In Case C-312/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundesgerichtshof (Federal Court of Justice), Germany, for a preliminary ruling in the proceedings pending before that court between Schutzverband gegen Unwesen in der Wirtschaft eV and Warsteiner Brauerei Haus Cramer GmbH & Co. KG — on the interpretation of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet and V. Skouris, Presidents of Chambers, D.A.O. Edward, J.-R Puissochet, P. Jann, L. Sevón, R. Schintgen (Rapporteur) and F. Macken, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 7 November 2000, in which it has ruled:

Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs does not preclude the application of national legislation which prohibits the potentially misleading use of a geographical indication of source in the case of which there is no link between the characteristics of the product and its geographical provenance.

([1]) OJ C 327 of 24.10.1998.

JUDGMENT OF THE COURT

of 7 November 2000

in Case C-371/98 (reference for a preliminary ruling from the Queen's Bench Division (Divisional Court) of the High Court of Justice of England and Wales): The Queen v Secretary of State for the Environment, Transport and the Regions ([1])

(Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Definition of the boundaries of sites eligible for designation as special areas of conservation — Discretion of the Member States — Economic and social considerations — Severn Estuary)

(2001/C 28/04)

(Language of the case: English)

In Case C-371/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Queen's Bench Division (Divisional Court) of the High Court of Justice of

England and Wales, (United Kingdom), for a preliminary ruling in the proceedings pending before that court between The Queen and Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd, interveners: World Wide Fund for Nature UK (WWF) and Avon Wildlife Trust — on the interpretation of Articles 2(3) and 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann (Rapporteur), M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón and R. Schintgen, Judges; P. Léger, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 7 November 2000, in which it has ruled:

On a proper construction of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, a Member State may not take account of economic, social and cultural requirements or regional and local characteristics, as mentioned in Article 2(3) of that directive, when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance.

([1]) OJ C 397 of 19.12.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 November 2000

in Case C-357/98 (reference for a preliminary ruling from the Court of Appeal of England and Wales): The Queen v Secretary of State for the Home Department, ex parte: Nana Yaa Konadu Yiadom ([1])

(Freedom of movement of persons — Derogations — Decisions regarding foreign nationals — Temporary admission — Judicial safeguards — Legal remedies — Articles 8 and 9 of Directive 64/221/EEC)

(2001/C 28/05)

(Language of the case: English)

In Case C-357/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Court of Appeal of England and Wales (United Kingdom) for a preliminary ruling in the proceedings pending before that court between The Queen and Secretary of State for the Home Department, ex parte: Nana Yaa Konadu Yiadom — on the interpretation of Articles 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117) — the Court (Fifth Chamber), composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, D.A.O. Edward and L. Sevón (Rapporteur), Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 9 November 2000, in which it has ruled:

Articles 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health must be interpreted as meaning that a decision adopted by the authorities of a Member State refusing a Community national, not in possession of a residence permit, leave to enter its territory cannot be classified as a 'decision concerning entry' within the meaning of Article 8 thereof in a case such as that at issue in the main proceedings where the person concerned was temporarily admitted to the territory of that Member State, pending a decision following the enquiries required for the investigation of her case, and therefore resided for almost seven months in that territory before that decision was notified to her, since such a national must be entitled to the procedural safeguards referred to in Article 9 of Directive 64/221.

The time which elapsed after the competent authority's decision as a result, first, of the suspensory effect of legal proceedings and, second, of the grant of permission to take up employment pending the determination of those proceedings, cannot have any bearing on the classification of that decision under Directive 64/221.

([1]) OJ C 358 of 21.11.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 November 2000

in Case C-381/98 (reference for a preliminary ruling from the Court of Appeal of England and Wales (Civil Division)): Ingmar GB Ltd v Eaton Leonard Technologies Inc. [1]

(Directive 86/653/EEC — Self-employed commercial agent carrying on his activity in a Member State — Principal established in a non-member country — Clause submitting the agency contract to the law of the country of establishment of the principal)

(2001/C 28/06)

(Language of the case: English)

In Case C-381/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Court of Appeal of England and Wales (Civil Division), United Kingdom, for a preliminary ruling in the proceedings pending before that court between Ingmar GB Ltd and Eaton Leonard Technologies Inc. — on the interpretation of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17) — the Court (Fifth Chamber), composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, D.A.O. Edward and P. Jann (Rapporteur), Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 9 November 2000, in which it has ruled:

Articles 17 and 18 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, which guarantee certain rights to commercial agents after termination of agency contracts, must be applied where the commercial agent carried on his activity in a Member State although the principal is established in a non-member country and a clause of the contract stipulates that the contract is to be governed by the law of that country.

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[1] OJ C 397 of 19.12.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 November 2000

in Case C-387/98 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): Coreck Maritime GmbH v Handelsveem BV and Others [1]

(Brussels Convention — Article 17 — Clause conferring jurisdiction — Formal conditions — Effects)

(2001/C 28/07)

(Language of the case: Dutch)

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

In Case C-387/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) for a preliminary ruling in the proceedings pending before that court between Coreck Maritime GmbH and Handelsveem BV and Others — on the interpretation of the first paragraph of Article 17 of the abovementioned Convention of 27 September 1968 (OJ 1972 L 299, p. 32), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) — the Court (Fifth Chamber), composed of: D.A.O. Edward, acting as President of the Fifth Chamber, P. Jann (Rapporteur) and L. Sevón, Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 9 November 2000, in which it has ruled:

The first paragraph of Article 17 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, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, must be interpreted as follows:

1. *It does not require that a jurisdiction clause be formulated in such a way that the competent court can be determined on its wording alone. It is sufficient that the clause state the objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them. Those factors, which must be sufficiently precise to enable the court seised to ascertain whether it has jurisdiction, may, where appropriate, be determined by the particular circumstances of the case.*

2. *It applies only if, first, at least one of the parties to the original contract is domiciled in a Contracting State and, secondly, the parties agree to submit any disputes before a court or the courts of a Contracting State.*

3. *A jurisdiction clause agreed between a carrier and a shipper which appears in a bill of lading is enforceable against a third party bearer of the bill of lading if he succeeded to the rights and obligations of the shipper under the applicable national law when he acquired the bill of lading. If he did not, it must be ascertained whether he accepted that clause having regard to the requirements laid down in the first paragraph of Article 17 of the Convention, as amended.*

([1]) OJ C 397 of 19.12.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 9 November 2000

in Case C-75/99 (reference for a preliminary ruling from the Bundessozialgericht): Edmund Thelen v Bundesanstalt für Arbeit ([1])

(Social security — Articles 6 and 7 of Regulation (EEC) No 1408/71 — Applicability of a convention between Member States on unemployment insurance)

(2001/C 28/08)

(Language of the case: German)

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

In Case C-75/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundessozialgericht (Federal Social Court), Germany, for a preliminary ruling in the proceedings pending before that court between Edmund Thelen and Bundesanstalt für Arbeit — on the interpretation of Articles 6 and 7 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6) and amended by Council Regulation (EEC) No 2332/89 of 18 July 1989 (OJ 1989 L 224, p. 1) — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet (Rapporteur), R. Schintgen and F. Macken, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 9 November 2000, in which it has ruled:

Articles 6 and 7 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 and amended by Council Regulation (EEC) No 2332/89 of 18 July 1989, do not preclude application of provisions of an inter-State convention on unemployment insurance which are more advantageous for the insured, provided that the latter exercised his right to freedom of movement before the date of entry into force of that regulation, even if, as a result of the reference period prescribed by the national legislation applicable to determination of the insured's entitlement, it is not possible for him to claim a right to benefits based entirely on the period prior to that date.

([1]) OJ C 121 of 1.5.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 November 2000

in Case C-126/99 (reference for a preliminary ruling from the Pretore di Torino): Roberto Vitari v European Training Foundation ([1])

(Local staff — Article 79 of the Conditions of Employment of other Servants — Fixed-term contract of employment — Conversion into contract for an indefinite period — Whether or not national legislation applicable)

(2001/C 28/09)

(Language of the case: Italian)

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

In Case C-126/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Pretore di Torino

(Labour Court, Turin), Italy, for a preliminary ruling in the proceedings pending before that court between Roberto Vitari and European Training Foundation — on the interpretation of Article 79 of the Conditions of Employment of other Servants of the European Communities — the Court, (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 9 November 2000, in which it has ruled:

On a proper construction of Article 79 of the Conditions of Employment of other Servants of the European Communities, that provision precludes the possibility for a Community institution to conclude a fixed-term contract of employment with a member of its local staff where that is contrary to its own rules applicable to the conditions of employment of local staff and drawn up in accordance with the rules and practice of the State in which the duties are performed. It is therefore for the national court to determine whether, in accordance with Article 3 of the rules governing the conditions of employment of local staff serving in Italy adopted by the Commission, the circumstances surrounding the work, or the nature of that work, made it necessary for the local-staff contract between the parties to the main proceedings to be concluded for a fixed term. If not, it is for the national court to convert that contract into a contract of employment for an indefinite period.

