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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Sixth Chamber)

of 25 January 2001

in Case C-413/98 (reference for a preliminary ruling from the Supremo Tribunal Administrativo): Directora-Geral do Departamento para os Assuntos do Fundo Social Europeu (DAFSE) v Frota Azul-Transportes e Turismo L.da [1]

(European Social Fund — Certification of facts and accounts — Powers of certification Limits)

(2001/C 173/01)

(Language of the case: Portuguese)

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

In Case C-413/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Supremo Tribunal Administrativo (Supreme Administrative Court) (Portugal) for a preliminary ruling in the proceedings pending before that court between Directora-Geral do Departamento para os Assuntos do Fundo Social Europeu (DAFSE) and Frota Azul-Transportes e Turismo Ld.a — on the interpretation of Council Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (OJ 1983 289, p. 38), Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC (OJ 1983 L 289, p. 1) and Commission Decision 83/673/EEC of 22 December 1983 on the management of the European Social Fund (OJ 1983 L 377, p. 1) — the Court, composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; J. Mischo, Advocate General; R. Grass, for the Registrar, has given a judgment on 25 January 2001, in which it has ruled:

1. *The relevant Member State's certification of the accuracy of the facts and accounts in final payment claims must, for the purposes of Article 5(4) of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC on the tasks of the European Social Fund, be understood as including an assessment as to whether the expenditure incurred is appropriate and justified.*

2. *A decision by the competent authorities of a Member State not to certify the accuracy of the facts and accounts concerning a portion of the expenditure in respect of a training operation to which the European Social Fund has contributed, on the ground that the expenditure cannot be justified or is disproportionate, must be regarded as a proposal addressed to the Commission of the European Communities for that portion of the expenditure to be held to be ineligible.*

3. *The reduction or withdrawal of the national contribution proposed by the competent authorities of a Member State pursuant to a decision not to certify the accuracy of the facts or accounts as regards certain expenditure must be made the subject of a final decision by the Commission concerning the portion of the aid corresponding to the assistance from the European Social Fund. That final decision of the Commission approving the balance to be paid determines the amount of the balance to be paid from the national contribution.*

4. *Community law does not preclude the competent authorities of a Member State from requiring, as a purely protective measure, repayment of the national contribution and of the assistance from the European Social Fund before the adoption by the Commission of its final decision.*

5. *Certification, for the purposes of the second sentence of Article 5(4) of Regulation No 2950/83, of the accuracy of the facts and accounts in the final payment claim in respect of a training operation does not preclude a Member State from undertaking a subsequent reassessment of the final payment claim and from submitting to the Commission, if necessary, a revised application proposing that the assistance be reduced.*

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[1] OJ C 33 of 6.2.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 25 January 2001

in Case C-172/99 (reference for a preliminary ruling from the Korkein oikeus): Oy Liikenne Ab v Pekka Liskojärvi, Pentti Juntunen [1]

(Directive 77/187/EEC — Safeguarding of employees' rights in the event of transfers of undertakings — Directive 92/50/EEC — Public service contracts — Non-maritime public transport services)

(2001/C 173/02)

(Language of the case: Finnish)

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

In Case C-172/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Korkein oikeus (Supreme Court), Finland, for a preliminary ruling in the proceedings pending before that court between Oy Liikenne Ab and Pekka Liskojärvi, Pentti Juntunen — on the interpretation of Article 1(1) of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26) — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet (Rapporteur), R. Schintgen and N. Colneric, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 25 January 2001, in which it has ruled:

1. *The taking over by an undertaking of non-maritime public transport activities — such as the operation of scheduled local bus routes — previously operated by another undertaking, following a procedure for the award of a public service contract under Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, may fall within the material scope of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, as set out in Article 1(1) of that directive.*

