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(Information)

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 23 November 2000

in Case C-441/97 P: Wirtschaftsvereinigung Stahl and Others v Commission of the European Communities and Others [1]

(Appeal — ECSC — Commission Decision No 3855/91/ECSC (Fifth Aid Code) — State aid for steel undertakings in the Italian public sector — Misuse of powers — Principle of non-discrimination — Principle of necessity)

(2001/C 79/01)

(Language of the case: German)

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

In Case C-441/98 P: Wirtschaftsvereinigung Stahl, established in Düsseldorf (Germany), Thyssen Stahl AG, established in Duisburg (Germany), Preussag Stahl AG, established in Salzgitter (Germany), and Hoogovens Staal BV, formerly Hoogovens Groep BV, established in IJmuiden (Netherlands), represented by J. Sedemund, Rechtsanwalt, Berlin, and, in the case of Hoogovens Staal BV, by E.H. Pijnacker Hordijk, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. May, of the Luxembourg Bar, 398 Route d'Esch — appeal against the judgment of the Court of First Instance of 24 October 1997 in Case T-244/94 Wirtschaftsvereinigung Stahl and Others v Commission [1997] ECR II-1963, in which the Court of First Instance dismissed their action for the annulment of Commission Decision 94/259/ECSC of 12 April 1994 concerning aid to be granted by Italy to the public steel sector (Ilva group) (OJ 1994 L 112, p. 64), the other parties to the proceedings being: Commission of the European Communities (Agent: P.F. Nemitz) Italian Republic (Agent: Professor U. Leanza, assisted by P.G. Ferri), Council of the European Union, (Agents: S. Marquardt and A.P. Feeney) and Ilva Laminati Piani SpA, established in Rome, Italy, — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet (Rapporteur), and F. Macken, Judges; N. Fennelly, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 23 November 2000, in which it:

1. *Dismisses the appeal;*

2. *Orders Wirtschaftsvereinigung Stahl, Thyssen Stahl AG, Preussag Stahl AG and Hoogovens Staal BV to pay the costs;*

3. *Orders the Italian Republic and the Council of the European Union to bear their own costs.*

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[1] OJ C 94 of 28.3.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 23 November 2000

in Case C-1/98 P: British Steel plc v Commission of the European Communities and Others [1]

(Appeal — ECSC — Commission Decision No 3855/91/ECSC (Fifth Aid Code) — Individual Commission decisions authorising State aid for steel undertakings — Competence of the Commission — Legitimate expectations)

(2001/C 79/02)

(Language of the case: English)

In Case CA/98 P: British Steel plc (now Corus UK Ltd), established in London, United Kingdom, represented by R. Plender QC, instructed by W. Sibree, Solicitor, with an

address for service in Luxembourg at the Chambers of Elvinger, Hoss et Prussen, 15 Côte d'Eich — appeal against the judgment of the Court of First Instance of the European Communities (First Chamber, Extended Composition) of 24 October 1997 in Case T-243/94 British Steel v Commission [1997] ECR II-1887, seeking to have that judgment set aside in so far as it dismissed its application against Commission Decision 94/258/ECSC of 12 April 1994 concerning aid to be granted by Spain to the public integrated steel company Corporación de la Siderurgia Integral (CSI) and Commission Decision 94/259/ECSC of 12 April 1994 concerning aid to be granted by Italy to the public steel sector (Ilva group) (OJ 1994 L 112, pp. 58 and 64 respectively), the other parties to the proceedings being: Commission of the European Communities (Agents: N. Khan and P.F. Nemitz), Det Danske Stålvalseværk A/S, established in Frederiksværk, Denmark, represented by J.A. Lawrence and A. Renshaw, Solicitors, with an address for service in Luxembourg at the Chambers of E. Arendt, 8-10 Rue Mathias Hardt, Italian Republic (Agents: Professor U. Leanza, assisted by P.G. Ferriv), Kingdom of Spain (Agent: N. Díaz Abad), Council of the European Union (Agents: J. Carbery and A.P. Feeney), Svenskt Stål AB (SSAB), established in Stockholm, Sweden, and Ilva Laminati Piani SpA, established in Rome, Italy — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet (Rapporteur), and M. Macken, Judges; N. Fennelly, Advocate General; R. Grass, the Registrar, has given a judgment on 23 November 2000, in which it:

1. *Dismisses the appeal;*
2. *Orders British Steel plc, now Corus UK Ltd, to pay the costs;*
3. *Orders the Italian Republic, the Kingdom of Spain, the Council of the European Union and Det Danske Stålvalseværk A/S to bear their own costs.*

([1]) OJ C 72 of 7.3.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 23 November 2000

in Case C-135/99 (reference for a preliminary ruling from the Bundessozialgericht): Ursula Elsen v Bundesversicherungsanstalt für Angestellte ([1])

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Articles 3 and 10 and Annex VI, Section C, point 19 — Old-age insurance — Validation of periods of child-rearing completed in another Member State)

(2001/C 79/03)

(Language of the case: German)

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

In Case C-135/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundessozialgericht (Germany), for a preliminary ruling in the proceedings pending before that court between Ursula Elsen and Bundesversicherungsanstalt für Angestellte — on the interpretation of Article 51 of the EC Treaty (now, after amendment, Article 42 EC) and Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), as amended at the material time, in particular by Council Regulation (EEC) No 2195/91 of 25 June 1991 (OJ 1991 L 206, p. 2) — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur) and D.A.O. Edward, Judges; A. Saggio, Advocate General; R. Grass, Registrar, has given a judgment on 23 November 2000, in which it has ruled:

Articles 8a, 48 and 51 of the EC Treaty (now, after amendment, Articles 18 EC, 39 EC and 42 EC) require that, for the purpose of the grant of an old-age pension, the competent institution of a Member State take into account, as though they had been completed in national territory, periods devoted to child-rearing completed in another Member State by a person who, at the time when the child was born, was a frontier worker employed in the territory of the first Member State and residing in the territory of the second Member State.

([1]) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Third Chamber)

of 23 November 2000

in Case C-319/99: Commission of the European Communities v French Republic ([1])

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 95/47/EC)

(2001/C 79/04)

(Language of the case: French)

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

In Case C-319/99: Commission of the European Communities (Agent: M. Nolin) v French Republic (Agents: K. Rispal-Bellanger and A. Maitrepierre) — application for a declaration that, by not communicating within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards

for the transmission of television signals (OJ 1995 L 281, p. 51) or by not taking the measures necessary to comply therewith, the French Republic has failed to fulfil its obligations under that directive — 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 23 November 2000, in which it:

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals, the French Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Third Chamber)

of 23 November 2000

in Case C-320/99: Commission of the European Communities v French Republic ([1])

(Failure by a Member State to fulfil its obligations — Directive 97/68/EC — Non-road mobile machinery — Emission of gaseous and particulate pollutants)

(2001/C 79/05)

(Language of the case: French)

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

In Case C-320/99: Commission of the European Communities (Agent: M. Nolin) v French Republic (Agents: K. Rispal-Bellanger and G. Taillandier) — application for a declaration that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (OJ 1998 L 59, p. 1) or, in any event, by not communicating those provisions to the Commission, the French Republic has failed to fulfil its obligations under that directive — 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 23 November 2000, in which it:

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, the French Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 30 November 2000

in Case C-436/98 (reference for a preliminary ruling from the Supreme Court): HMIL Ltd v Minister for Agriculture, Food and Forestry ([1])

(Agriculture — Common organisation of the markets — Special export refunds and private storage aid for certain pieces of beef)

(2001/C 79/06)

(Language of the case: English)

In Case C-436/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Supreme Court (Ireland), for a preliminary ruling in the proceedings pending before that court between HMIL Ltd and Minister for Agriculture, Food and Forestry — on the interpretation of Commission Regulation (EEC) No 1964/82 of 20 July 1982 laying down the conditions for granting special export refunds on certain cuts of boned meat of bovine animals (OJ 1982 L 212, p. 48, and the corrigendum at OJ 1982 L 273, p. 43), as amended by Commission Regulation (EEC) No 3169/87 of 23 October 1987 amending Regulations (EEC) No 32/82, (EEC) No 1964/82 and (EEC) No 74/84 in the matter of customs export formalities for certain beef on which special refunds are granted (OJ 1987 L 301, p. 21), and of Commission Regulation (EEC) No 2675/88 of 29 August 1988 providing

for the grant of private storage aid fixed at a standard rate in advance in respect of carcases, half-carcases, hindquarters and forequarters from adult male bovine animals (OJ 1988 L 239, p. 20), as amended by Commission Regulation (EEC) No 3258/88 of 21 October 1988 (OJ 1988 L 289, p. 52) — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, D.A.O. Edward and L. Sevón (Rapporteur), Judges; G. Cosmas, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 30 November 2000, in which it has ruled:

1. *On a proper construction of Article 1 of Commission Regulation (EEC) No 1964/82 of 20 July 1982 laying down the conditions for granting special export refunds on certain cuts of boned meat of bovine animals, as amended by Commission Regulation (EEC) No 3169/87 of 23 October 1987 amending Regulations (EEC) No 32/82, (EEC) No 1964/82 and (EEC) No 74/84 in the matter of customs export formalities for certain beef on which special refunds are granted, every piece of meat had to be individually wrapped, whatever its size, weight and nature, and without distinguishing, in particular, between scraps and trimmings.*

2. *On a proper construction of Articles 7 and 8 of the same regulation, the Member States had the right to exclude from entitlement to special export refunds trimmings whose weight was below a certain limit, such as a limit of 100 grams.*

3. *On a proper construction of Article 4(4) of Commission Regulation (EEC) No 2675/88 of 29 August 1988 providing for the grant of private storage aid fixed at a standard rate in advance in respect of carcases, half-carcases, hindquarters and forequarters from adult male bovine animals, as amended by Commission Regulation (EEC) No 3258/88 of 21 October 1988, trimmings left over from cutting or boning, whatever their weight, did not qualify for private storage aid under contracts entered into pursuant to that regulation.*