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(1) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 November 2000

in Case C-148/99: United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — 1995 financial year — Regulation (EEC) No 1164/89 — Aid for fibre flax and hemp)

(2001/C 28/10)

(Language of the case: English)

In Case C-148/99: United Kingdom of Great Britain and Northern Ireland (Agent: J.E. Collins, assisted by A. Sutton) v Commission of the European Communities (Agent: P. Oliver) — application for partial annulment of Commission Decision 1999/187/EC of 3 February 1999 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 (OJ 1999 L 61, p. 37) in so far as it excludes from Community financing expenditure of GBP 869 283 incurred in the United Kingdom under the scheme established by Commission Regulation (EEC) No 1164/89 of 28 April 1989 laying down detailed rules concerning the aid for fibre flax and hemp (OJ 1989 L 121, p. 4) — the Court (Fifth Chamber), composed of: D.A.O. Edward, acting as President of the Fifth Chamber, L. Sevón and P. Jann (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 9 November 2000, in which it:

1. *Annuls Commission Decision 1999/187/EC of 3 February 1999 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, in so far as it excludes from Community financing expenses of GBP 869 283 incurred in the United Kingdom of Great Britain and Northern Ireland under the scheme established by Commission Regulation (EEC) No 1164/89 of 28 April 1989 laying down detailed rules concerning the aid for fibre flax and hemp;*

2. *Orders the Commission of the European Communities to pay the costs.*

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(1) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 November 2000

in Case C-207/99 P: Commission of the European Communities v Claudine Hamptaux (1)

(Appeal — Officials — Promotion — Consideration of comparative merits)

(2001/C 28/11)

(Language of the case: French)

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

In Case C-207/99 P: Commission of the European Communities (Agents: C. Berardis-Kayser and F. Duvieusart-Clotuche and

D. Waelbroeck) APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 25 March 1999 in Case T-76/98 Hamptaux v Commission [1999] ECR-SC I-A-59 and II-303, seeking to have that judgment set aside, the other party to the proceedings being Claudine Hamptaux an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by L. Vogel, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of C. Kremer, 6 Rue Heinrich Heine — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 9 November 2000, in which it:

1. *Dismisses the appeal;*

2. *Orders the Commission of the European Communities to pay the costs.*

([1]) OJ C 246 of 28.8.1999.

JUDGMENT OF THE COURT

(Third Chamber)

of 9 November 2000

in Case C-356/99: Commission of the European Communities v Hitesys SpA ([1])

(Arbitration clause — Non-performance of contract — Recovery of moneys advanced — Procedure in default of defence)

(2001/C 28/12)

(Language of the case: Italian)

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

In Case C-356/99: Commission of the European Communities (Agents: E. de March and A. Dal Ferro) v Hitesys SpA, established in Aprilia (Italy) — application by the Commission of the European Communities under Article 238 EC to recover moneys advanced in relation to Contract JOU2-CT93-0417, which was terminated by the applicant on the ground of the defendant's failure to perform its contractual obligations — the Court (Third Chamber), composed of: C. Gulmann (Rapporteur), President of the Chamber, J.-P. Puissochet and F. Macken, Judges; A. Saggio, Advocate General; R. Grass, Registrar, has given a judgment on 9 November 2000, in which it:

1. *Orders Hitesys SpA to repay to the Commission of the European Communities the sum of EUR 132 500, together with default interest calculated in accordance with the second subparagraph of Article 8(4) of the general conditions forming Annex II to Contract JOU2-CT93-0417 from 8 January 1994 until full payment of the debt;*

2. *Orders Hitesys SpA to pay the costs.*

([1]) OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT

(First Chamber)

of 14 November 2000

in Case C-142/99 (reference for a preliminary ruling from the Tribunal de Première Instance de Tournai): Floridienne SA, Berginvest SA v Belgian State ([1])

(Sixth VAT Directive — Deduction of input tax — Undertaking subject to tax on only one part of its operations — Deductible proportion — Calculation — Holding company collecting share dividends and loan interest from its subsidiaries — Involvement in management of subsidiaries)

(2001/C 28/13)

(Language of the case: French)

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

In Case C-142/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Tribunal de Première Instance (Court of First Instance), Tournai, Belgium, for a preliminary ruling in the proceedings pending before that court between Floridienne SA, Berginvest SA and Belgian State — on the interpretation of Article 19 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 (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and L. Sevón (Rapporteur), Judges; N. Fennelly, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 14 November 2000, in which it has ruled:

Article 19 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 is to be interpreted as meaning that the following must be excluded from the denominator of the fraction used to calculate the deductible proportions:

— *share dividends paid by its subsidiaries to a holding company which is a taxable person in respect of other activities and which supplies management services to those subsidiaries, and*

— *interest paid by the subsidiaries to the holding company on loans it has made to them, where the loan transactions do not constitute, for the purposes of Article 4(2) of the Sixth Directive, an economic activity of the holding company.*

(1) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 November 2000

in Case C-214/98: Commission of the European Communities v Hellenic Republic (1)

(Failure of a Member State to fulfil its obligations — Failure to transpose certain provisions of Directive 93/118/EC)

(2001/C 28/14)

(Language of the case: Greek)

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

In Case C-214/98: Commission of the European Communities (Agents: M. Condou-Durande) v Hellenic Republic (Agents: I.K. Chalkias and N. Dafniou) — application for a declaration that,

— by failing to mention, among the meat to which the fees fixed by Council Directive 93/118/EEC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1993 L 340 p. 15) apply, the category corresponding to solipeds/equidae,

— by fixing the amounts of the fees to be charged for health checks on the slaughter of animals and of those connected with cutting operations of fresh meat at 50 % of the standard Community rates, without giving reasons for that reduction in accordance with the requirements of Chapter I of the annex to Directive 93/118, and

— by exempting poultrymeat from the fee for the cutting of fresh meat,

the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and the said directive, in particular points 1, 2 and 5 of Chapter I of the annex thereto — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen (Rapporteur) and F. Macken, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 16 November 2000, in which it:

1. *Declares that,*

   — *by failing to mention, among the meat to which the fees fixed by Council Directive 93/118/EEC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat apply, the category corresponding to solipeds/equidae, and*

   — *by not explicitly mentioning poultrymeat for the purposes of the application of the fee for the cutting of fresh meat fixed by that directive,*

   the Hellenic Republic has failed to fulfil its obligations under the provisions of the first and third subparagraphs of Article 3(1) of Directive 93/118 and points (b) and (e) of the first indent of point 1 and point (a) of the first indent of point 2 of the annex thereto, taken together;

2. *Dismisses the remainder of the application;*

3. *Orders the Commission of the European Communities and the Hellenic Republic to bear their own costs.*

(1) OJ C 258 of 15.8.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 November 2000

in Case C-248/98 P: NV Koninklijke KNP BT v Commission of the European Communities [1]

(Appeal — Competition — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Fines — Statement of reasons — Power of unlimited jurisdiction)

(2001/C 28/15)

(Language of the case: Dutch)

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

In Case C-248/98 P: NV Koninklijke KNP BT, established in Amsterdam, Netherlands, represented by T.R. Ottervanger, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Loeff, Claeys and Verbeke, 56-58 Rue Charles Martel, appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 14 May 1998 in Case T-309/94 KNP BT v Commission [1998] ECR II-1007, seeking to have that judgment set aside, the other party to the proceedings being, Commission of the European Communities (Agents: R. Lyal and W. Wils), the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 16 November 2000, in which it:

1. *Sets aside paragraph 1 of the operative part of the judgment of the Court of First Instance of 14 May 1998 in Case T-309/94 KNP BT v Commission;*

2. *Sets the amount of the fine imposed on NV Koninkliijke KNP BT by Article 3 of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard) at EUR 2 600 000;*

3. *Dismisses the remainder of the appeal;*

4. *Orders NV Koninklijke KNP BT to bear its own costs and to pay two thirds of the costs of the Commission of the European Communities relating to the proceedings before the Court of Justice;*

5. *Orders the Commission of the European Communities to bear one third of its own costs relating to the proceedings before the Court of Justice.*

[1] OJ C 299 of 26.9.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 November 2000

in Case C-279/98 P: Cascades SA v Commission of the European Communities [1]

(Appeal — Competition — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Liability for the infringement — Fines — Statement of reasons — Principle of non-discrimination)

(2001/C 28/16)

(Language of the case: French)

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

In Case C-279/98 P: Cascades SA, established in Bagnolet (France), represented by J.-Y. Art, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Arendt and Medernach, 8-10 Rue Mathias Hardt, appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 14 May 1998 in Case T-308/94 Cascades v Commission [1998] ECR II-925, seeking to have that judgment set aside, the other party to the proceedings being, Commission of the European Communities (Agents: Richard Lyal and E. Gippini Fournier) — the Court (Fifth Chamber), composed of: A. La Pergola, M. Wathelet (Rapporteur), D.A.O. Edward, President of the Chamber, P. Jann, and L. Sevón, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 16 November 2000, in which it:

1. *Sets aside the judgment of the Court of First Instance of 14 May 1998 in Case T-308/94 Cascades v Commission in so far as it attributes to Cascades SA responsibility for the infringements committed by Van Duffel NV and Djupafors AB during the period from mid-1986 until February 1989 inclusive;*