2. *Article 1(1) of Directive 77/187 must be interpreted as meaning that*

   — *that directive may apply where there is no direct contractual link between two undertakings which are successively awarded, following procedures for, the award of public service contracts conducted in accordance with Directive 92/50, a non-maritime public transport service — such as the operation of scheduled local bus routes — by a legal person governed by public law;*

   — *in a situation such as that in the main proceedings, Directive 77/187 does not apply where there is no transfer of significant tangible assets between those two undertakings.*

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[1] OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

of 30 January 2001

in Case C-36/98: Kingdom of Spain v Council of the European Union, supported by French Republic, by Portuguese Republic, by Republic of Finland, and by Commission of the European Communities [1]

(Legal basis — Environment — Council decision approving the Convention on cooperation for the protection and sustainable use of the river Danube — Article 130s(l) and (2) of the EC Treaty (now, after amendment, Article 175(1) and (2) EC) — Concept of 'management of water resources')

(2001/C 173/03)

(Language of the case: Spanish)

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

In Case C-36/98: Kingdom of Spain (Agent: S. Ortiz Vaamonde) v Council of the European Union (Agents: G. Houttuin and D. Canga Fano), supported by French Republic (Agents: K. Rispal-Bellanger and R. Nadal), by Portuguese Republic (Agents: L. Fernandes, M. Telles Romão and P. Canelas de Castro), by Republic of Finland (Agents: H. Rotkirch and T. Pyrind), and by Commission of the European Communities (Agents: R. Gosalbo Bono and F. de Sousa Fialho) — application for annulment of Council Decision 97/825/EC of 24 November 1997 concerning the conclusion of the Convention on cooperation for the protection and sustainable use of the river Danube (OJ 1997 L 342, p. 18) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón (Rapporteur), R. Schintgen and F. Macken, Judges; P. Léger, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 30 January 2001, in which it:

1. *Dismisses the action;*

2. *Orders the Kingdom of Spain to pay the costs;*

3. *Orders the French Republic, the Portuguese Republic, the Republic of Finland and the Commission of the European Communities to bear their own costs.*

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(1) OJ C 113 of 11.4.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 1 February 2001

in Case C-108/96 (reference for a preliminary ruling from the Tribunal de Première Instance de Bruxelles): Dennis Mac Quen, Derek Pouton, Carla Godts, Youssef Antoun and Grandvision Belgium SA, formerly Vision Express Belgium SA, being civilly liable; intervener: Union Professionnelle Belge des Médecins Spécialistes en Ophtalmologie et Chirurgie Oculaire, civil plaintiff (1)

(Interpretation of Article 5 of the EC Treaty (now Article 10 EC) and of Articles 30, 52 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 43 EC and 49 EC) — National legislation prohibiting opticians from carrying out certain optical examinations — National legislation restricting the marketing of equipment for carrying out certain optical examinations which are reserved exclusively for ophthalmologists)

(2001/C 173/04)

(Language of the case: French)

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

In Case C-108/96: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Tribunal de Première Instance de Bruxelles (Court of First Instance, Brussels) for a preliminary ruling in the criminal proceedings pending before that court against Dennis Mac Quen, Derek Pouton, Carla Godts, Youssef Antoun and Grandvision Belgium SA, formerly Vision Express Belgium SA, being civilly liable; intervener: Union Professionnelle Belge des Médecins Spécialistes en Ophtalmologie et Chirurgie Oculaire, civil plaintiff — on the interpretation of Article 5 of the EC Treaty (now Article 10 EC) and of Articles 30, 52 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 43 EC and 49 EC) — the Court (Fifth Chamber), composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and P. Jann, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 1 February 2001, in which it has ruled:

As Community law stands at present, Article 52 of the EC Treaty (now, after amendment, Article 43 EC) does not preclude the competent authorities of a Member State from interpreting the national law governing the practice of medicine in such a way that, within the context of the correction of purely optical defects, the objective examination of a client's eyesight, that is to say, an examination which does not use a method under which the client alone determines the optical defects from which he is suffering, is reserved, for reasons relating to the protection of public health, to a category of professionals holding specific qualifications, such as ophthalmologists, to the exclusion, in particular, of opticians who are not qualified medical doctors. It is for the national court to assess, in the light of the Treaty requirements relating to freedom of establishment and the demands of legal certainty and the protection of public health, whether the interpretation of domestic law adopted by the competent national authorities in that regard remains a valid basis for the prosecutions brought in the case in the main proceedings.