4. *On a proper construction of Regulation No 1964/82, of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products, as amended by Council Regulation (EEC) No 2026/83 of 18 July 1983, and of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EEC) No 3494/88 of 9 November 1988 and Commission Regulation (EEC) No 3993/88 of 21 December 1988, where the competent authority establishes that a carton of meat subject to the scheme covered by Regulation No 1964/82 contains items prohibited by the legislation, whether trimmings rolled up within other pieces of meat, separate pieces of fat rolled up within pieces of meat, or non-individually wrapped pieces of meat, those regulations permit it to hold that the entire contents of the carton do not qualify for special export refunds and to forfeit the security given for the advance payment made in respect of that carton plus 20 %.*

5. *On a proper construction of Regulation No 2675/88, of Commission Regulation (EEC) No 1091/80 of 2 May 1980 laying down detailed rules for granting private storage aid for beef and veal and of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products, as amended by Commission Regulation (EEC) No 1181/87 of 29 April 1987, where the competent authority establishes that a carton of meat subject to the scheme covered by Regulation No 2675/88 contains items prohibited by Article 4(4) thereof, such as trimmings or separate pieces of fat rolled up within pieces of meat, those regulations permit it to hold that the entire contents of the carton do not qualify for private storage aid and to forfeit the security given for the advance payment made in respect of that carton plus 20 %.*

6. *On a proper construction of the Community regulations, where checks relating to cartons of meat reveal evidence in particular production plants of a deliberate and persistent policy of infringement of Regulations No 1964/82 and No 2675/88, the competent authority may extrapolate the results of those checks across the production of the production plants in question.*

7. *Where the sampling checks have revealed evidence of a deliberate and persistent policy of storing material which does not qualify for the private storage aid scheme by virtue of Article 4(4) of Regulation No 2675/88, the competent authority is permitted to refuse to grant private storage aid and to forfeit the security in its entirety, pursuant to Article 5(2)(c) of Regulation No 1091/80, in respect of the whole of the material to which it has extrapolated the results of the check.*

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(1) OJ C 48 of 20.2.1999.

JUDGMENT OF THE COURT

(Third Chamber)

of 30 November 2000

in Case C-422/99: Commission of the European Communities v Italian Republic (1)

(Failure of a Member State to fulfil its obligations — Failure to implement Directive 97/51/EC)

(2001/C 79/07)

(Language of the case: Italian)

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

In Case C-422/99: Commission of the European Communities (Agents: C. Schmidt and G. Bisogni) v Italian Republic (Agent: Professor U. Leanza, assisted by I.M. Braguglia) — application for a declaration that, by failing to adopt or, in any event, by

failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJ 1997 L 295, p. 23), the Italian Republic has failed to fulfil its obligations under that directive — the Court (Third Chamber), composed of: C. Gulmann (Rapporteur), President of the Chamber, J.-P. Puissochet and F. Macken, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 30 November 2000, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications, the Italian Republic has failed to fulfil its obligations under that directive;*

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

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(1) OJ C 20 of 22.1.2000.

JUDGMENT OF THE COURT

of 5 December 2000

in Case C-448/98 (reference for a preliminary ruling from the Tribunal de Police, Belley, France): criminal proceedings against Jean-Pierre Guimont (1)

(Measures having equivalent effect to a quantitative restriction — Purely internal situation — Manufacture and marketing of Emmenthal cheese without rind)

(2001/C 79/08)

(Language of the case: French)

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

In Case C-448/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Tribunal de Police (Local Criminal Court), Belley, (France) for a preliminary ruling in the criminal proceedings before that court against Jean-Pierre Guimont — on the interpretation of Articles 3(a) and 30 et seq. of the EC Treaty (now, after amendment, Articles 3(1)(a) EC and 28 EC et seq.) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann (Rapporteur), M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón and R. Schintgen, Judges; A. Saggio, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 5 December 2000, in which it has ruled:

Article 30 of the EC Treaty (now, after amendment, Article 28 EC) precludes a Member State from applying to products imported from another Member State, where they are lawfully produced and marketed, a national rule prohibiting the marketing of a cheese without rind under the designation 'Emmenthal' in that Member State.

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(1) OJ C 33 of 6.2.1999.

JUDGMENT OF THE COURT

of 5 December 2000

in Case C-477/98 (reference for a preliminary ruling from the Court of Appeal in Northern Ireland): Eurostock Meat Marketing Ltd v Department of Agriculture for Northern Ireland (1)

(Agriculture — Animal health — National emergency measures against bovine spongiform encephalopathy — Specified risk material)

(2001/C 79/09)

(Language of the case: English)

In Case C-477/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Court of Appeal in Northern Ireland (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Eurostock Meat Marketing Ltd and Department of Agriculture for Northern Ireland — on the interpretation of Article 9 of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13), Commission Decision 97/534/EC of 30 July 1997 on the prohibition of the use of material presenting risks as regards transmissible spongiform encephalopathies (OJ 1997 L 216, p. 95) and Article 36 of the EC Treaty (now, after amendment, Article 30 EC) — 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.-P. Puissochet, P. Jann, L. Sevón (Rapporteur), R. Schintgen and F. Macken, Judges; S. Alber, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 5 December 2000, in which it has ruled:

A Member State may prohibit imports of bovine heads containing material presenting risks as regards bovine spongiform encephalopathy, by way of an interim protective measure within the meaning of the fourth subparagraph of Article 9(1) of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market, where the Commission has adopted, pursuant to Article 9(4) of that directive, a decision such as Commission Decision 97/534/EC of 30 July 1997 on the prohibition of the use of material presenting risks as regards transmissible spongiform encephalopathies, requiring the removal of, and prohibiting the use of, such material but where the date on which the measures laid down by that decision are to become applicable has been postponed.

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(1) OJ C 71 of 13.3.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 7 December 2000

in Case C-374/98: Commission of the European Communities v French Republic (1)

(Failure of Member State to fulfil its obligations — Directives 79/409/EEC and 92/43/EEC — Conservation of wild birds — Special protection areas)

(2001/C 79/10)

(Language of the case: French)

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

In Case C-374/98: Commission of the European Communities (Agents: P. Stancanelli and O. Couvert-Castéra) v French Republic (Agents: K. Rispal-Bellanger and R. Nadal) — application for a declaration, first, that, by failing to classify the Basses Corbières site, France, as a special protection area for the conservation of certain species of birds listed in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and of certain migratory species not listed in that Annex, and by also failing to adopt special conservation measures concerning their habitat, contrary to Article 4(1) and (2) of that directive, and, second, that, by failing to take appropriate steps in relation to the Basses Corbières to avoid disturbance of the species protected on that site and deterioration of their habitat likely to have a significant effect, as a result of the opening and working of limestone quarries in the municipalities of Tautavel and Vingrau, France, contrary to Article 6(2) to (4) 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 French Republic has failed to fulfil its obligations under the EC Treaty — the Court (Sixth Chamber), composed of: C. Gulmann (Rapporteur), President of the Sixth Chamber, V. Skouris and R. Schintgen, Judges; S. Alber, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 7 December 2000, in which it:

1. *Declares that, by not classifying any part of the Basses Corbières site as a special protection area and by not adopting special conservation measures for that site sufficient in their geographical extent, the French Republic has failed to fulfil its obligations under Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;*

2. *Dismisses the remainder of the application;*

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

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(1) OJ C 378 of 5.12.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 7 December 2000

in Case C-482/98: Italian Republic v Commission of the European Communities (1)

(Action for annulment — Council Directive 92/83/EEC — Harmonisation of the structures of excise duties on alcohol and alcoholic beverages — Commission Decision 98/617/EC of 21 October 1998 denying authority to Italy to refuse the grant of exemption to certain products exempt from excise duty under Council Directive 92/83 — Cosmetic products)

(2001/C 79/11)

(Language of the case: Italian)

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

In Case C-482/98: Italian Republic (Agents: Professor U. Leanza, assisted by O. Fiumara) v Commission of the European Communities (Agent: E. Traversa) — application for annulment of Commission Decision 98/617/EC of 21 October 1998 denying authority to Italy to refuse the grant of exemption to certain products exempt from excise duty under Council

Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1998 L 295, p. 43) — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur) and D.A.O. Edward, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 7 December 2000, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 71 of 13.3.1999.

JUDGMENT OF THE COURT

(First Chamber)

of 7 December 2000

in Case C-2/99 (reference for a preliminary ruling from the Hessisches Finanzgericht, Kassel): Döhler GmbH v Hauptzollamt Darmstadt ([1])

(Agriculture — Common organisation of the markets — Production refunds — Article 7 of Regulation (EEC) No 2169/86, as amended by Regulation (EEC) No 165/89 — Esterified or etherified starch — Proper use — Penalties — Meaning of 'party concerned')

(2001/C 79/12)

(Language of the case: German)

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

In Case C-2/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Hessisches Finanzgericht (Finance Court, Hessen), Kassel, Germany, for a preliminary ruling in the proceedings pending before that court between Döhler GmbH and Hauptzollamt Darmstadt — on the interpretation of Article 7(5) of Commission Regulation (EEC) No 2169/86 of 10 July 1986 laying down detailed rules for the control and payment of the production refunds in the cereals and rice sectors (OJ 1986 L 189, p. 12), as amended by Commission Regulation (EEC) No 165/89 of 24 January 1989 (OJ 1989 L 20, p. 14) — the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, Judges; G. Cosmas, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 7 December 2000, in which it has ruled:

The term 'party concerned' used in Article 7(5) of Commission Regulation (EEC) No 2169/86 of 10 July 1986 laying down detailed rules for the control and payment of the production refunds in the cereals and rice sectors, as amended by Commission Regulation (EEC) No 165/89 of 24 January 1989, is to be construed as meaning that it does not refer to a purchaser of esterified or etherified starch who has undertaken to his supplier to use that product exclusively for the manufacture of products other than those listed in Annex I to that regulation. Such a purchaser cannot therefore have imposed on him the penalty provided for in Article 7(5) of that regulation, namely, payment of an amount equal to 105 % of the highest production refund applicable to the product in question during the previous 12-month period.