2. *Dismisses the remainder of the appeal;*

3. *Refers the case back to the Court of First Instance;*

4. *Orders that the costs are reserved.*

[1] OJ C 299 of 26.9.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 November 2000

in Case C-280/98 P: Moritz J. Weig GmbH & Co. KG v Commission of the European Communities [1]

(Appeal — Competition — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Fines — Determination of the amount — Statement of reasons — Mitigating circumstances)

(2001/C 28/17)

(Language of the case: German)

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

In Case C-280/98 P: Moritz J. Weig GmbH & Co. KG, established in Mayen, Germany, represented by T. Jestaedt, of the Brussels Bar and V. von Bomhard, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the Chambers of P. Dupont, 8-10 Rue Mathias Hardt, appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 14 May 1998 in Case T-317/94 Weig v Commission [1998] ECR II-1235, seeking to have that judgment set aside, the other party to the proceedings being, Commission of the European Communities (Agent: R. Lyal assisted by D. Schroeder) — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 16 November 2000, in which it:

1. *Annuls paragraph 3 of the operative part of the judgment of the Court of First Instance of 14 May 1998 in Case T-317/94 Weig v Commission;*

2. *Fixes at EUR 1 900 000 the amount of the fine to be imposed on Moritz J. Weig GmbH & Co. KG by Article 3 of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard);*

3. *Dismisses the remainder of the appeal;*

4. *Orders Moritz J. Weig GmbH & Co. KG to bear its own costs and to pay two-thirds of the costs of the Commission of the European Community before the Court of Justice;*

5. *Orders the Commission of the European Communities to bear one-third of its own costs before the Court of Justice.*

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[1] OJ C 299 of 26.9.1998.

Reference for a preliminary ruling by the Giudice di Pace di Genova by order of that court of 16 October 2000 in the case of Radiosistemi Srl against Prefetto di Genova

(Case C-388/00)

(2001/C 28/18)

Reference has been made to the Court of Justice of the European Communities by order of the Giudice di Pace (District Court), Genoa, of 23 October 2000, received at the Court Registry on 16 October 2000, for a preliminary ruling in the case of Radiosistemi Srl against Prefetto di Genova on the following questions:

(1) Does Community law, in the light also of its fundamental principles for which there is no primary textual source, preclude legislation and/or national administrative practice which — in the context of a system where matters concerning conformity assessment procedures for the purposes of placing radio equipment on the market and putting such equipment into service have been delegated to the administrative authorities, to be decided merely at their discretion — precludes economic operators from importing, marketing or holding in stock, with a view to selling, radio equipment that has not undergone national type-approval, and which does not admit other forms of evidence, equally reliable but less burdensome to obtain, to prove that such equipment is in conformity with requirements concerning the proper use of the radio frequencies authorised under national law?

(2) Does Directive 1999/5/EC [1] of the European Parliament and of the Council of 9 March 1999 confer on individuals rights upon which they may rely before the national courts, where the Directive itself has not been formally transposed into national law and the deadline for such transposition has already expired? If that question is answered in the affirmative, is it compatible with Article 7(2)) of Directive 1999/5/EC to maintain in force legislation and/or administrative practice which, after 8 April 2000, prohibits the marketing and/or the putting into service of radio equipment which does not bear the national type-approval stamp, where it has been confirmed that such equipment makes efficient and proper use of the radio frequencies authorised under national law, or where it is easy to verify that this is the case?

(3) On a proper construction of Article 1 of Decision No 3052/95/EC [2] of the European Parliament and of the Council of 13 December 1995, how is the term 'the measure' to be interpreted and does that term cover the situation where the administrative authorities, having seized a particular model or a particular type of product which is lawfully marketed in another Member State, continue to withhold that model or product after it has been ascertained by the public authorities responsible for technical checks that the good in question is in conformity with both national and Community legislation, that is to say, after the evidential purposes justifying the initial seizure have been served?

(4) Are penalties such as those provided for under Article 399 of the Codice Postale Italiano (Italian Postal Regulations set out in Presidential Decree No 156 of 1973) compatible with Community law, in the light of the principles of non-discrimination and proportionality?

(1) OJ L 91 of 7.4.1999, p. 10.
(2) OJ L 321 of 30.12.1995, p. 1.

Action brought on 26 October 2000 by the Commission of the European Communities against the Italian Republic

(Case C-396/00)

(2001/C 28/19)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 26 October 2000 by the Commission of the European Communities, represented by Gregorio Valero Jordana, of its Legal Service, and by Roberto Amorosi, judge on secondment to the 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, Kirchberg.

The applicant claims that the Court should:

— Declare that, by failing to adopt the provisions necessary to ensure that, by 31 December 1998, discharges of urban waste water from Milan collected in a basin draining into the 'Po delta' and 'northwestern Adriatic coastal areas', as defined by the Decree Law No 152 of the Italian Republic of 11 May 1999 (Provisions on the prevention of pollution of water and implementation of Council Directive 91/271/EEC(1) concerning urban waste-water treatment and Council Directive 91/676/EEC(2) of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources), pursuant to Article 5 of concerning urban waste-water treatment, were subject to more stringent treatment than the secondary treatment or equivalent described by Article 4 of that directive, the Italian Republic has failed to fulfil its obligations under Article 5(2) of the aforementioned directive, as laid down in Article 5(5);

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission claims that even though there existed, within the area in question, waste-water treatment plants by 31 December 1998, Italy should have adopted measures to identify the discharges for the purposes of applying Article 5(5) of the directive by adapting, if necessary, the relevant plants. Italy cannot justify its delay in fulfilling its obligations under the directive by arguing that the main factors on the basis of which the present situation was to be characterised, for the purposes of the applicability of its obligations under Articles 5(2) and 5(5), have not yet been examined and assessed, since those obligations had been entrusted to local bodies (the Regions). As the Court of Justice has consistently held, Member States cannot rely on provisions of their own internal legal order in order to justify failure to respect the obligations and time-limits laid down by a directive.

As regards the exemption under Article 5(4) of the directive, it is clear that it cannot apply unless it can be shown that the minimum percentage of reduction of the overall load entering all urban waste water treatment plants in that area is of a certain value, which is impossible for the time being because there is no treatment plant in existence.

By declaring a state of emergency, the Italian authorities have shown themselves to be seriously willing to resolve the situation even if the Commission is concerned that, despite having indicated the expected dates of completion of the works, by letter of 9 July and of 27 October 1999, in reply to the letter of formal notice, the latest letter of 6 April 2000 makes no further mention in that respect. In any event, so far as concerns the present case, nothing of the foregoing changes the fact that Italy is in breach of Community law.

(1) OJ 1991 L 135, p. 40.
(2) OJ 1991 L 375, p. 1.

Action brought on 30 October 2000 by Kingdom of Spain against Commission of the European Communities

(Case C-398/00)

(2001/C 28/20)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 30 October 2000 by the Kingdom of Spain, represented by Santiago Ortiz Vaamonde, Abogado del Estado, 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 should:

— annul the decision of the Commission of 22 August 2000 in respect of all the measures it relates to with the exception of the grant of June 1998;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

— The present action is directed against the decision of the Commission initiating the formal investigation provided for under Article 88(2) EC into the injection of capital and regional aid given to Santana Motor SA, taking the view that this was new aid, and suspending its implementation. The Spanish authorities however regard the measures to which the contested decision relates to be existing aid. The aid, which was duly notified on 30 July and 17 November 1999 (capital injection and regional aid respectively), became *existent* by virtue of Article 4(6) of Council Regulation No 659/99 [1]. By letter of 28 July 2000 transmitted by fax on the same day, the Spanish authorities informed the Commission that the Junta de Andalucía was about to implement the measures notified to the Commission. The fact that that communication was registered by the Commission on 31 July, or 3 days later, does not change the date on which the fax was received, which is the transmission date.

  The contested decision dated 22 August was notified on 23 August 2000, when the 15 working days on which the Commission relied had expired.

  Likewise, a fax of 17 August and a letter of 21 August, prior to the date of the contested decision, informing the recipient that the Commission had 'adopted' that decision, cannot be regarded in any way as notification of the formal decision to initiate the investigation pursuant to Article 4 of Regulation 659/99.

— (In the alternative) Inadequate statement of reasons

  The contested decision was adopted by the Commission only in order to circumvent the deadline after which they became 'existent', and are not a reflection of a certainty that the measures are incompatible with the Treaty, nor that there was a need for more information than was received.

(1) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 7 November 2000 by the Commission of the European Communities against the Kingdom of Spain

(Case C-404/00)

(2001/C 28/21)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 7 November 2000 by the Commission of the European Communities, represented by Klaus-Dieter Borchardt and Stefan Rating, 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, Kirchberg.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Decision 2000/131/EC of 26 October 1999 [1] declaring certain aid granted to the group of publicly owned shipyards in Spain to have been granted illegally and, moreover, incompatible with the common market, Kingdom of Spain has failed to fulfil its obligations under Article 249 of the EC Treaty and Articles 2 and of that directive; and

— Order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Under Article 249 of the EC Treaty, Decision 2000/131/EC of 26 October 1999 is to be binding in its entirety upon Kingdom of Spain, the Member State to which it is addressed, by virtue of the notification served upon it on 2 December 1999. Although Article 243 EC provides for Court of Justice to prescribe any necessary interim measures, the Kingdom of Spain, which had brought an action for annulment under Article 230 EC against the decision (Case C-36/00), has not to date submitted any request to that effect. Thus, the decision in question remains binding in its entirety in respect of the Kingdom of Spain. The Spanish Government has not complied with the decision without it being possible to consider such failure justified by an 'absolute impossibility'.