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(1) OJ C 158 of 1.6.1996.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 1 February 2001

in Case C-66/99 (reference for a preliminary ruling from the Finanzgericht Bremen (Germany)): D. Wandel GmbH v Hauptzollamt Bremen (1)

(Community Customs Code and implementing regulation — Incurrence of a customs debt on importation — Relevant time — Concept of removal from customs supervision of goods liable to import duty — Production of certificates of origin — Effect)

(2001/C 173/05)

(Language of the case: German)

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

In Case C-66/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Finanzgericht (Finance Court), Bremen, (Germany) for a preliminary ruling in the proceedings pending before that court between D. Wandel GmbH and Hauptzollamt Bremen — on the interpretation of Article 75, Article 201(1)(a) and (2), Article 203(1) and Article 204(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen (Rapporteur) and F. Macken, Judges; G. Cosmas, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 1 February 2001, in which it has ruled:

1. *Where an examination of goods has been ordered by the customs authority for the purposes of verifying a declaration which has been accepted and it has proved impossible to carry out the examination because the goods have been removed from the place of temporary storage without the authorisation of the relevant customs authority, the customs debt on importation is incurred under Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.*

2. *It is possible for a customs debt on importation to be incurred under Article 203(1) of Regulation No 2913/92 where the customs declaration received by the customs office was accompanied by technically correct certificates of origin corresponding to Form A and where the zero preferential tariff applied to the goods covered by the declaration.*

([1]) OJ C 136 of 15.5.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 1 February 2001

in Case C-237/99: Commission of the European Communities v French Republic, supported by United Kingdom of Great Britain and Northern Ireland ([1])

(Failure by a Member State to fulfil obligations — Directive 93/37/EEC — Public works contracts — Concept of 'contracting authority')

(2001/C 173/06)

(Language of the case: French)

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

In Case C-237/99: Commission of the European Communities (Agent: M. Nolin) v French Republic (Agents: K. Rispal-Bellanger, F. Million and S. Pailler) supported by United Kingdom of Great Britain and Northern Ireland (Agent: R.V. Magrill) — application for a declaration that, in the context of various procedures, for the award of public contracts for the construction of housing organised by public development and construction entities and by low-rent housing corporations, the French Republic has failed to fulfil its obligations under Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), in particular Article 11(2) thereof — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward, P. Jann (Rapporteur) and L. Sevón, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 1 February 2001, in which it:

1. *Declares that, since the public management and construction entities of Val-de-Marne and Paris and the low-rent housing corporation Logirel did not publish contract notices in the* Official Journal of the European Communities *concerning the public contracts announced by notices in the* Bulletin Officiel des Annonces des Marchés Publics *of 7 and 16 February 1995 and the* Moniteur des Travaux Publics et du Bâtiment *of 17 February 1995, the French Republic has failed to fulfil its obligations under Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, in particular Article 11(2) thereof;*

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

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 246 of 28.8.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 1 February 2001

in Case C-333/99: Commission of the European Communities v French Republic ([1])

(Failure of a Member State to fulfil obligations — Community system for the conservation and management of fishery resources — Control of fishing and related activities — Inspection of fishing vessels and monitoring of landings (Article 5 (2) of Regulation (EEC) No 170/83 and Article 1(1) of Regulation (EEC) No 2241/87) — Temporary prohibition of fishing activities (Article 11(2) of Regulation No 2241/87) — Penal or administrative action against those responsible for infringing the Community rules on conservation and monitoring (Article 5(2) of Regulation No 170/83 and Article 1(2) of Regulation No 2241/87))