([1]) OJ C 71 of 13.3.1999.

ORDER OF THE COURT

(Fifth Chamber)

of 27 September 2000

in Case C-456/99 P: J v Commission of the European Communities ([1])

(Officials — Place of recruitment — Habitual residence at the time of recruitment — Legal characterisation of the facts found — Manifestly inadmissible appeal)

(2001/C 79/13)

(Language of the case: French)

In Case C-456/99 P: J, an official of the Commission of the European Communities, residing in Brussels, represented by G. Vandersanden and L. Levi, of the Brussels Bar, with an address for service in Luxembourg at the offices of Société de Gestion Fiduciaire, 2-4 Rue Beck — appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 28 September 1999 in Case T-28/98 J v Commission (not yet published in the European Court Reports), seeking to have that judgment set aside and to obtain relief in the form of order sought by the appellant in the proceedings at first instance, the other party to the proceedings being the Commission of the European Communities (Agent: J. Currall, assisted by D. Waelbroeck) — the Court (Fifth Chamber), composed of: D.A.O. Edward, President of the Chamber, L. Sevón, A. La Pergola, P. Jann and M. Wathelet, Judges; G. Cosmas, Advocate General; R. Grass, Registrar, has made an order on 27 September 2000, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *J is to pay the costs.*

(1) OJ C 47 of 19.2.2000.

ORDER OF THE COURT

(Third Chamber)

of 5 October 2000

in Case C-363/96 (reference for a preliminary ruling by the Tribunale di Catania): ISFA SpA v Ministero delle Finanze (1)

(Article 104(3) of the Rules of Procedure — Manifestly identical question)

(2001/C 79/14)

(Language of the case: Italian)

In Case C-363/96: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunale di Catania (District Court, Catania) (Italy) for a preliminary ruling in the proceedings pending before that court between ISFA SpA and Ministero delle Finanze — on the interpretation of Community law concerning the recovery of sums paid but not due — the Court (Third Chamber), composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann and J.-P. Puissochet (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 5 October 2000, the operative part of which is as follows:

In circumstances such as those of the main proceedings, Community law does not prevent a Member State from resisting actions for repayment of charges levied in breach of a directive by relying on a time-limit under national law which is reckoned from the date of payment of the charges in question, even if, at that date, the directive concerned had not yet been properly transposed into national law.

(1) OJ C 9 of 11.1.1997.

ORDER OF THE COURT

(Third Chamber)

of 5 October 2000

in Case C-182/97 (reference for a preliminary ruling from the Tribunale di Brescia): Palazzo Piacentini Srl v Amministrazione Finanzaria dello Stato (1)

(Article 104(3) of the Rules of Procedure — Manifestly identical question)

(2001/C 79/15)

(Language of the case: Italian)

In Case C-182/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Tribunale di Brescia (Italy) for a preliminary ruling in the proceedings pending before that court between Palazzo Piacentini Srl and Amministrazione Finanzaria dello Stato on the interpretation of Community law concerning the recovery of sums paid but not due — the Court, composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann and J.-P. Puissochet (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 5 October 2000, the operative part of which is as follows:

1. *Community law does not prevent a Member State from resisting actions for repayment of charges levied in breach of Community law by relying on a three-year time-limit under national law which derogates from the ordinary rules governing actions for the recovery of sums paid but not due between private individuals, the latter actions being subject to a more favourable time-limit, provided that the time-limit in question applies in the same way to actions for recovery of such charges which are based on Community law as to actions based on domestic law.*

2. *In circumstances such as those of the main proceedings, Community law does not prevent a Member State from resisting actions for repayment of charges levied in breach of a directive by relying on a time-limit under national law which is reckoned from the date of payment of the charges in question, even if, at that date, the directive concerned had not yet been properly transposed into national law.*

(1) OJ C 212 of 12.7.1997.

ORDER OF THE COURT

(Third Chamber)

of 5 October 2000

in Case C-3/98 (reference for a preliminary ruling from the Hof van Beroep te Gent): criminal proceedings against Dany Schacht and Others [1]

(Article 104(3) of the Rules of Procedure — Question identical to one on which the Court has already ruled)

(2001/C 79/16)

(Language of the case: Dutch)

In Case C-3/98: reference to the Court under Article 234 EC (formerly Article 177 of the EC Treaty) from the Hof van Beroep te Gent (Belgium) for a preliminary ruling in the criminal proceedings pending before that court against Dany Schacht and Others on the interpretation of Article 1(a)(i) and Article 14a(1)(a) 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, in the version thereof amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6) and subsequently by Council Regulation (EEC) No 3811/86 of 11 December 1986 (OJ 1986 L 355, p. 5) — the Court (Third Chamber), composed of: J.C. Moitinho de Almeida (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges; S. Alber, Advocate General; R. Grass, Registrar, has made an order on 5 October 2000, the operative part of which is as follows:

1. *The term 'work' appearing in Article 14a(1) (a) 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, in the version thereof amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 and subsequently by Council Regulation (EEC) No 3811/86 of 11 December 1986, means any work performed on an employed or self-employed basis.*

2. *As long as it is not withdrawn or declared invalid, an E 101 certificate issued pursuant to Article 11a of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71, in the version thereof amended and updated by Regulation No 2001/83 and subsequently by Regulation No 3811/86, is binding on the competent institution of the Member State to which a self-employed worker goes in order to perform work and on the person who avails himself of the services of that worker.*

(1) OJ C 72 of 7.3.1998.

ORDER OF THE COURT

(Fourth Chamber)

of 6 October 2000

in Case C-49/99 P: Associazione Nazionale Bieticoltori (ANB) and Others v Council of the European Union [1]

(Appeal — Aid to sugar-beet producers — Abolition — 2001/2002 marketing year — Appeal clearly inadmissible and unfounded)

(2001/C 79/17)

(Language of the case: Italian)

In Case C-49/99 P: Associazione Nazionale Bieticoltori (ANB), established in Rome (Italy), Francesco Coccia, residing in Manfredonia (Italy), and Vincenzo Di Giovine, residing in Lucera (Italy), represented by L.F. Paolucci and G.P. Galletti, of the Bologna Bar, with an address for service in Luxembourg at the Chambers of A. Kronshagen, 22 Rue Marie-Adélaïde — appeal against the order of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 8 December 1998 in Case T-38/98 ANB and Others v Council [1998] ECR II-4191, seeking to have that order set aside, the other party to the proceedings being the Council of the European Union (Agents: J. Carbery and I. Díez Parra) — the Court (Fourth Chamber), composed of: D.A.O. Edward, President of the Chamber, P.J.G. Kapteyn (Rapporteur) and A. La Pergola, Judges; G. Cosmas, Advocate General; R. Grass, Registrar, has made an order on 6 October 2000, the operative part of which is as follows:

1. *The appeal is dismissed;*

2. *The Associazione Nazionale Bieticoltori, Mr Coccia and Mr Di Giovine are ordered to pay the costs.*

(1) OJ C 100 of 10.4.1999.

ORDER OF THE COURT

of 12 October 2000

in Case C-278/00 R: Hellenic Republic v Commission of the European Communities [1]

(Interim measures — Suspension of operation — State aid)

(2001/C 79/18)

(Language of the case: Greek)

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

In Case C-278/00 R: Hellenic Republic (Agents: I. Chalkias and C. Tsiavou) v Commission of the European Communities (Agents: J. Flett and D. Triantafyllou) — application for suspension of operation, primarily, of Commission Decision E(2000) 686 final of 1 March 2000 relating to the aid schemes implemented by Greece in order to regulate debts of agricultural cooperatives in the years 1992 and 1994 including aid for the reorganisation of the dairy cooperative AGNO, alternatively of Article 2 of that decision — the President of the Court has made an order on 12 October 2000, the operative part of which is as follows:

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

2. *The costs are reserved.*

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[1] OJ C 259 of 9.9.2000.

Reference for a preliminary ruling from the Landessozialgericht Nordrhein-Westfalen by order of that court of 28 September 2000 in the case of Merz + Co. GmbH & Co. v (1) AOK Bundesverband (2) Bundesverband der Betriebskrankenkassen (3) IKK-Bundesverband (4) Bundesverband der landwirtschaftlichen Krankenkassen (5)Verband der Angestellten-Krankenkassen e.V. (6) AEV — Arbeiter-Ersatzkassen-Verband e.V. (7) Seekrankenkasse and (8) Bundesknappschaft, joined parties: (1) Federal Republic of Germany, and (2) Bundesausschuss der Ärzte und Krankenkassen

(Case C-428/00)

(2001/C 79/19)

Reference has been made to the Court of Justice of the European Communities by order of the Landessozialgericht Nordrhein-Westfalen (Higer Social Court of North Rhine-Westphalia) of 28 September 2000, which was received at the Court Registry on 20 November 2000, for a preliminary ruling in the case of (1) AOK Bundesverband (2) Bundesverband der Betriebskrankenkassen (3) IKK-Bundesverband (4) Bundesverband der landwirtschaftlichen Krankenkassen (5) Verband der Angestellten-Krankenkassen e.V. (6) AEV — Arbeiter-Ersatzkassen-Verband e.V. (7) Seekrankenkasse and (8) Bundesknappschaft, joined parties: (1) Federal Republic of Germany, and (2) Bundesausschuss der Ärzte und Krankenkassen on the following questions:

1. Must statutory sickness funds and the associations thereof which are subject to State supervision be regarded as undertakings or associations of undertakings within the meaning of Article 81 et seq. EC for the purpose of the joint determination of the level of uniform fixed amounts for medicinal products to which the funds' liability is limited in relation to the insured persons?

2. If the answer to the first question is in the affirmative, does determination of a fixed amount as referred to in the first question constitute an agreement which restricts competition within the meaning of Article 81(1) EC?