(1) On the State aid implemented by Spain in favour of the publicly owned shipyards (OJ 2000 L 37, p. 22).

Action brought on 8 November 2000 by the Commission of the European Communities against the Republic of Austria

(Case C-407/00)

(2001/C 28/22)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 8 November 2000 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, 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 failing within the time-limit prescribed to take all necessary measures in order to comply with Council Directive 96/82/EC of 9 December 1996 [1] on the control of major-accident hazards involving dangerous substances, and in particular Articles 11 and 12 thereof, the Republic of Austria has failed to fulfil its obligations under the EC Treaty;

(2) order the Republic of Austria 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 obliges the Member States to adopt the measures necessary in order to comply with directives addressed to them within the time-limit prescribed for so doing. That time-limit expired on 3 February 1999 but Austria has not to date taken all the measures required in order to transpose Articles 11 and 12 of the directive.

[1] OJ 1997 L 10, p. 13.

Action brought on 8 November 2000 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-408/00)

(2001/C 28/23)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 8 November 2000 by the Commission of the European Communities, represented by Götz zur Hausen, Commission Legal Adviser, 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 not adopting in full, or in any event not communicating in full to the Commission, the laws, regulations and administrative provisions necessary to comply with Council Directive 97/11/EC [1] of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The pleas in law and main arguments correspond to those in Case C-407/00 [2]; the time-limit for implementation expired on 14 March 1999.

[1] OJ L 73, 14.3.1997, p. 5.
[2] See p. 13 of this Official Journal.

Action brought on 10 November 2000 by Kingdom of Spain against Commission of the European Communities

(Case C-409/00)

(2001/C 28/24)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 10 November 2000 by the Kingdom of Spain, represented by Mónica López-Monís Gallego, abogado del Estado, acting as Agent, 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:

— annul the Commission decision of 26 July 2000 [1]; and

— order the defendant institution to pay the costs.

Pleas in law and main arguments

— Indeterminate nature of the contested decision: delimitation of the benefits covered respectively by Article 1 (incompatible aid) and Article 2 (aid incompatible with the common market and, accordingly, to be recovered) is impossible. The whole category of undertakings referred to in Article 1 and, in particular, those which are caught by the definition of 'operating at local or regional level does not exist as a concept under Spanish law'.

— Non-selective aid: the measures contained in the Convenio do not favour certain undertakings or productions, since the subsidies which it envisages are not aimed at a defined set of recipients but at all possible beneficiaries in general. The fact of requiring that beneficiaries should be natural persons or small or medium-sized enterprises constitutes an objective condition requiring that they be in an objectively similar situation.

— Absence of discrimination: the implementing rules for the Convenio do not require that the vehicle which must be withdrawn from circulation should belong to the beneficiary of the subsidy — the vehicle may belong to a third party with which the beneficiary may have entered into an agreement to that end. Thus, there is no distortion of competition to the detriment of those hauliers not established in Spain.

— Competition is not distorted: the impact at Community level of the system of aid provided for by the Convenio on competition in transport is entirely insignificant — the requirements laid down in Article 87(1) EC are not met.

— Infringement of Article 87(3)(c) EC: in the view of the Kingdom of Spain, concern for the environment and traffic safety justify application in the present case of Article 87(3)(c), since it is clear that the measures proposed in those two sectors will have a positive impact, without resulting in an increase in capacity. The measures provided for in the Convenio cannot be characterised as operating aid but rather as aid for investment linked to the restructuring of the pool of industrial vehicles. The Commission is inconsistent in its criteria in this regard, since in paragraph 35 of the contested decision it describes the aid as aid to investment while, on the other hand, in paragraph 38 it describes it as operating aid.

[1] Commission Decision C(2000) 2465 Final concerning the system of aid granted by Spain for the purchase of industrial vehicles by means of the 'Convenio de Colaboración' of 26 February 1997 between the Ministerio de Industria y Energía and the Instituto de Crédito Official.

Action brought on 9 November 2000 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-410/00)

(2001/C 28/25)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 9 November 2000 by the Commission of the European Communities, represented by Marie Wolfcarius and Christina Tufvesson, Legal Advisers in the Commission's Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of that service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC [1] of 23 July 1996 on the interoperability of the trans-European high-speed rail system, the Kingdom of Sweden has failed to fulfil its obligations under that directive,

2. order the Kingdom of Sweden to bear the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those relied on in Case C-407/00 [2]; the period prescribed for transposition of the directive expired on 8 April 1999.

[1] OJ L 235, 17.9.1996, p. 6.
[2] See p. 13 of this Official Journal.

Reference for a preliminary ruling by the Bundesvergabeamt, by a decision of that Court of 29 September 2000 in the case of Felix Swoboda against the Austrian National Bank

(Case C-411/00)

(2001/C 28/26)

Reference has been made to the Court of Justice of the European Communities by a decision of the Bundesvergabeamt on 29 September 2000, which was received at the Court Registry on 10 November, for a preliminary ruling in the case of Felix Swoboda GmbH against the Austrian National Bank, on the following questions:

— Must a service which serves a single purpose, but which could be subdivided into part services, be classified as a single service consisting of a main service and accessory, supporting services in accordance with the scheme of Directive 92/50/EEC [1], in particular of the types of services contained in Annex I A and I B, and treated as a service listed in Annex I A or I B of the directive according to its main object, or must each part service instead be considered separately to establish whether the service is subject to the directive in full as a priority service or to only individual provisions thereof as a non-priority service?

— How far may a service which describes a specific type of service (e.g. transport services) be broken down into individual services in accordance with the scheme of Directive 92/50/EEC without infringing the provisions on the award of service contracts or undermining the effet utile of the directive on services?

— Must the services referred to in this case (having regard to Article 10 of Directive 92/50/EEC) be classified as services listed in Annex I A of Directive 92/50/EEC (Category 2, land transport services) and contracts which have as their object such services thus be awarded in accordance with the provisions of Titles III to VI of the directive, or must they be classified as services listed in Annex I B of Directive 92/50/EEC (in particular Category 20, Supporting and auxiliary transport services, and Category 27, Other services) and contracts which have as their object such services thus be awarded in accordance with Articles 14 and 16, and under which CPC reference number must they be subsumed?

— In the event that consideration of the part services leads to the conclusion that a part service listed in Annex I A of the directive which per se is subject in full to the provisions of Directive 92/50/EEC is, by way of an exception, not subject in full to the provisions of the directive on account of the principle of predominance laid down in Article 10 thereof, is there an obligation on the contracting authority to separate off non-priority part services and to award contracts for them separately in order to preserve the priority nature of the service?

[1] OJ 1992 L 209, p. 1.

Action brought on 10 November 2000 by the Commission of the European Communities against the Portuguese Republic

(Case C-412/00)

(2001/C 28/27)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 10 November 2000 by the Commission of the European Communities, represented by Ana Maria Alves Vieira, of its Legal Service, acting as Agent, 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:

— Declare that, by failing to bring into force within the prescribed period all the provisions necessary to comply with:

  (a) Commission Directive 98/54/EC [1] of 16 July 1998 amending Directives 71/250/EEC, 72/199/EEC, 73/46/EEC and repealing Directive 75/84/EEC;

  (b) Commission Directive 98/68/EC [2] of 10 September 1998 laying down the standard document referred to in Article 9(1) of Council Directive 95/53/EC and certain rules for checks at the introduction into the Community of feedingstuffs from third countries;

  (c) Commission Directive 98/82/EC [3] of 27 October 1998 amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC on the fixing of maximum levels for pesticide residues in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables respectively;

  the Portuguese Republic failed to fulfil its obligations under the Treaty.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case C-407/00 [4]; the time-limit for transposition expired on 13 February 1999, 31 March 1999 and 30 April 1999 respectively.

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[1] OJ 1998 L 208, p. 49.
[2] OJ 1998 L 261, p. 32.
[3] OJ 1998 L 290, p. 25.
[4] See p. 13 of this Official Journal.

Action brought on 9 November 2000 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-413/00)

(2001/C 28/28)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 9 November 2000 by the Commission of the European Communities, represented by B. Mongin and H. M. H. Speyart, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 98/41/EC [1] of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community, or in any event by not informing the Commission of such measures, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive.

2. Order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Case C-407/00 [2]; the period for transposition expired on 1 January 1999.

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[1] OJ 1998 L 188, p. 35.
[2] See p. 13 of this Official Journal.

Action brought on 10 November 2000 by the Commission of the European Communities against the Portuguese Republic

(Case C-414/00)

(2001/C 28/29)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 10 November 2000 by the Commission of the European Communities, represented by Ana Maria Alves Vieira, of its Legal Service, acting as Agent, 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:

— Declare that, by failing to bring into force within the prescribed period all the provisions necessary to comply with Council Directive 97/78/EC [1] of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries, the Portuguese Republic has failed to fulfil its obligations under Articles 10 and 249 of the EC Treaty; and

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case C-407/00 [2]; the time-limit for transposition of the directive expired on 1 June 1999.