(2001/C 173/07)

(Language of the case: French)

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

In Case C-333/99: Commission of the European Communities (Agents: T. van Rijn and B. Mongin) v French Republic

(Agents: K. Rispal-Bellanger and C. Vasak) — application for a declaration that,

— by failing to determine the appropriate detailed rules for the utilisation of the quotas allocated to it for the 1988 and 1990 fishing years,

— by failing to ensure compliance with the Community rules on the conservation of species through adequate monitoring of fishing activities and through appropriate inspection of the fishing fleet, actual landings and catch records for both the 1988 and 1990 fishing years,

— by not temporarily prohibiting, in both the 1988 and 1990 fishing years, fishing by vessels flying the French flag or registered in French territory at times when the catches made were deemed to have exhausted the corresponding quota, and by finally prohibiting fishing at a time when the corresponding quota had been largely exceeded,

and

— by failing, for the 1988 and 1990 fishing years, to take penal or administrative action against any master or other person responsible for fishing after a prohibition had been imposed,

the French Republic has failed to fulfil its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1), in conjunction with Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1), under Article 11(2) of Regulation No 2241/87, and under Article 5(2) of Regulation No 170/83 in conjunction with Article 1(2) of Regulation No 2241/87 — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward (Rapporteur), P. Jann and L. Sevón, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 1 February 2001, in which it:

1. *Declares that:*

— *by failing to determine the appropriate detailed rules for the utilisation of the quotas allocated to it for the 1988 and 1990 fishing years and by failing to ensure compliance with the Community rules on the conservation of species through adequate monitoring of fishing activities and through appropriate inspection of the fishing fleet, actual landings and catch records for both the 1988 and 1990 fishing years;*

— *by not provisionally prohibiting fishing by vessels flying the French flag or registered in French territory in cases where the catches made were deemed to have exhausted the corresponding quota and, where relevant, by prohibiting fishing after the corresponding quota had been largely exceeded, in both the 1988 and 1990 fishing years;*

and

— *by failing, as regards the 1988 and 1990 fishing years, to take penal or administrative action against any master or other person responsible for fishing after imposition of a fishing ban,*

the French Republic has failed to fulfil its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, in conjunction with Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities, under Article 11(2) of Regulation No 2241/87, and under Article 5(2) of Regulation No 170/83 in conjunction with Article 1(2) of Regulation No 2241/87;

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

([1]) OJ C 333 of 20.11.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 February 2001

in Case C-350/99 (reference for a preliminary ruling from the Arbeitsgericht Bremen, Germany): Wolfgang Lange v Georg Schünemann GmbH ([1])

(Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship — Length of normal daily or weekly work — Rules on overtime — Rules of evidence)

(2001/C 173/08)

(Language of the case: German)

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

In Case C-350/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Arbeitsgericht

Bremen for a preliminary ruling in the proceedings pending before that court between Wolfgang Lange and Georg Schünemann GmbH — on the interpretation of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288 p. 32) — the Court (Fifth Chamber), composed of: A. La Pergola (Rapporteur), President of the Chamber, M. Wathelet, D.A.O. Edward, P. Jann and L. Sevón, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 8 February 2001, in which it has ruled:

1. *Article 2(2)(i) of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship must be interpreted as not relating to the working of overtime. However, it is clear from Article 2(1) of that Directive that the employer is obliged to notify the employee of any term having the nature of an essential element of the contract or employment relationship and requiring the employee to work overtime whenever requested to do so by his employer. That information must be notified under the same conditions as those laid down by the Directive for the elements expressly mentioned in Article 2(2) thereof. It may, where appropriate, by analogy with the rule which applies, in particular, to normal working hours by virtue of Article 2(3) of the Directive, take the form of a reference to the relevant laws, regulations and administrative or statutory provisions or collective agreements.*