3. Do Articles 81 and 86 EC preclude legislation giving social security funds and associations thereof the power to determine fixed amounts of the kind referred to in the first question for medicinal products?

Action brought on 13 December 2000 by the Commission of the European Communities against the Italian Republic

(Case C-455/00)

(2001/C 79/20)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 13 December 2000 by the Commission of the European Communities, represented by Antonio Aresu, 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 the Italian Republic has failed to fulfil its obligations under Article 9(1) to (3) of Council Directive 90/270/EEC [1] of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [2], inasmuch as it:

  (a) does not ensure regular eye and eyesight tests for all workers who use display screen equipment within the meaning of Article 2(c) of the abovementioned directive;

(b) does not ensure that an additional ophthalmological test is carried out whenever necessary as a result of the regular eye and eyesight tests;

(c) does not define the conditions for providing the workers concerned with corrective appliances appropriate for the work concerned.

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission finds that the Italian Republic has failed to fulfil its obligations under Article 9(1) to (3) insofar as:

— Italian legislation is to be regarded as incompatible with Directive 90/270/EEC as regards regular eye and eyesight tests for workers who have commenced work with display screen equipment. Article 9(1) of the abovementioned directive provides that all workers working on display screen equipment are entitled to regular eye and eyesight tests after commencing display screen work in order to prevent visual difficulties which may be due to display screen work, as well as other possible illness, connected with overexposure to radiation emitted by display equipment. The workers concerned, therefore, are to be regarded as workers at risk for the purposes of Directive 89/391. However, according to the wording of Article 55(2) of Decree Law No 626/94, regular tests to take place at least every two years, are made available only to two specific classes of worker: those who were initially classified as fit, with corrective lenses, for work on display equipment and those over 45 years of age. Workers under 45 years of age who were initially passed fit to work on video equipment without corrective lenses are thus wholly excluded from the protection afforded by Article 9(1) of the directive.

— However, the Commission would draw attention to the fact that workers excluded by virtue of the Italian legislation from the regular eye and eyesight tests provided for by Article 9(1) of Directive 90/270/EEC are in practice excluded also from the ophthalmological examination provided for by Article 9(2), since usually it is the former test which shows signs of eyesight problems. In any event, even if Article 55(4) of Decree-Law 626/94 mentions the possibility of such an examination, the legislation does not offer any assurance that it will be carried out in every case where the normal regular eye and eyesight test shows that further analysis is necessary, thus significantly reducing the level of protection provided for by the directive itself.

— According to Article 9(3) of Directive 90/270/EEC, workers are entitled to receive 'special corrective appliances appropriate for the work concerned', where this proves necessary following testing and the wearing of normal corrective appliances is not possible. Such a provision is the logical and necessary corollary to rules requiring the carrying out of eye and eyesight tests, and examination by an oculist where necessary, with a view to offering complete protection of the health and safety of workers at risk.

— However, in Article 55 of Decree-Law 626/94 no provision is made which expressly guarantees such a right. Article 55(5) merely states: 'expenditure in respect of providing special corrective appliances appropriate for the work concerned is to be borne by the employer', which is clear, but not sufficient to identify the precise criterion establishing the right of workers to benefit from such provisions.

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(1) OJ 1990 L 156, p. 14.

(2) Council Directive of 12 June 1989, OJ 1989 L 183, p. 1.

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat des Landes Oberösterreich by order of 15 December 2000 in the case of Primetzhofer Stahl- und Fahrzeugbau GmbH v Land Oberösterreich

(Case C-464/00)

(2001/C 79/21)

Reference has been made to the Court of Justice of the European Communities by order of 15 December 2000 by the Unabhängiger Verwaltungssenat des Landes Oberösterreich, which was received at the Court Registry on 22 December 2000, for a preliminary ruling in the case of Primetzhofer Stahl- und Fahrzeugbau GmbH v Land Oberösterreich on the following questions:

(a) Do the rules of a Member State under which the court (the independent body) in the review procedure must also act of its own motion and determine the course of the preliminary investigation constitute an infringement of the first half of the final sentence of Article 2(8) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts? (1)

(b) If that question is answered in the negative: Does the first half of the final sentence of Article 2(8) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts require an interpretation of the national legislation to the effect that the court (the independent body) clarifies of its own motion, without specific assertions (and certainly without relevant offers of evidence) made by one of the parties, whether the invitation to tender in question is not an individual project, but merely a part-project and — in the event that the latter is the case — whether the overall project has an estimated contract value of more than EUR 5 million, or is such a view prohibited precisely because the onus of proof and obligation to produce evidence imposed on the party constitutes the essential difference between a procedure in which both sides are heard and inquisitorial proceedings?

(1) OJ 1989 L 395, p. 33.

Reference for a preliminary ruling by the Verfassungsgerichtshof, Vienna, by order of 12 December 2000 in the case of the Rechnungshof against 1. Österreichischer Rundfunk, 2. Wirtschaftskammer Steiermark, 3. Marktgemeinde Kaltenleutgeben, 4. Land Niederösterrreich, 5. Oesterreichische Nationalbank, 6. Stadt Wiener Neustadt, 7. Austrian Airlines, Österreichische Luftverkehrs-AG

(Case C-465/00)

(2001/C 79/22)

Reference has been made to the Court of Justice of the European Communities by order of the Verfassungsgerichtshof, Vienna, by order of 12 December 2000, received at the Court Registry on 28 December 2000 for a preliminary ruling in the case of the Rechnungshof against 1. Österreichischer Rundfunk, 2. Wirtschaftskammer Steiermark, 3. Marktgemeinde Kaltenleutgeben, 4. Land Niederösterrreich, 5. Oesterreichische Nationalbank, 6. Stadt Wiener Neustadt, 7. Austrian Airlines, Österreichische Luftverkehrs-AG on the following questions:

1. Are the provisions of Community law, in particular those on data protection, to be interpreted as precluding national rules which require a State body to collect and pass on data on income for the purpose of publishing the names and income of employees of:

   (a) a regional or local authority,

   (b) a broadcasting organisation governed by public law,

   (c) a national central bank,

   (d) a statutory body representing its members' interests,

   (e) a partially State-controlled undertaking which is operated for profit?

2. If the answer to at least part of the above question is in the affirmative:

   Are the provisions precluding the abovementioned national rules directly applicable, in the sense that persons obliged to disclose data may rely on them to prevent the application of conflicting national rules?

Appeal brought on 22 December 2000 by the European Parliament against the judgment delivered on 26 October 2000 by the Fourth Chamber of the Court of First Instance of the European Communities in Joined Cases T-83/99, T-84/99 and T-85/99 between Ripa di Meana and Others and the European Parliament

(Case C-470/00 P)

(2001/C 79/23)

An appeal against the judgment delivered on 26 October 2000 by the Fourth Chamber of the Court of First Instance of the European Communities in Joined Cases T-83/99, T-84/99 and T-85/99 between Ripa di Meana and Others and the European Parliament was brought before the Court of Justice of the European Communities on 22 December 2000 by the European Parliament, represented by A. Caiola and G. Ricci, acting as Agents, with an address for service in Luxembourg.

The appellant claims that the Court should:

1. set aside the judgment of the Court of First Instance of 26 October 2000 in Cases T-83/99 and T-84/99 Carlo Ripa di Meana and Leoluca Orlando and the European Parliament;

2. in consequence, declare the applications of the said applicants at first instance inadmissible and unfounded, and

3. order the applicants at first instance to pay the whole of the costs of the proceedings before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The European Parliament puts forward three pleas in law in support of its appeal, two of which relate to admissibility and the third to the substance, the last being subdivided into various parts and supported by a number of legal arguments. Its grounds of appeal are as follows:

(a) as regards admissibility: the European Parliament disputes, first of all, the Court of First Instance's characterisation of the letter of 19 November 1998 of the two Italian Vice-presidents of the European Parliament as the 'applicants' application for membership'. According to the Court of First Instance, that application for membership was made on behalf of the applicants. In the opinion of the Parliament, that is an apoditic assertion, unsupported by reasons and having no basis in relevant provisions of law, or in practice;

(b) again, as regards admissibility: the Parliament also disputes the Court of First Instance's characterisation of the College of Quaestors' letter of 4 February 1999 as a decision. Rather, it was merely a communication from the quaestors of the European Parliament for the purposes of providing information and as a courtesy, and, in any event, did no more than confirm the existing situation, of which the Members of Parliament in question were already perfectly well aware. Moreover, the informal and atypical requests the applicants made of the quaestors place them outside the scope of every applicable rule and every procedure (such as that provided for in Article 27(2) of the Rules Governing the Payment of Expenses and Allowances to Members);

(c) lastly, as to the substance: the European Parliament maintains that the Court of First Instance erred in law when, reversing the burden of proof and thus committing a breach of procedure, it found that the Parliament had 'not proved that the Members had acquired precise knowledge of the amending decision more than six months before they submitted their applications', and concluded that 'the applicants submitted their applications for membership of the provisional pension scheme within the time-limit laid down in the amendment to Annex III'.

Action brought on 29 December 2000 by the Kingdom of Spain against the Commission of the European Communities

(Case C-501/00)

(2001/C 79/24)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 29 December 2000 by the Kingdom of Spain, represented by Santiago Ortiz Vaamonde, Abogado del Estado, acting as Agent, with an address for service in Luxembourg care of the Spanish Embassy, 4-6 Boulevard Emmanuel Servais.

The applicant claims that the Court should:

— annul the Commission's decision of 31 October 2000 declaring that the Spanish legislation on the exemption from corporation tax of expenditure and investments made abroad constitutes aid which is incompatible with the common market and prohibited by Article 4(c) of the ECSC Treaty;

— order the defendant institution to pay the costs.