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[1] OJ 1998 L 24, p. 9.
[2] See p. 13 of this Official Journal.

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat Salzburg by order of that court of 9 November 2000 in the appeal concerning (1) Dr Herbert Pflanzl, (2) Bürgermeister der Landeshauptstadt Salzburg, (3) Grundverkehrsbeauftragter des Landes Salzburg and (4) Grundverkehrslandeskommission des Landes Salzburg

(Case C-415/00)

(2001/C 28/30)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängiger Verwaltungssenat Salzburg of 9 November 2000, received at the Court Registry on 13 November 2000, for a preliminary ruling in the appeal concerning (1) Dr Herbert Pflanzl, (2) Bürgermeister der Landeshauptstadt Salzburg, (3) Grundverkehrsbeauftragter des Landes Salzburg and (4) Grundverkehrslandeskommission des Landes Salzburg on the following question:

Are the provisions of Article 56 et seq. of the EC Treaty to be interpreted as precluding the application of Paragraphs 13, 36 and 43 of the Salzburger Grundverkehrsgesetz (Salzburg land Transfer Law) of 1997 in the version published in LGBl. No. 11/1999, whereby any person who wishes to acquire a building plot in the federal *Land* of Salzburg must comply with a notification or authorisation procedure in respect of the acquisition of that plot, with the consequence that one of the fundamental freedoms of the acquirer of title as guaranteed by the laws of the European Union has been infringed in this case?

Reference for a preliminary ruling by the Tribunale di Padova by order of that court of 16 October 2000 in the case of Tommaso Morellato against Comune di Padova

(Case C-416/00)

(2001/C 28/31)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Civile di Padova — Sezione II (Padua Civil District Court — Second Chamber) of 16 October 2000, which was received at the Court Registry on 13 November 2000, for a preliminary ruling in the case of Tommaso Morellato against Comune di Padova on the following questions:

1. must Article 14(4) of Law No 580 of 4 July 1967 (replaced by Article 44(4) of Law No 146 of 22 February 1994), as interpreted by the Mayor of the Commune of Padua in the contested order, in so far as it prohibits the sale of bread baked from frozen or non-frozen part-baked bread (lawfully manufactured in and imported from France), if it has not previously been *packaged* by the reseller, be regarded as incompatible with Articles 30 and 36 of the EC Treaty?

2. must Article 14(4) of Law No 580 of 4 July 1967 (replaced by Article 44(4) of Law No 146 of 22 February 1994) and the subsequent construction placed upon it by the Mayor of the Commune of Padua be regarded as a quantitative restriction or a measure having equivalent effect within the meaning of Article 30 of the EC Treaty?

3. if so, may the Italian State avail itself of the derogation provided for by Article 36 of the Treaty for the purpose of protecting the health and lives of humans?

4. must Article 14(4) of Law No 580 of 4 July 1967 (replaced by Article 44(4) of Law No 146 of 22 February 1994) be disapplied by the Italian courts?

5. must bread baked from frozen or non-frozen part-baked bread (lawfully manufactured in and imported from France) be allowed into free circulation without any restriction, such as the *previous packaging* requirement provided for in Article 14(4) of Law No 580 of 4 July 1967 (replaced by Article 44(4) of Law No 146 of 22 February 1994)?

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat Salzburg by order of that court of 31 October 2000 in the appeal concerning (1) Dr Werner Salentinig, (2) Bürgermeister der Landeshauptstadt Salzburg, and (3) Grundverkehrsbeauftragter des Landes Salzburg

(Case C-420/00)

(2001/C 28/32)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängiger Verwaltungssenat Salzburg of 31 October 2000, received at the Court Registry on 14 November 2000, for a preliminary ruling in the appeal concerning Dr (1) Werner Salentinig, (2) Bürgermeister der Landeshauptstadt Salzburg, and (3) Grundverkehrsbeauftragter des Landes Salzburg:

Are the provisions of Article 56 et seq. of the EC Treaty to be interpreted as precluding the application of Paragraphs 12, 36 and 43 of the Salzburger Grundverkehrsgesetz (Salzburg Land Transfer Law) of 1997 in the version published in LGBl. No. 11/1999, whereby any person who wishes to acquire a building plot in the federal *Land* of Salzburg must comply with a notification or authorisation procedure in respect of the acquisition of that plot, with the consequence that one of the fundamental freedoms of the acquirer of title as guaranteed by the laws of the European Union has been infringed in this case?

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat für Kärnten by order of 8 November 2000 in the case of the Mayor of the provincial capital Klagenfurt against Renate Sterbenz

(Case C-421/00)

(2001/C 28/33)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängiger Verwaltungssenat für Kärnten (Independent Administrative Chamber for Carinthia) of 8 November 2000, which was received at the Court Registry on 14 November 2000, for a preliminary ruling in the case of the Mayor of the provincial capital Klagenfurt against Renate Sterbenz on the following question:

'Are Article 28 (ex Article 30) of the EC Treaty as amended by the Treaty of Amsterdam and Articles 2(1)(b) and 15(1) and (2) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1) in the applicable version to be interpreted as precluding national legislation prohibiting any health-related information from appearing on the labelling and presentation of foodstuffs, products intended for human consumption and additives for general consumption, save if expressly authorised? (Paragraph 9(1)(a) to (c) and (3) of the LMG 1975, BGBl. No. 1975/86 in the applicable version)'.

Reference for a preliminary ruling by the VAT and Duties Tribunal, London Tribunal Centre, by direction of that court of 19 October 2000, in the case of Capespan International plc against Commissioners of Customs and Excise

(Case C-422/00)

(2001/C 28/34)

Reference has been made to the Court of Justice of the European Communities by a direction of the VAT and Duties Tribunal, London Tribunal Centre, of 19 October 2000, which was received at the Court Registry on 14 November 2000, for a preliminary ruling in the case of Capespan International plc against Commissioners of Customs and Excise, on the following questions:

(i) For products listed in the Annex to Commission Regulation (EC) No. 3223/94 [1] ('Regulation 3223/94'), as replaced by Commission Regulation (EC) No. 1890/96 [2], and entered into the European Community from 18 March 1997 but before 18 July 1998, being the date upon which Commission Regulation (EC) No. 1498/98 [3] ('Regulation 1498/98') amending Article 5 of Regulation 3223/94 is expressed to have entered into force, is the customs value of such products to be determined in accordance with

a) the rules set out in Chapter 3 of Title II (namely Articles 28 to 36) to Council Regulation (EEC) No. 2913/92 [4] ('the Code') and the rules set out in Title V (namely Articles 141 to 181a) to Commission Regulation (EEC) No. 2454/93 [5] ('the Implementing Regulation'); or

b) Article 5 of Regulation 3223/94?

(ii) If the customs value is not to be determined in accordance with either of the above, what is the correct basis for the determination of the customs value of such products?

(iii) Is Regulation 1498/98, amending with effect from 18 July 1998 Article 5 of Regulation 3223/94 on detailed rules for the application of the import arrangements for fruit and vegetables published in the Official Journal of the European Communities [OJ No L 198, 15.07.98 p. 4], valid?

(iv) If Regulation 1498/98 is not valid, how is the customs value of products of the type identified in question (i), which are entered into the European Community from 18 July 1998, to be determined?

(v) Whether or not Regulation 1498/98 is valid, does Regulation 3223/94 preclude the giving of a provisional indication of customs value in accordance with Article 254 of the Implementing Regulation?

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[1] of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables (OJ L 337, 24.12.1994, p. 66).

[2] OJ L 249, 1.10.1996, p. 29.

[3] OJ L 198, 15.7.1998, p. 4.

[4] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

[5] of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ L 253, 11.10.1993, p. 1).

Action brought on 16 November 2000 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-423/00)

(2001/C 28/35)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 16 November 2000 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt all the laws, regulations and/or administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances [1], and in any event by failing to inform the Commission of such provisions, the Kingdom of Belgium has failed to fulfil its obligations under that Directive;

2. Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case C-407/00 [2]; the time-limit for transposition expired on 3 February 1999.

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[1] OJ 1997 L 10, p. 13.
[2] See p. 13 of this Official Journal.

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat Wien by order of 15 November 2000 in the case of Paul Dieter Haug against Magistrat der Stadt Wien

(Case C-426/00)

(2001/C 28/36)

Reference has been made to the Court of Justice of the European Communities by order of 15 November 2000 of the Unabhängiger Verwaltungssenat Wien (Independent Administrative Chamber, Vienna), which was received at the Court Registry on 20 November, for a preliminary ruling in the case of Paul Dieter Haug against Magistrat der Stadt Wien (Vienna municipal authorities) on the following questions:

Question 1

Does Paragraph 9 of the LMG constitute an appropriate transposition of Article 2(1)(b) of Council Directive 79/112/EEC [1] of 18 December 1978?

Question 2

Does Article 2(1)(b) of Directive 79/112/EEC make exhaustive provision concerning unlawful labelling, or does that provision provide for a minimum level of regulation which may be supplemented by national provisions?

Question 3

Is Article 2(1)(b) of Directive 79/112/EEC to be construed to mean that a restriction on labelling (such as that in Paragraph 9(1) of the LMG in regard to health-related information) is only permissible where a prohibition appears to be an unavoidable necessity in order to prevent consumers from being misled?

Question 4

Can Paragraph 9(1) of the LMG be interpreted so as to comply with the directive and the restriction on labelling mentioned therein be deemed to be in conformity with Article 2(1)(b) of Directive 79/112/EEC? This would be possible inasmuch as an intention to mislead is not required by Article 2(1)[(b)] as a whole but is a second criterion of the unlawfulness of a label.

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[1] OJ 1979 L 33, p. 1.

Action brought on 20 November 2000 by the Commission of the European Communities against the United Kingdom

(Case C-427/00)

(2001/C 28/37)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 20 November 2000 by the Commission of the European Communities, represented by Mr Richard Wainwright, Principal Legal Adviser, acting as agent, with an address for service at the office of Mr Carlos Gómez de la Cruz, a member of the Legal Service of the Commission, Wagner Centre, Kirchberg, Luxembourg.

The Applicant claims that the Court should:

— declare that, by failing to ensure that bathing waters in the United Kingdom comply with the limit values set in accordance with Article 3 of Directive 76/160/EC [1], the United Kingdom has failed to fulfil its obligations under that Directive;

— order the United Kingdom to pay the costs.

Pleas in law and main arguments

Article 4 of the Directive 76/160/CEE requires Member States to have taken all necessary measures, within 10 years following notification of the Directive, to ensure that the quality of bathing water conforms to the limit values set out in the Annex.

The Commission notes that, despite efforts to improve compliance, the United Kingdom is continuing to fail to meet the requirements of the directive. The Commission must conclude, therefore, that the United Kingdom has failed to fulfil its obligations in terms of the Directive.

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[1] Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ L 31, 5.2.1976, p. 1).

Reference for a preliminary ruling by the Giudice di Pace di Genova by order of that court of 11 November 2000 in the case of Radiosistemi Srl against Prefetto di Genova

(Case C-429/00)

(2001/C 28/38)

Reference has been made to the Court of Justice of the European Communities by order of the Giudice di Pace (District Court), Genoa, of 20 November 2000, received at the Court Registry on 11 November 2000, for a preliminary ruling in the case of Radiosistemi Srl against Prefetto di Genova on questions which are in substance identical to those referred in Case C-388/00 [1].

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[1] See p. 10 of this Official Journal.

Appeal brought on 21 November 2000 by Anton Dürbeck GmbH against the judgment delivered on 19 December 2000 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-252/97 between Anton Dürbeck GmbH and the Commission of the European Communities, supported by the Kingdom of Spain and the French Republic

(Case C-430/00 P)

(2001/C 28/39)

An appeal against the judgment delivered on 19 September 2000 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-252/97 between Anton Dürbeck GmbH and the Commission of the European Communities, supported by the Kingdom of Spain and the French Republic, was brought before the Court of Justice of the European Communities on 21 November 2000 by Anton Dürbeck GmbH, represented by Dr Gert Meier, Rechtsanwalt, Berrenrather Straße 313, D-50937 Köln.

The appellant claims that the Court should:

1. Set aside the contested judgment;

2. Annul the contested decision of the Commission of 10 July 1997 relating to the case of hardship;

3. Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

— The Court of First Instance erred in not undertaking a critical appraisal of the applicant's submissions on infringement of the principle of equivalence. The defendant had first referred to the 'interest in the equal treatment of all traders' in its defence. The applicant was entitled to state its position on this not solely for the purpose of refuting the defendant's plea.

— Owing to an incorrect appreciation of the contract between the applicant and Consultban, the Court of First Instance concluded that the Commission had correctly established the amount of the compensation to which the applicant was entitled.

— The Court of First Instance erred in approving the Commission's refusal to take the licences granted in order to compensate losses in cases of hardship into account for the purpose of determining future reference quantities. The Commission was not entitled to adopt the approach of providing compensation by allocating licences in cases of hardship if that approach meant that it could not take those licences into account for the purpose of determining reference quantities for future years. Once it adopted that approach, however, the effect of the binding rule in Article 19 of Regulation No 404/93 was such that the Commission could not then refuse to take those licences into account for the purpose of determining reference quantities for future years if, owing to further developments in the organisation of the market in bananas, the applicant received excessive compensation for its loss.

Action brought on 22 November 2000 by the Commission of the European Communities against the Portuguese Republic

(Case C-431/00)

(2001/C 28/40)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 22 November 2000 by the Commission of the European Communities, represented by António Caeiros, of its Legal Service, acting as Agent, 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:

— declare that, by failing to bring into force within the prescribed period the laws, regulations or administrative provisions necessary to comply with Council Directive 96/82/EC [1] of 9 December 1996 on the control of major-accident hazards involving dangerous substances, the Portuguese Republic has failed to fulfil its obligations under the first paragraph of Article 10 and the third paragraph of 249 of the EC Treaty, as well as the provisions of Article 24(1) of Directive 96/82/EC;

— in the alternative, declare that, by failing to inform the Commission immediately of such measures, the Portuguese Republic failed to fulfil its obligations under the above provisions;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case C-407/00 [2]; the time-limit for transposing the directive expired on 3 February 1999.

[1] OJ 1997 L 10, p. 13.

[2] See p. 13 of this Official Journal.

Reference for a preliminary ruling by the Tribunale Amminstrativo Regionale per la Lombardia by order of that court of 6 October 2000 in the case of Europetrol SpA v Azienda Lombarda Edilizia Residenziale Milano (A.L.E.R.) and Orion SCRL

(Case C-432/00)

(2001/C 28/41)

Reference has been made to the Court of Justice of the European Communities by an order of the Tribunale Amministrativo Regionale per la Lombardia (Regional Administrative Court for the Lombardy Region) of 6 October 2000, which was received at the Court Registry on 22 November 2000, for a preliminary ruling in the case of Europetrol SpA v Azienda Lombarda Edilizia Residenziale Milano (A.L.E.R.) and Orion SCRL, on the following question:

May Article 31 — and in particular Article 31(1)(c) — of Council Directive 92/50 [1] of 18 June 1992 relating to the coordination of procedures for the award of public service contracts be interpreted as meaning that the competent national courts are required to protect citizens of the Union adversely affected by measures adopted in breach of Community law by resorting, in particular, to disapplication as provided for in Article 5 of Law No 2248 of 20 March 1865 with respect to clauses of an invitation to tender which are contrary to Community law but were not challenged within the short time-limit laid down by national procedural law for the application of Community law by the court of its own motion, whenever it is found, first, that the application of Community law has been seriously impeded or rendered difficult in any way, and second, that there is a public interest, of Community or national origin, which justifies such application, and does Article 6(2) of the Treaty which, by providing for respect of the fundamental rights safeguarded by the European Convention on Human Rights and Fundamental Freedoms, has adopted the principle of effective judicial protection provided for in Articles 6 and 13 of that Convention, lead to the same conclusion?

[1] OJ L 209 of 24.7.1992, p. 1.

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 21 November 2000 in the criminal proceedings against G. Cuomo

(Case C-434/00)

(2001/C 28/42)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 21 November 2000, received at the Court Registry on 27 November 2000, for a preliminary ruling in the criminal proceedings against G. Cuomo on the following questions:

1. What is to be understood by 'leaves' or 'ceases to be covered by' (onttrekken) the external transit procedure within the meaning of the third subparagraph of Article 5(1) of the Directive on products subject to excise duty [1] and of Article 7(3) of the Sixth Directive [2], where such leaving or cessation is irregular — that is to say, it occurs otherwise than by declaring the goods for release for free circulation:

   (a) is it the first action in relation to the goods which contravenes a provision connected with that procedure, and is the presence of an intention to place the goods — partly by that action — on the Community market in breach of that provision relevant; or

   (b) does it occur (only) when the goods — in this case after breaking the seal — are unloaded from the vehicle without satisfying the requirement to produce the goods together with the relevant document at the office of destination in accordance with Article 22(1) of Regulation (EEC) No 2726/90 (OJ 1990 L 262, p. 1), and is the presence of an intention to place the goods — partly by that action — on the Community market in breach of Community law relevant; or

   (c) must 'leaves' or 'ceases to be covered by' be taken to refer to all the actions (taken together) resulting in the goods being placed unlawfully on the Community market?

2. If the answer to the first question is as indicated in (c), where does the 'leaving' or 'cessation of coverage' occur: where the first unlawful action is performed or where a subsequent action is performed, in particular where the goods — in this case after breaking the seal — are unloaded from the vehicle?

3. For the purposes of the application of criminal law, may 'leaves' or 'ceases to be covered' also be taken to refer to the mere placing and transport of goods under a Community customs procedure where a third country, as referred to in the directive, is entered as the destination of that transport operation in the accompanying documents but the intention of placing the goods on the market in another Member State was present at the start of the transport operation?

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(1) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

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

Action brought on 28 November 2000 by the Commission of the European Communities against the French Republic

(Case C-439/00)

(2001/C 28/43)

An action against the French Republic was brought before the Court of Justice on 28 November 2000 by the Commission of the European Communities, represented by Michel Nolin, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

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

— declare that, by failing to adopt all the laws, regulations and administrative measures necessary in order to comply with Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors [1], or at all events by failing to communicate the same to the Commission, the French Republic has failed to comply with its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case C-407/00 [2]; the transposition period expired on 16 February 1999.