Pleas in law and main arguments

— Infringement of the procedure laid down by law and breach of the principles of legal certainty, of the right to a fair hearing and of the protection of legitimate expectations: by not adopting the decision within the time-limit prescribed by Article 6(5) of Decision 2496/96/ECSC, the Commission failed to observe the procedure laid down by the latter decision, on which the contested decision is based. Moreover, the contested decision was adopted contrary to the legitimate expectations of both the Member State to which it was addressed and the undertakings affected by it. Following the finalisation of the preparatory documents, the Commission failed to give its definitive decision within the legal time-limit of three months; it allowed several years to elapse following the expiry of the deadline for the adoption of a decision, and may thus reasonably be considered to have engendered a legitimate expectation that the measures in issue were not regarded as contrary to the Treaty in the light of the investigation initiated in 1997.

— Infringement of Article 15 ECSC, on account of the absence of a statement of reasons concerning the change of criterion and the effect of the legislation on the competitiveness of the national products exported.

— Misapplication of Article 4(c) of the ECSC Treaty: non-existence of any aid or subsidy within the meaning of that provision: automatically to assimilate the concept of aid under that provision to aid under Article 87 EC could give rise to inconsistency, inasmuch as the effects produced by Article 87 EC are absolute and unconditional. The ECSC Treaty automatically prohibits aid by virtue of the very fact of accession to the ECSC; it does not require any assessment of the effects of such aid on competition, and does not regulate or deal with existing grants of aid, since all aid, past and future, is covered by the same prohibition. For that reason, it may be stated, on the basis of the case-law of the Court and of the aids code referred to, that the aid prohibited by Article 4(c) is direct aid, whether or not specifically intended for ECSC undertakings. Measures adopted by Member States which produce indirect effects or repercussions on competition are subject to different rules, in particular Article 67 of the ECSC Treaty.

— (In the event that the Court considers that the concept of aid as contained in Article 4(c) of the ECSC Treaty is the same as that in Article 87 EC:)

Non-existence of aid within the meaning of Article 87 EC: it is characteristic of fiscal rules that they should be aimed at the achievement of general economic policy objectives. The Spanish fiscal rules in issue are designed to promote the internationalisation of undertakings. The deductibility for tax purposes does not, however, depend on the volume of exports; nor does it have any manifest effect on pricing. Its effect, like that of the other tax exemptions proposed, is limited to the actual amount of the sum assessed to tax. Nor can it simply be said that the taxable steelworks in Spain will be given an advantage over those in other countries, since it is necessary to take into account all factors which affect the actual taxation of those liable to tax. Even assuming that the measures applying in certain Member States are not analogous to those under consideration in the present case, the actual tax burden on taxable steelworks in Spain may be said to be lower than that in other Member States.

Appeal brought on 5 January 2001 by the Bundesverband der Arzneimittel-Importeure e.V. against the judgment delivered on 26 October 2000 by the Fifth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-41/96 between Bayer AG, supported by the European Federation of Pharmaceutical Industries' Associations and the Commission of the European Communities, supported by the Bundesverband der Arzneimittel-Importeure e.V.

(Case C-2/01 P)

(2001/C 79/25)

An appeal against the judgment delivered on 26 October 2000 by the Fifth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-41/96 ([1]) between Bayer AG, supported by the European Federation of Pharmaceutical Industries' Associations and the Commission of the European Communities, supported by the Bundesverband der Arzneimittel-Importeure e.V. was brought before the Court of Justice of the European Communities on 5 January 2001 by the Bundesverband der Arzneimittel-Importeure e.V., represented by U. Zinsmeister and W.A. Rehmann, Rechtsanwälte, with an address for service in Luxembourg.

The appellant claims that the Court should:

— set aside the decision of the Court of First Instance of 26 October 2000 in Case T-41/96 and dismiss the claim by the plaintiff at first instance, or in the alternative refer the matter back to the Court of First Instance;

— order the plaintiff to pay the costs of the proceedings, including those incurred by the Bundesverband der Arzneimittel-Importeure e.V. through its intervention, but excluding the costs of the intervention of the European Federation of Pharmaceutical Industries' Associations, which the latter should bear itself.

Pleas in law and main arguments

— Failure to take full account of the facts as found by the Commission: The Court held that there was no agreement because, as it found, Bayer did not carry out any monitoring of the final destination of the goods supplied to the French and Spanish wholesalers. In fact, however, as is apparent from the documents submitted by the Commission, such controls did take place, even if in some cases only by way of spot checks.

— Erroneous assessment of the evidence owing to a disregard of the rules on the burden of proof: The Court of First Instance wrongly perceived the burden of proof that an unlawful agreement came into being between Bayer and the wholesalers concerned in Spain and France as lying with the Commission. The wholesalers were aware that Bayer's intention was to impose quotas on quantities supplied with the aim of stopping exports. They were directly confronted with that demand for the imposition of quotas. They then became involved in the imposition of quotas on supply quantities. There was no need for any further proof by the Commission that that was done for the purpose of hindering exports. On a proper legal assessment, it follows from the undisputed facts that the evidence collected by the Commission is already *prima facie* sufficient to prove the existence of a corresponding agreement.

— Misapplication of the concept of an agreement: For an appraisal of Article 81 EC, it is sufficient that the wholesalers became involved in the demands of Bayer that exports be restricted.

The mere fact that wholesalers initially refused to bend to Bayer's policy and made attempts to circumvent it, does not, under the case-law of the Court of Justice, mean that there was no concordance of wills. Rather, the latter can be inferred from the way in which the wholesalers eventually behaved, which the Court established. The wholesalers accepted the quota measures.

Finally, the Court of First Instance took no account of the fact that the dependence of wholesalers on the pharmaceutical manufacturers leads to a situation comparable to cases of selective distribution systems. As in those cases, where continuous business relations exist the imposition of quotas is generally capable of hindering the free movement of goods inside the European Communities and adversely affecting competition in the Member States.

(1) Not yet published in the Official Journal.

Appeal brought on 5 January 2001 by the Commission of the European Communities against the judgment delivered on 26 October 2000 by the Fifth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-41/96 between Bayer AG, supported by the European Federation of Pharmaceutical Industries' Associations and the Commission of the European Communities, supported by the Bundesverband der Arzneimittel-Importeure e.V.

(Case C-3/01 P)

(2001/C 79/26)

An appeal against the judgment delivered on 26 October 2000 by the Fifth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-41/96 (1) between Bayer AG, supported by the European Federation of Pharmaceutical Industries' Associations and the Commission of the European Communities, supported by the Bundesverband der Arzneimittel-Importeure e.V. was brought before the Court of Justice of the European Communities on 5 January 2001 by the Commission of the European Communities, represented by K. Wiedner and W. Wils, acting as agents, assisted by H.-J. Freund, Rechtsanwalt, with an address for service in Luxembourg.

The appellant claims that the Court should:

1. set aside in its entirety the judgment of the Court of First Instance of 26 October 2000 in Case T-41/96 (1) and dismiss the claim by Bayer for the annulment of Commission Decision 96/478/EC of 10 January 1996 relating to a proceeding under Article 85 of the EC Treaty (Case IV/34.279/F3 — Adalat);

2. order Bayer to pay the costs before the Court of Justice and the Court of First Instance.

Pleas in law and main arguments

— Excessively restrictive interpretation of the concept of an agreement to prohibit exports within the meaning of Article 85(1) of the Treaty, in that, in this case, the Court saw the requirements for an intended prohibition on exports by the manufacturer as being fulfilled only if the manufacturer *subsequently* monitored whether traders had exported products and reduced supplies as a sanction in *that* event (without taking account of the fact that, in this case, Bayer applied the sanction of reducing supplies in advance, as a preventive measure, when it appeared likely that exports would take place).

— Excessively restrictive interpretation of the concept of an agreement to prohibit exports within the meaning of Article 85(1) of the Treaty, in that, in this case, the Court saw the requirements for an intended prohibition on exports by the manufacturer as being fulfilled only if the manufacturer *demanded* a particular line of conduct from its dealers or *attempted* to force their consent to the implementation of its policy designed to reduce parallel imports (without taking account of the fact that the dealers *understood* and *could only understand* Bayer's supply behaviour as a demand for a certain line of conduct, namely the placing of orders henceforward only in respect of national needs).

— Distortion of evidence or failure to take it into account, in that — although the opposite is immediately obvious from the files — the Court held it unproven that the wholesalers wished to *pretend* to Bayer that they were henceforth ordering only in respect of national needs.

— Erroneous interpretation of the concept of an agreement within the meaning of Article 85(1) of the EC Treaty in that the Court saw the requirements for a concurrence of wills as not being fulfilled because the *declared* will of the wholesalers (ordering only for national needs) did not correspond with the *real* will of the wholesalers (ordering for export purposes also).

— Erroneous application of Article 85(1) of the Treaty, in that — despite the fact that Bayer's supply policy designed to prevent parallel imports formed part of continuous business relations in the context of general agreements *previously* made, and despite clear parallels between the distribution of pharmaceutical products in France and Spain and selective distribution systems — the Court *additionally* required that a subjective element on the part of the dealers be established, having as its subject-matter a concurrence of wills in relation to the implementation of the policy referred to.

(1) Not yet published in the Official Journal.

Reference for a preliminary ruling by the Giudice di Pace di Genova by order of 4 January 2001 in the case of Safalero Srl against Prefetto di Genova

(Case C-13/01)

(2001/C 79/27)

Reference has been made to the Court of Justice of the European Communities by order of the Giudice di Pace di Genova (District Court, Genoa) of 4 January 2001, which was received at the Court Registry on 11 January 2001, for a preliminary ruling in the case of Safalero Srl against Prefetto di Genova on the following questions:

(1) Are the rules on procedure and on sanctions for administrative infringements, laid down by Law No 689 of 24 November 1981 compatible with the principles of proportionality, effectiveness and adequate legal protection of the rights conferred by Community law on individuals, laid down in the Treaty and/or set out and defined in the case-law of the Court of Justice, where:

— the offender cannot institute court proceedings against a measure authorising seizure adopted by the administrative authorities until the administrative authorities themselves, without being constrained to observe procedural time-limits, have applied to the courts for an interim order or a confiscation order;

— a person directly and individually concerned by a measure adopted by the administrative authorities is not allowed to institute court proceedings where the measure itself is addressed to other persons;

— a person directly and individually concerned by a measure adopted by the administrative authorities and addressed to other persons is not allowed to participate, even as a voluntary intervener, in court proceedings brought against such a measure;

— provision is made, without it being possible for a court to make a different and unfettered assessment, for the additional penalty of confiscation of the goods in the event of a purely administrative infringement, the main penalty for which is pecuniary and involves payment of a quite modest sum of money?