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[1] OJ L 101 of 1.4.1998, p. 1.
[2] See p. 13 of this Official Journal.

Action brought on 29 November 2000 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-441/00)

(2001/C 28/44)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 29 November 2000 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, 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 96/48/EC [1] of 23 July 1996 on the interoperability of the trans-European high-speed rail system, the United Kingdom has failed to fulfil its obligations under that Directive.

— order the United Kingdom 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 8 April 1999 without the United Kingdom having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission.

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[1] OJ L 235, 17.9.1996, p. 6.

Reference for a preliminary ruling by the Tribunal Superior de Justicia de Castilla-La Mancha, Sala de lo Social, by order of that court of 27 October 2000 in the case of Ángel Rodríguez Caballero against Fondo de Garantía Salarial (FOGASA)

(Case C-442/00)

(2001/C 28/45)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Superior de Justicia, Sala de lo Social (High Court of Justice, Social Chamber), Castilla-La Mancha, Spain, of 27 October 2000, received at the Court Registry on 30 November 2000, for a preliminary ruling in the case of Ángel Rodríguez Caballero against Fondo de Garantía Salarial (Wages Guarantee Fund, FOGASA) on the following questions:

(a) Should a concept of the kind at issue in the present proceedings, namely remuneration which is payable by the employer to the employee as a result of the dismissal being unfair, be regarded as falling within those 'employees' claims arising from contracts of employment or employment relationships' referred to in Article 1(1) of Council Directive 80/987/EEC [1] of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer?

(b) In the affirmative, is there an obligation under Article 1(1) of Directive 80/987 to determine employees' claims by way of either a judicial decision or an administrative decision, and should such claims include all those employee claims upheld in the course of any other procedure recognised at law and judicially reviewable, such as conciliation, a compulsory procedure conducted before a court, which must encourage the parties to negotiate before commencing any legal proceedings and approve the terms of any agreement, and may prevent an agreement being concluded if it considers that the terms of the agreement would seriously prejudice one of the parties or amount to a circumvention of the law or an abuse of process?

(c) In the event that post-dismissal remuneration agreed upon in a court-supervised conciliation and approved by the court does fall within the scope of 'employees' claims', may the national court responsible for giving judgment in the proceedings refrain from applying a provision of national law which excludes the employee's claim for such remuneration from the scope of matters for which the national state guarantee institution, the Fondo de Garantia Salarial, is responsible and apply Article 1(1) of the directive directly on the ground that it considers the provision to be clear, precise and unconditional?

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[1] OJ L 283, 28.10.1980, p. 23.

Reference for a preliminary ruling by the Landesgericht Salzburg (as a commercial court) by order of 27 November 2000 in the application for company registration by Holto Limited

(Case C-447/00)

(2001/C 28/46)

Reference has been made to the Court of Justice of the European Communities by the Landesgericht Salzburg (as a commercial court) by order of 27 November 2000, received at the Court Registry on 4 December 2000, in the application for company registration by Holto Limited for a preliminary ruling on the following questions:

I. Is the second sentence of the first paragraph of Article 43 of the EC Treaty to be interpreted as meaning that a branch may exist even if a company does not have a principal place of business within the meaning of Article 48 of the EC Treaty at any other place, where it carries out at least an essential part of its business activity?

If so:

II. Is the second sentence of the first paragraph of Article 43 of the EC Treaty to be interpreted as meaning that the requirement of establishment is fulfilled if a company merely has its seat as declared in its constitution in a Member State in which it was effectively constituted and does not carry on any business there?

If so:

III. Does the establishment of an Austrian branch of a company that has been effectively constituted under English law but merely has its seat as declared in its constitution in England and does not carry on any business there belong to the rights under the second sentence of the first paragraph of Article 43 and by Article 48 of the EC Treaty?

If any of Questions I, II or III are answered in the negative:

IV. Does the establishment of an Austrian branch and its entry in the Austrian companies register (commercial register) by a company effectively constituted under English law which merely has its seat as declared in its constitution in England and does not carry on any business there belong to the rights covered by the first sentence of the first paragraph of Article 43 and by Article 48 of the EC Treaty?

If either Question III or Question IV is answered in the affirmative:

V. Do Articles 43 and 48 of the EC Treaty prohibit the application of a domestic conflict of laws rule which determines the legal capacity of a company in accordance with the law of the State in which the company has the actual seat of its main administration (the seat theory), even if, as a result, a company that has been effectively constituted under English law but merely has its seat as declared in its constitution in England and does not carry on any business there is refused recognition as a legal person and consequently refused entry in the companies register (commercial register)?

Appeal brought on 4 December 2000 by the Commission of the European Communities against that part of the judgment delivered on 27 September 2000 by the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-184/97 [1] between BP Chemicals Ltd and the Commission of the European Communities, supported by the French Republic, which annuls Commission Decision SG (97) D/3266 of 9 April 1997 [2] concerning an aid scheme for biofuels in France in so far as that decision relates to measures applicable to the ethyl-tertiobutyl-ether ('ETBE') sector

(Case C-448/00 P)

(2001/C 28/47)

An appeal against that part of the judgment delivered on 27 September 2000 by the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-184/97 between BP Chemicals Ltd and the Commission of the European Communities, supported by the French Republic, which annuls Commission Decision SG (97) D/3266 of 9 April 1997 concerning an aid scheme for biofuels in France in so far as that decision relates to measures applicable to the ethyl-tertiobutyl-ether ('ETBE') sector, was brought before the Court of Justice of the European Communities on 4 December 2000 by the Commission of the European Communities, represented by Xavier Lewis, a member of the Legal Service, acting as agent, assisted by Nicholas Khan, Barrister, of the Inner Temple, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, a member of the Legal Service of the Commission, Centre Wagner.

The Appellant claims that the Court should:

1. Annul that part of the judgment of the Court of First Instance of 27 September 2000 handed down in Case T-184/97, BP Chemicals Ltd v Commission, which annulled Commission Decision SG (97) D/3266 of 9 April 1997 concerning an aid scheme for biofuels in France in so far as that decision relates to measures applicable to the ethyl-tertiobutyl-ether ('ETBE') sector;

2. Dismiss the action for annulment of Commission Decision SG (97) D/3266 of 9 April 1997 concerning an aid scheme for biofuels in France in so far as that decision relates to measures applicable to the ethyl-tertiobutyl-ether ('ETBE') sector as unfounded

3. And, order BP Chemicals Ltd to bear the costs of the action for annulment in Case T-184/97

4. Alternatively, refer the case back to the Court of First Instance for judgment on the first, third and fourth pleas rased by the Applicant in the action for annulment,

5. And, order BP Chemicals Ltd to pay the costs of this appeal.

Pleas in law and main arguments

The Commission submits that the Court of First Instance erred in law in finding that it had exceeded its powers by adopting the Decision. In particular, it submits that the Court of First Instance erred in law by adopting an interpretation of a 'pilot project' which is limited to a project at the last stage of research and development before industrial exploitation on a larger scale of the results of such research.

The Commission considers that the Court of First Instance so erred for two reasons:

— The Court of First Instance was wrong to consider that the Community framework for State aid for Research and Development could provide decisive assistance in interpreting Article 8 (2) d) of Directive 92/81, and

— The Court of First Instance failed to examine whether the interpretation it propounded of Article 8 (2) d) was itself plausible and failed to examine the plausibility of the interpretation offered by the Commission in the Decision.

([1]) OJ C 252, 16.8.1997, p. 36.
([2]) Not published in the Official Journal.

COURT OF FIRST INSTANCE

Amendment of the Rules of Procedure of the Court of First Instance with a view to expediting proceedings

(2001/C 28/48)

On 6 December 2000 the Court of First Instance adopted various amendments to its Rules of Procedure with a view to expediting proceedings (OJ L 322 of 19 December 2000). Those amendments will enter into force on 1 February 2001.

The amendments in question chiefly concern:

(1) the introduction of an expedited ('fast track') procedure;

(2) the possibility of the Court dispensing with a second exchange of pleadings;

(3) the shortening of the time-limit for intervening;

(4) the use of modern means of communication and the simplification of the rules concerning extensions of time on account of distance.

1. *Introduction of an expedited ('fast track') procedure — new Article 76a*

This new type of procedure is designed to deal with cases of a particularly urgent nature which do not lend themselves to the adoption of interim measures of the kind which may be ordered in proceedings for interim relief. The cases in question include, for example, actions concerning public access to administrative documents held by the institutions or decisions regarding the control of mergers and takeovers.

— Under the expedited procedure, the emphasis will be placed on the oral procedure. The Court will devote more time to it, allowing all aspects of the case to be argued comprehensively and in depth.

— The written procedure will in principle be limited to the application and the defence. There will be no second exchange of pleadings or any lodgement of statements in intervention.

— The pleadings lodged must be brief and concise.

— The case will be given priority.

— An application for a case to be determined under an expedited procedure must be made by a separate document lodged at the same time as the application initiating the proceedings or the defence, as the case may be.

— The Court's decision will be taken in the light of each individual case, having regard to the particular urgency of the matter, the circumstances of the case and the question whether, in view of its complexity and the volume of the pleadings lodged, the case lends itself to essentially oral argument.

2. *Elimination of a second exchange of pleadings — amendment of Article 47*

Where, following the lodgement of the defence, the case-file is sufficiently comprehensive to enable the parties to elaborate their pleas and arguments in the course of the oral procedure, the Court may decide that no reply or rejoinder is to be lodged. Upon application by the parties, they will be allowed more time for the presentation of oral submissions, so that they may elaborate their arguments at the hearing.

3. *Abridgement of the time-limit for intervening — amendment of Article 115(1) and addition of a new Article 116(6)*

— The time-limit for intervening is shortened to six weeks from publication in the Official Journal of the notice concerning the initiation of the proceedings.

— A belated application to intervene made following the expiry of that time-limit and prior to the decision to open the oral procedure will be allowed, but the intervener concerned may only submit oral observations at the hearing, based solely on the Report for the Hearing as communicated to him.

4. *Use of modern means of communication — new Article 43(6), amendment of Articles 44(2) and 100; and simplification of the rules governing extensions of time on account of distance — amendment of Article 102(2)*

Extended provision is made for the use of faxes or other technical means of communication for the purposes of correspondence between the Court Registry and the parties' lawyers and agents. The ability to transmit documents instantaneously no longer warrants the existence of differentiated time-limits on account of distance which vary according to the physical location of the parties.

— The lodging of procedural documents in such a way as to comply with time-limits, in the form of a copy of the signed original sent by way of fax or attachment (scanned copy) of an e-mail (address: *cfi.registry@curia.eu.int*) is permitted on condition that the signed original is received at the Registry no later than ten days thereafter.

— The Registry may serve documents by fax or e-mail, provided that the lawyer or agent concerned has agreed to service being effected in that way.

— Where the lawyer or agent has agreed to service being effected in that way, the statement of an address for service in Luxembonrg is optional.

— There is to be a single, uniform ten-day extension of the time-limit on account of distance, regardless of the location of the party concerned.

Practice directions concerning the detailed implementation of these amendments will be issued and promulgated in due course.

Action brought on 20 November 2000 by Hubert Huygens against Commission of the European Communities

(Case T-351/00)

(2001/C 28/49)

(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 20 November 2000 by Hubert Huygens, residing in Olm (Luxembourg), represented by Sylvie Nyssens, of the Brussels Bar.

The applicant claims that the Court should:

— annul the decision of the Commission of the European Communities not to promote the applicant to Grade B 1 in the 2000 promotions procedure;

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

Pleas in law and main arguments

— Infringement of Article 25 of the Staff Regulations and breach of the rights of the defence inasmuch as no reasons have been provided for the contested decision.

— Infringement of Articles 26, 43 and 45 of the Staff Regulations and breach of the principles of equal treatment and sound administration, inasmuch as:

— the promotions were decided upon in the absence of any staff report on the applicant or of any other document to palliate its absence;

— the applicant's merits were erroneously assessed; and

— the promotions procedure is vitiated by the fact that it was based on reports drawn up on the basis of a system of awarding points which disregards the 'Guide de la notation'.

Action brought on 21 November 2000 by Jean-Marie Le Pen against European Parliament

(Case T-353/00)

(2001/C 28/50)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 21 November 2000 by Jean-Marie Le Pen, residing in St Cloud (France), represented by François Wagner, of the Nice Bar.

The applicant claims that the Court should:

— declare the contested measure null and void;

— award the applicant FRF 50 000 in non-returnable damages;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

The applicant, a Member of the European Parliament (MEP), contests the decision taken by the President of the European Parliament on 23 October 2000 taking note, in accordance with Article 12(2) of the Act of 20 September 1976 concerning the election of representatives to the European Parliament by direct universal suffrage, of the notification from the French Government of the termination of the term of office of Jean-Marie Le Pen as MEP. That decision was taken after he was found guilty of a criminal offence by a French criminal court.

In support of his application the applicant alleges that:

— there is nothing in the Act of 20 September 1976 or in the Rules of Procedure of the European Parliament permitting the Member States to terminate, for national reasons, the term of office of an MEP, other than in cases of incompatibilities arising during the term of office, which is not the case here;

— such a measure is all the more contrary to the principles of Community law inasmuch as it is the result of an entirely national decision, which cannot by itself be the basis for a Community decision;

— there is a general legal principle based on the generally applicable rules of law of the Member States which means that termination must be decided by the parliamentary assembly concerned itself;

— the substantive procedural rules have been disregarded in the present case inasmuch as the Legal Affairs Committee was not convened and the applicant was not given a hearing by that committee;

— in the contested measure, the President of the European Parliament purportedly spoke on behalf of the Parliament when she did not have the authority to do so.

Finally, the applicant alleges breach of the principles of parliamentary immunity and legal certainty.

Action brought on 24 November 2000 by Daimler Chrysler AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-355/00)

(2001/C 28/51)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 24 November 2000 by Daimler Chrysler AG, Stuttgart, Germany, represented by Stefan Völker of Gleiss Lutz Hootz Hirsch, Stuttgart, Germany.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 September 2000 in Case R 142/2000-3,

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Mark:	Word mark 'TELE AID' — Application No 469 957
Goods or services:	Goods and services in Classes 12, 9, 37, 38, 39 and 42 (including motor vehicles, motor vehicle repair, equipment for the transmission of speech and data, emergency call systems for motor vehicles, breakdown assistance, rescue services)
Decision contested beforethe Board of Appeal:	Refusal by the examiner to register
Pleas in law:	— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 — Infringement of Article 7(1)(c) of Regulation (EC) No 40/94

Action brought on 24 November 2000 by Daimler Chrysler AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-356/00)

(2001/C 28/52)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 24 November 2000 by Daimler Chrysler AG, of Stuttgart (Germany), represented by Stefan Völker, Rechtsanwalt, of Messrs Gleiss Lutz Hootz Hirsch, Rechtsanwälte, Stuttgart, Germany.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 September 2000 in appeal No R 477/1999-3;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

The trade mark concerned:	Verbal mark 'CARCARD' — application No 115 014
Goods or services concerned:	Goods and services in Classes 9, 36, 37, 38, 39, 42 (including data media for vehicles, leasing of motor vehicles and accounting in that regard, arranging the provision of services in the field of traffic and transport logistics, emergency assistance, repairs and towing-away services)
Decision contested before the Board of Appeal:	Refusal of registration by the examiner
Grounds of claim:	— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 — Infringement of Article 7(1)(c) of Regulation (EC) No 40/94

Action brought on 24 November 2000 by Daimler Chrysler AG against the Office for Harmonisation in the Internal Market (Trademarks and Designs)

(Case T-358/00)

(2001/C 28/53)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trademarks and Designs) was brought before the Court of First Instance of the European Communities on 24 November 2000 by Daimler Chrysler AG, Stuttgart (Germany), represented by Stefan Völker, Rechtsanwalt, of Gleiss Lutz Hootz Hirsch, Stuttgart, Germany.

The applicant claims that the Court should:

— Set aside the decision of 12 September 2000 by the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trademarks and Designs) in Case R 569/1999-3;

— Order the Office for Harmonisation in the Internal Market (Trademarks and Designs) to pay the costs of the present proceedings.

Pleas in law and main arguments

Trade mark concerned:	Verbal trade mark 'TRUCKCARD', Application No 113 274
Goods or service:	Goods and services in Classes 9, 36, 37, 38, 39, 42 (*inter alia*, data carrier for vehicle data, leasing of motor vehicles and calculation thereof, provision of services in the areas of traffic and transport logistics, emergency, repair and vehicle-removal services)
Decision challenged before the Board of Appeal:	Refusal of registration by the examiner
Pleas in law:	— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 — Infringement of Article 7(1)(c) of Regulation (EC) No 40/94

Action brought on 29 November 2000 by Alsace International Car Service (A.I.C.S.) against European Parliament

(Case T-365/00)

(2001/C 28/54)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 29 November 2000 by Alsace International Car Service (A.I.C.S.), whose registered office is at Strasbourg (France), represented by Jean Claude Fourgoux, of the Paris Bar.

The applicant claims that the Court should:

— annul the decision of the European Parliament of 4 October 2000 refusing to terminate TAXI 13's contract;

— subject to the appeal against the Case T-139/99, order the Parliament to pay, pursuant to Article 288 of the EC Treaty, compensation at a monthly rate of EUR 10 000 from 4 October 2000 until TAXI 13's contract is terminated;

— order the Parliament to pay the costs.

Pleas in law and main arguments

The problem raised by the present case is related to that in Case T-139/99 [1] Alsace International Car Service v Commission. The pleas in law and main arguments are substantially the same as those put forward in that case.

The applicant submits in particular that:

— French law prohibits taxi firms from carrying on a business which is incompatible with the specific rules which enable them to benefit from the advantages under the memorandum and articles of association, according to a final judgment of the Strasbourg Criminal Court delivered on 7 April 2000.

— the European Parliament was aware that awarding the contract in question to TAXI 13 was illegal.

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[1] Not yet published.