(2) Do Articles 10 and 249 of the Treaty precludes Member States from adopting measures contrary to Directive 1999/5/EC [1] of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity:

— during the period prescribed for the transposition of the directive itself;

— after expiry, without transposition, of the period?

If the answer to the above is in the positive, what is the meaning of the Community concept of 'measure liable seriously to compromise the result prescribed by the directive'?

[1] OJ 1999 L 91, p. 10.

Reference for a preliminary ruling by the Verwaltungsgericht Hannover by order of 6 December 2000 in the case of Molkerei Wagenfeld Karl Niemann GmbH & Co. KG v Bezirksregierung Hannover

(Case C-14/01)

(2001/C 79/28)

Reference has been made to the Court of Justice of the European Communities by order of 6 December 2000 by the Verwaltungsgericht Hannover (Administrative Court, Hannover), which was received at the Court Registry on 12 January 2001, for a preliminary ruling in the case of Molkerei Wagenfeld Karl Niemann GmbH & Co. KG v Bezirksregierung Hannover on the following questions:

Does Regulation (EC) No 2799/1999 [1] in conjunction with its annexes contravene

(a) Article 11(1) of Regulation (EC) No 1255/1999 [2],

(b) the second subparagraph of Article 34(2) EC, and

(c) the general legal principles of the European Community and the principle of the protection of legitimate expectations,

inasmuch as the aforesaid regulation precludes aid from being granted for skimmed milk and buttermilk for liquid feed unless that milk is first processed into compound feedingstuffs or into skimmed-milk powder, and makes no provision for a transitional period; is it on those grounds void (in part)?

[1] OJ L 340 of 31.12.1999, p. 3.
[2] OJ L 160 of 26.6.1999, p. 48.

Reference for a preliminary ruling from the Regeringsrätten (Supreme Administrative Court) — by decision of that court of 21 December 2000 in the case of Paranova Läkemedel AB, Farmagon A/S, Medartuum AB, K.G. NetPharma AB, Orifarm AB, Trans Euro Medical AB, Cross Pharma AB and MedImport Scandinavia AB v Läkemedelsverket (Medical Products Agency)

(Case C-15/01)

(2001/C 79/29)

Reference has been made to the Court of Justice of the European Communities by a decision of the Regeringsrätten — of 21 December 2000, which was received at the Court Registry on 15 January 2001, for a preliminary ruling in the case of Paranova Läkemedel AB, Farmagon A/S, Medartuum AB, K.G. NetPharma AB, Orifarm AB, Trans Euro Medical AB, Cross Pharma AB and MedImport Scandinavia AB v Läkemedelsverket on the following questions:

1. Is it compatible with Articles 28 and 30 EC to revoke a marketing authorisation for a medicinal product imported as a parallel import on the ground that the marketing authorisation for the directly imported medicinal product has been revoked at the request of the holder of the authorisation for reasons unconnected with the safety of the medicinal product? Does the answer depend on what specific reasons have given rise to that request or on whether the holder of the authorisation or companies belonging to the same group in other Member States continue to sell the medicinal product to which the parallel imports relate on the basis of marketing authorisations granted there?

2. If the parallel importers rely on a new marketing authorisation for a directly imported medicinal product rather than on the old marketing authorisation, is authorisation for the continued marketing of the medicinal product imported as a parallel import precluded by the fact that that medicinal product and the directly imported medicinal product which is covered by the new marketing authorisation are different in the sense that the medicinal product imported as a parallel import is sold in the form of a capsule containing a certain acid (omeprazole) while the directly imported medicinal product is sold in the form of a tablet containing a magnesium salt of the acid?

Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that court of 18 December 2000 in the case of Paul Dieter Haug against Unabhängiger Verwaltungssenat Wien

(Case C-16/01)

(2001/C 79/30)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Administrative Court of Appeal) of 18 December 2000 which was received at the Court Registry on 15 January 2001, for a preliminary ruling in the case of Paul Dieter Haug against Unabhängiger Verwaltungssenat Wien (Independent Administrative Chamber for Vienna) on the following questions:

1. Does Article 2(1)(b) 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 (now consolidated in European Parliament and Council Directive 2000/13/EC of 20 March 2000 — OJ 2000 L 109, p. 29), under which — subject to Community provisions applicable to natural mineral waters and to foodstuffs for particular nutritional uses — the labelling and methods used may not attribute to any foodstuff the property of preventing, treating or curing a human disease, or suggest that it possesses such properties, preclude national legislation which makes it an offence when marketing foodstuffs:

   (a) to refer to physiological or pharmacological effects, in particular those which preserve youthfulness, inhibit signs of ageing, promote slimming or maintain health, or to create the impression of any such effect;

   (b) to refer to case-histories, recommendations made by doctors or medical experts' reports;

   (c) to use health-related, pictorial or stylised representations of organs of the human body, pictures of members of the health-care professions or of sanatoria or other pictures or illustrations referring to health-care activities?

2. Do Directive 79/112/EEC or Articles 28 and 30 EC preclude a national provision which, on the placing into circulation of foodstuffs, permits health-related information such as that described in Question (1) to be affixed thereto only after prior authorisation by the competent federal minister, whereby a condition of authorisation is that the health-related information is consistent with protecting the consumer from being misled?

Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 30 November 2000 in the case of Finanzamt Sulingen against Walter Sudholz

(Case C-17/01)

(2001/C 79/31)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 30 November 2000, received at the Court Registry on 15 January 2001, for a preliminary ruling in the case of Finanzamt Sulingen against Walter Sudholz on the following questions:

1. Is Article 2 of the Council Decision 2000/186/EC [1] of 28 February 2000 authorising the Federal Republic of Germany to apply measures derogating from Articles 6 and 17 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment invalid because the procedure prior to the adoption of the decision did not meet the criteria laid down in Article 27 of Directive 77/388/EEC?

2. Is the first paragraph of Article 3 of Decision 2000/186/EC, under which the decision is to have retroactive effect from 1 April 1999, valid?

3. Does Article 2 of Decision 2000/186/EC meet the substantive requirements to be applied to such an authorisation, and do any objections to the validity of that provision arise as a consequence?

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[1] OJ L 59 of 4.3.2000, p. 12.

Reference for a preliminary ruling by the Tribunale di Pisa — Sezione Lavoro — by order of that court of 19 December 2000 in the case of INPS v Alberto Barsotti and Others

(Case C-19/01)

(2001/C 79/32)

Reference has been made to the Court of Justice of the European Communities by an order of the Labour Division of the Tribunale di Pisa (District Court, Pisa) of 19 December 2000, which was received at the Court Registry on 15 January 2001, for a preliminary ruling in the case of INPS v Alberto Barsotti and Others, on the following question:

'Whether Directive 80/987/EEC [1] and the judgments relating to it (judgments in Joined Cases C-6/90 and C-9/90 of 13 November 1991 and Case C-373/95 of 10 July 1997) may be interpreted as meaning that, subject to the ceiling imposed, it is lawful to prohibit aggregation of the compensation awarded by the Guarantee Fund and part of the wages paid by the employer in the last three months only as regards the amount exceeding that represented by the level of the indennita di mobilità (job-seeker's allowance) provided for, ratione temporis, in respect of the same period, in view of the fact that the said advances appear, like the job seeker's allowance and up to the same amount, to be intended to cover the primary needs of the dismissed worker.'

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[1] OJ 1980 L 283, p. 23 (Council directive of 20 October 1980).

Action brought on 18 January 2001 by Kingdom of Spain against Commission of the European Communities

(Case C-22/01)

(2001/C 79/33)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 January 2001 by the Kingdom of Spain, represented by Rosario Silva de Lapuerta, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the point relating to anchovies referred to in note (2) to the item relating to stocks of 'Anchovy; Zone: IX, X, CECAF 34.1.1' contained in Annex Id to Council Regulation (EC) No 2848/2000 [1] of 15 December 2000 fixing for 2001 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required; and

— order the defendant institution 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-81/00 [2] except in so far as concerns the TAC for anchovy fixed by the Council in Zone VIII which for 2001 is of 33 000 metric tonnes.

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[1] OJ 2000 L 334, p. 1.
[2] OJ 2000 C 176, p. 4.

Reference for a preliminary ruling by the Hof van Beroep te Brussel by order of 15 January 2001 in the case of NV Robelco and NV Robeco Groep

(Case C-23/01)

(2001/C 79/34)

Reference has been made to the Court of Justice of the European Communities by order of 15 January 2001 by the Hof van Beroep te Brussel (Court of Appeal, Brussels), which was received at the Court Registry on 22 January 2001, for a preliminary ruling in the case of NV Robelco and NV Robeco Groep on the following questions:

— Must Article 5(5) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks be interpreted as meaning that the possibility laid down therein for protection by Member States can be afforded only against the use of a sign which is identical to the trade mark or can it also be afforded in that case against the use of a sign similar to the trade mark?

— If that protection can also be afforded against a sign similar to the trade mark, does unlawful similarity within the meaning of the abovementioned article require that confusion can arise as a consequence or is likelihood of association sufficient, in the sense that in the minds of those confronted by the trade mark and the sign one will suggest the other without any confusion resulting therefrom, or must no likelihood of association at all exist in this respect?

Action brought on 24 January 2001 by the Commission of the European Communities against the United Kingdom

(Case C-31/01)

(2001/C 79/35)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 24 January 2001 by the Commission of the European Communities, represented by Mr Richard Wainwright, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Mr Carlos Gómez de la Cruz, member of the Legal Service of the Commission, Centre Wagner.

The Applicant claims that the Court should:

— declare that by failing to notify the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 98/4/EC [1] of 16 February 1998 amending Directive 93/38/EEC [2] coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors or by failing to adopt the measures to comply with it, the United Kingdom has failed to fulfil its obligations under Article 2(1) of the said 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 16 February 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 101, 1.4.1998, p. 1.
[2] OJ L 199, 9.8.1993, p. 84.

Reference for a preliminary ruling by the Corte Suprema di Cassazione — Sezione Tributaria by order of that court of 12 July 2000 in the case of Enirisorse SpA against Ministero delle Finanze

(Case C-34/01 to C-38/01)

(2001/C 79/36)

Reference has been made to the Court of Justice of the European Communities by order of the Corte Suprema di Cassazione — Sezione Tributaria (Supreme Court of Cassation, Tax Chamber) of 12 July 2000, which was received at the Court Registry on 25 January 2001, for a preliminary ruling in the case of Enirisorse SpA against Ministero delle Finanze on the following questions:

1. Does allocation to a public undertaking — operating in the market for dockside unloading and loading of goods — of a significant proportion of a charge (port charge on loading and unloading goods) paid to the State by operators which have not obtained any services from that undertaking, constitute a special or exclusive right or a measure contrary to the rules of the Treaty, in particular the rules on competition, within the meaning of Article 90(1) of the Treaty?

2. Irrespective of the reply to the preceding question, does the allocation to such a public undertaking of a significant proportion of the proceeds from the charge amount to abuse of a dominant position as a result of a State legislative measure and is it thus contrary to Article 86 in conjunction with Article 90 of the Treaty?

3. May the allocation to such an undertaking of a significant proportion of the abovementioned charge be defined as State aid, within the meaning of Article 92 of the Treaty, and does it therefore justify, in the event that the Commission is either not notified or adopts a decision finding the aid to be incompatible with the common market, pursuant to Article 93, the exercise by national courts of their powers — in accordance with the case-law of the Court of Justice — to ensure disapplication of illegal and/or incompatible aid?

4. Does the appropriation to the abovementioned public undertaking, ab origine, of a significant proportion of the proceeds from a State charge levied for or upon the unloading or loading of goods at ports, without such payment being reciprocated by any services rendered by the AMM itself, constitute a charge having an effect equivalent to a customs duty on imports (prohibited by Articles 12 and 13 of the Treaty), or an internal taxation imposed on products of other Member States in excess of that imposed on similar domestic products (Article 95), or a barrier to imports, prohibited by Article 30?

5. In the event that the national provisions are in conflict with Community law, do the factors set out in the foregoing paragraphs, considered individually, affect the charge as a whole or only the portion allocated to the AMM?

Action brought on 29 January 2001 by the Commission of the European Communities against the United Kingdom

(Case C-39/01)

(2001/C 79/37)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 29 January 2001 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 its Legal Service, at the Wagner Centre, Kirchberg, Luxembourg.

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 96/61/EC of 24 September 1996 concerning integral pollution prevention and control [1] or in any event by failing to inform the Commission thereof, the United Kingdom has failed to fulfil its obligations under that Directive, and

— order the United Kingdom to pay the costs.

Pleas in law and main arguments

Article 249 EC, 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 30 October 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 257, 10.10.1996, p. 26.

Action brought on 1 February 2001 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-41/01)

(2001/C 79/38)

An action against the Federal Republic of Germany was brought before the Court of Justice on 1 February 2001 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, of the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service of the Commission of the European Communities, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by having, contrary to the judgment of the Court of Justice of 22 October 1998 in Case C-301/95 [1], excluded in advance from the environmental impact assessment requirement whole classes of projects listed in Annex II to Council Directive 85/337/EEC [2] of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, the Federal Republic of Germany has failed to comply with its obligations under Article 228 of the EC Treaty;

(2) order the Federal Republic of Germany to pay, for each day's delay, following delivery of the judgment to be given herein, in the fulfilment by it of the obligations referred to in (1) above, a penalty in the sum of EUR 237 600, to be remitted to account H 1 KEG entitled 'Eigene Mittel der EG' maintained by the Commission with the Federal Cashier in Bonn;

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

Pleas in law and main arguments

— The legislative rules which the Court of Justice held to be contrary to the Treaty in Case C-301/95, referred to in (1) above, have to date remained unchanged. According to the Federal Republic of Germany, a draft law which it has communicated is intended to ensure compliance with the judgment of the Court of Justice in this regard; however, it has not yet been enacted.

— The Commission's computation of the amount of the penalty applied for is based on a coefficient of 12 in respect of the seriousness of the infringement, a coefficient of 1,5 in respect of the duration thereof and a factor of 26,4 in respect of the effectiveness of the penalty, in accordance with its method of calculation as published in [3].

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[1] [1998] ECR I-6154.
[2] OJ 1985 L 175, p. 40.
[3] OJ C 63 of 28.2.1997, p. 2

COURT OF FIRST INSTANCE

Action brought on 23 November 2000 by Métropole Télévision (M6) against Commission of the European Communities

(Case T-354/00)

(2001/C 79/39)

(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 23 November 2000 by Métropole Télévision (M6), established in Neuilly-sur-Seine (France), represented by Didier Téophile, of the Paris Bar.

The applicant claims that the Court should:

— annul in its entirety the decision of the Commission of 12 September 2000 in Case COMP/C2/37.825 (M6) v European Broadcasting Union (EBU);

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant company observes that, on 13 July 2000 it brought an action against the exemption decision of the Commission of 10 May 2000 by which it declared the provisions of Article 85(1) of the EC Treaty inapplicable for the period 26 February 1993 to 31 December 2005 to certain EBU agreements. That decision is in line with the judgment of the Court of First Instance of 11 July 1996 ([1]) and the new rules which the EBU subsequently adopted, supplementing and amending its Statutes. In that regard, the applicant claims to find itself in a situation in which, pending the next judgment of the Court of First Instance, the EBU is benefiting from a situation in which the Commission expressly states that the new membership conditions do not result in a restriction of competition. That is why M6 was forced to lodge a complaint on 6 March 2000, the rejection of which is now the subject-matter of the present action, seeking a declaration from the Commission prohibiting the new EBU membership conditions and the rules supplementing them.

In support of its arguments, the applicant alleges:

— Breach of essential procedural requirements in that the Commission disregarded the procedural rules introduced by Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty, ([2]) by sending M6, in reply to its complaint of 6 March 2000, a definitive rejection, without giving it the opportunity beforehand of making known its views.

— The existence, in the present case, of a manifest error of assessment, inasmuch as:

  — the current circumstances have changed from those prevailing in December 1997. Such a change involves, in particular, the adoption on 3 April 1998, of new membership conditions as well as of new rules fixing the criteria for the interpretation of Article 3(3) of the EBU Statutes;

  — the complaint of 6 March 2000 does not reproduce the terms or arguments of the first complaint of 5 December 1997, the rejection of which formed the subject-matter of Case T-206/99 Métropole Télévision v Commission ([3]).

([1]) Joined Cases T-528/93, T-542/93, T-543/93, T-543/93, T-546/93, T-546/93 Métropole Télévision and Others v Commission [1996] ECR II-649.

([2]) OJ 1998 L 354, p. 18.

([3]) OJ 1999 C 333, p. 33.

Action brought on 6 December 2000 by N.V. Master Foods against the Commission of the European Communities

(Case T-370/00)

(2001/C 79/40)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 December 2000 by N.V. Master Foods, a company incorporated under Belgian law, represented by Laurent Ruessmann and Ivo Onkelinx of De Bandt, Van Hecke, Lagae & Loesch, Brussels (Belgium).

The applicant claims that the Court should:

— annul the Commission Decision set out in the DG Budget letter of 29 September 2000, as regards the determination of the import prices and resulting amount of definitive duties due by the applicant under the CRS; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, a privately held company incorporated under the Belgian laws, processes parboiled and non-parboiled brown rice into various milled rice products. During the period from 1 July 1997 through 31 December 1998, it imported brown rice purchased from a related U.S. company, Uncle Ben's Inc., in Belgium, under a Community customs duty regime known as the Cumulative Recovery System (CRS).

By its present action, the applicant seeks annulment of the Commission decision addressed to the Director General of the Belgian customs administration ('BCA'), and contained in the letter of Directorate General Budget ('DG Budget') dated 29 September 2000 (Document nº BUDG/B/03/D(00)/38549) (the contested decision).

The contested decision communicates to the BCA the final position of the Commission with regard to the determination and settlement of the definitive amount of customs duties due by the applicant under the CRS. Specifically, the decision, basing itself explicitly on the findings of report nº 98.6.073 of the European Anti-Fraud Office ('OLAF'),

— rejects the import prices that had been declared by the applicant under the CRS and previously accepted by the BCA,

— directs the BCA to determine the CRS import prices of the applicant, and the definitive amount of import duties due by the applicant under the CRS, in accordance with the detailed calculations of the OLAF report, and

— directs the BCA to recover the net amount of CRS import duties which are allegedly due by the applicant according to the detailed calculations of the OLAF report, but had been previously reimbursed to the applicant by the BCA.

The applicant brings forward three grounds for annulment of the contested decision. It alleges that the Commission:

— has committed a manifest error of assessment in the application of the CRS Regulation [1];

— has infringed fundamental principles of law forming part of the Community legal order, such as the rights of defence and the right not to be subjected to arbitrary action; and

— has infringed an essential procedural requirement under both Regulation 2185/96 and Regulation 1073/00 with regard to the OLAF report which is the foundation of the decision.

[1] Commission Regulation (EC) 703/97 of 18 April 1997 introducing for a trial period from 1 July 1997 to 30 June 1997 a cumulative recovery system for determining certain import duties on rice and amending Rebulation (EC) No 1503/96 (OJ L 104, p. 12).

Action brought on 19 December 2000 by Philip Morris International Inc., against the Commission of the European Communities

(Case T-377/00)

(2001/C 79/41)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 December 2000 by Philip Morris International Inc., a company established under the laws of Delaware (USA), represented by Eric Morgan de Rivery and Jacques Derenne, of Liedekerke Siméon Wessing Houthoff, Brussels.

The applicant claims that the Court should:

— annul the Commission Decision to bring the action filed on 3 November 2000 before the New York District Court against the applicant, as publicly announced by Commissioner Michaele Schreyer in Press Release IP/00/1255 of 6 November 2000

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

Pleas in law and main arguments

The applicant is, through its affiliates and subsidiaries, engaged in the sale of tobacco products outside the United States. According to the applicant, the European Community has filed an action in a United States court against the applicant to recover inter alia, in the form of damages, customs and duties and value-added tax related to alleged smuggling. The applicant challenges the decision to take legal proceedings announced by the Commission in the above-mentioned press release.

The applicant submits that the European Community (represented by the Commission) lacks competence to bring an action before a United States court, and that it has acted outside the limits of the powers conferred upon it by the EC Treaty, as it is only the Member States which have competence to seek allegedly unpaid customs and duties taxes.

In the alternative, the applicant submits that even if the European Community were competent to bring the action, the Community has infringed essential procedural requirements of Article 280 EC and lacks financial and legal interest in bringing an action on its own behalf as well as competence to bring an action on behalf of the Member States.

Furthermore, the applicant submits that the contested decision infringes general Community principles and constitutes a misuse of powers.

Action brought on 20 December 2000 by R.J. Reynolds Tobacco Holdings Inc. against the Council of the European Union and the Commission of the European Communities

(Case T-379/00)

(2001/C 79/42)

(Language of the case: English)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 December 2000 by R.J. Reynolds Tobacco Holdings Inc., a company incorporated in the state of Delaware (USA), represented by Onno W. Brouwer and Paul Lomas of Freshfields Bruckhaus Deringer.

The applicant claims that the Court should:

— annul the Commission's decision, which became known to the applicant on 6 November 2000, to commence the New York RICO Proceedings in the name of the European Community against the applicant and/or to instruct others to do so; and, if it exists,

— annul the Council's decision, which never became known to the applicant, to commence the New York RICO Proceedings in the name of the European Community against the applicant and/or to mandate or instruct others to do so;

— order the Commission and/or the Council to pay the cost of these proceedings, including those of the applicant and any third parties.

Pleas in law and main arguments

The applicant is a defendant in legal proceedings brought by the European Community before a United States court, in which the Community seeks compensatory, treble and punitive damages for losses allegedly suffered for unpaid VAT, customs duties etc. which, it is alleged, the Community has not received as a result of smuggling of cigarettes into the European Union.

The applicant submits that the Community has no competence to levy or collect customs duties or VAT directly or indirectly in civil damages proceedings. All competence to levy or collect such taxes resides exclusively in the Member States and is enforceable under procedures established in each of them which do not include the use of civil damages claims in lieu of tax collection.

Furthermore, the applicant submits that the Community's competence to act in Member States to counter fraud in cooperation with the Member States does not permit it to launch civil proceedings in the United States; measures to counter fraud must be adopted according to the procedures laid down in Article 280(4) EC, a procedure which was not followed in respect of the contested decisions.

The applicant contends that, in launching the proceedings in the United States, the Community is circumventing the applicable procedures for the levying and recoverability of unpaid customs duties and the penalties which could be imposed for avoidance, that the applicant's right to be heard has been infringed, and that the general principles of legal certainty, the rights of defence, due process and proportionality have been breached. Finally, the applicant maintains that the defendants have misused their powers by adopting the contested decisions.

Action brought on 20 December 2000 by Japan Tobacco Inc. against the Council of the European Union and the Commission of the European Communities

(Case T-380/00)

(2001/C 79/43)

(Language of the case: English)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 December 2000 by Japan Tobacco Inc., a company incorporated in Japan, represented by Onno W. Brouwer and Paul Lomas of Freshfields Bruckhaus Deringer, Brussels (Belgium).

The applicant claims that the Court should:

— annul the Commission's decision, which became known to the applicant on 6 November 2000, to commence the New York RICO Proceedings in the name of the European Community against the applicant and/or to instruct others to do so; and, if it exists,

— annul the Council's decision, which never became known to the applicant, to commence the New York RICO Proceedings in the name of the European Community against the applicant and/or to mandate or instruct others to do so;

— order the Commission and/or the Council to pay the cost of these proceedings, including those of the applicant and any third parties.

Pleas in law and main arguments

The pleas in law and main arguments are analogous to those relied upon in Case T-379/00.

Action brought on 30 December 2000 by the Institut für Lernsysteme against the Office for Harmonisation in the Internal Market

(Case T-388/00)

(2001/C 79/44)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 30 December 2000 by the Institut für Lernsysteme, Hamburg, represented by Jörg Schneider of CMS Hasche Sigle Eschenlohr Peltzer Schäfer, Stuttgart (Germany).

A further party to the proceedings before the Board of Appeal was ELS Educational Services, Inc., Culver City, California, United States.

The applicant claims that the Court should:

— annul the decision of the Office dated 18.10.2000 — R 074/2000-3 and reject the registration of the Community trade mark 000131276 'ELS';

— order the Office to bear the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	ELS Educational Services, Inc.
The trade mark concerned:	The verbal mark 'ELS' — application 131276, relating to 'educational textbooks and printed materials, namely student workbooks, catalogs, teaching manuals, printed instruction materials and charts and booklets designed for students seeking to learn English as a second language' in Class 16; 'rendering technical assistance in connection with the establishment and/or operation of language schools' in Class 35 and 'educational services, namely providing English language instruction' in Class 41
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	The applicant
Trade mark or sign asserted by way of opposition in the opposition proceedings:	Registered German figurative mark 'ILS' for 'educational and teaching material (except for apparatus) in the form of printed materials; data carriers of all kind with programmes for educational purposes; development and running of correspondence courses' in Classes 9, 16 and 41
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Rejection of the opposition
Grounds of claim:	— infringement of essential formal provisions, e.g. Article 43 (1) of Council Regulation on the Community Trade Mark — misapplication of the principle that the closer the goods and services are to one another, the greater the distance the marks must observe from one another

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Action brought on 5 January 2001 by Renco S.A. against the Council of the European Union

(Case T-4/01)

(2001/C 79/45)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 5 January 2001 by Renco S.A., established in Milan (Italy), represented by Denis Philippe, of the Luxembourg Bar, and Francesco Apruzzi, of the Brussels Bar.

The applicant claims that the Court should:

— order the defendant to pay to the applicant compensation totalling 6 863 000 euro, together with compensatory interest with effect from the date of the event giving rise to the damage — namely, 14 April 2000 — and legal interest from the date of delivery of the judgment, composed of:

— 24 000 000 euro for loss of the chance of being awarded the contract in issue;

— 63 000 euro for the expenses and ancillary costs agreed to in the context of participation in the restricted invitation to tender;

— 2 000 000 euro for the non-material damage suffered by the applicant;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant in the present case, the subject-matter of which is the same as in Case T-205/00 Renco v Council [1], seeks full compensation for the damage suffered by it as a result of the irregularities established in the award of a public contract for general installation and maintenance works to be carried out in the buildings of the Council following the issue of invitation to tender No 99/S 146-107865/FR of 30 July 1999.

It is alleged that the Council has incurred liability on account of, in particular, its failure to comply with the requirements imposed by Directive 93/37/EEC [2], which applies to the contract in issue. The applicant also complains that the Council disappointed the legitimate expectations of the tenderers concerning the selection criteria actually applied in the decision-making process.

[1] OJ C 285 of 7.10.2000, p. 19.
[2] Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts.

Action brought on 26 January 2001 by Georgios S. Zavvos against Commission of the European Communities

(Case T-21/01)

(2001/C 79/46)

(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 26 January 2001 by Georgios S. Zavvos, residing in Linkebeek (Belgium), represented by Georges Vandersanden and Laure Levi, Avocats, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the appointing authority of 11 January 2001 imposing on the applicant the disciplinary measure of downgrading from A 5 to A 6, on the same step, as provided for in Article 86(2)(e) of the Staff Regulations;

— order the Commission to compensate him for material and non-material damage, provisionally assessed, with all manner of reservations, at EUR 1 350 000;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests the disciplinary measure imposed on him following alleged irregularities committed in the course of his duties as Head of the Delegation of the European Commission in Bratislava (Slovak Republic).

In support of his claims, he puts forward the following pleas in law:

— Breach of the rights of the defence and of the disciplinary procedure.

— Lack of a statement of reasons and erroneous statement of reasons.

— Manifest error of assessment of the facts giving rise to a misassessment of law.

— Breach of the principle of proportionality.

Action brought on 26 January 2001 by Petros Efthymiou against Commission of the European Communities

(Case T-22/01)

(2001/C 79/47)

(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 26 January 2001 by Petros Efthymiou, residing in Luxembourg, represented by Jean-Noël Louis and Véronique Peere, avocats, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decisions of the Commission concerning 'supplementary amendments' in respect of mission expenses incurred by the applicant from 5 to 11 and from 12 to 18 September 1999 and from 8 to 11 November 1999;

— annul the decision to charge to the applicant overcharges amounting to EUR 239,08, EUR 254,7 and EUR 90,05;

— order the Commission to repay to the applicant those amounts together with default interest calculated at 6 % per annum as from 26 June 2000;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests the decision of the Commission to recover part of the amount which was paid to him by way of mission expenses incurred during September and November 1999. In support of his application, the applicant puts forward the following pleas in law:

— failure to fulfil the obligation to give reasons;

— infringement of Article 11(1) and 12(2) of Annex VII of the Staff Regulations;

— manifest error of assessment; and

— invalidity of the 1999 Missions Guide.