2. *No provision of Directive 91/533 requires an essential element of the contract or employment relationship that has not been mentioned in a written document delivered to the employee or has not been mentioned therein with sufficient precision to be regarded as inapplicable.*

3. *Where an employer fails to comply with his obligation under Directive 91/533 to provide information, that directive does not require the national court to apply, or refrain from applying, principles of national law under which the proper taking of evidence is deemed to have been obstructed where a party to the proceedings has not complied with his legal obligations to provide information.*

(1) OJ C 333 of 20.11.1999.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 February 2001

in Case C-219/99: Commission of the European Communities v French Republic (1)

(Failure of a Member State to fulfil its obligations — Failure not contested — Directive 95/16/EC)

(2001/C 173/09)

(Language of the case: French)

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

In Case C-219/99: Commission of the European Communities (Agent: H. van Lier) v French Republic (Agents: K. Rispal-Bellanger and D. Colas) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ 1995 L 213, p. 1), the French Republic has failed to fulfil its obligations under that directive — the Court (Second Chamber), composed of: V. Skouris, President of the Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 14 February 2001, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts, the French Republic has failed to fulfil its obligations under that directive;*

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

(1) OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT

of 15 February 2001

in Case C-99/98: Republic of Austria v Commission of the European Communities [1]

(Action for annulment — Plan to grant State aid in the field of power semiconductors — Notification of the Commission — Content of the notification and of supplementary questions put by the Commission — Nature and duration of the investigation — Commission's right of objection — Article 93(3) of the EC Treaty (now Article 88(3) EC))

(2001/C 173/10)

(Language of the case: German)

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

In Case C-99/98: Republic of Austria (Agent: W. Okresek) v Commission of the European Communities (Agents: V. Kreuschitz and P.F. Nemitz) — application for annulment of Commission Decision SG(98) D/1124 of 9 February 1998 to open a formal investigation procedure under Article 93(2) of the EC Treaty (now Article 88(2) EC) in respect of State aid C 84/97 (ex N 509/96) in favour of Siemens Bauelemente OHG, established in Villach, Austria — the Court, composed of: C. Gulmann, President of the Sixth Chamber, acting as President, A. La Pergola, M. Wathelet and V. Skoutis (Rapporteur), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón and R. Schintgen, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 15 February 2001, in which it:

1. *Annuls Commission Decision SG(98) D/1124 of 9 February 1998 to open a formal investigation procedure under Article 93(2) of the EC Treaty (now Article 88(2) EC) in respect of State aid C 84/97 (ex N 509/96) in favour of Siemens Bauelemente OHG;*

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

(1) OJ C 209 of 4.7.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 15 February 2001

in Case C-230/99: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil its obligations — Infringement of Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — National legislation concerning rubber materials and rubber articles entering into contact with foodstuffs, food products and beverages — Mutual recognition — No proper letter of formal notice — Action inadmissible)

(2001/C 173/11)

(Language of the case: French)

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

In Case C-230/99: Commission of the European Communities (Agents: H. van Lier and O. Couvert-Castéra) v French Republic (Agents: J.-F. Dobelle, R. Loosli-Surrans and K. Rispal-Bellanger) — application for a declaration that, by adopting the Order of 9 November 1994 concerning rubber materials and rubber articles entering into contact with foodstuffs, food products and beverages (*Journal Officiel de la République Française* of 2 December 1994, p. 17029) without expressly providing for recognition of technical rules, standards and manufacturing processes lawfully followed in the other Member States and recognition of the results of the related checks and tests carried out by an inspectorate or a laboratory officially recognised in another Member State, the French Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 15 February 2001, in which it:

1. *Dismisses the action as inadmissible;*

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

(1) OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT

of 15 February 2001

in Case C-239/99 (reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany)): Nachi Europe GmbH v Hauptzollamt Krefeld [1]

(Common commercial policy — Anti-dumping measures — Article 1(2) of Regulation (EEC) No 2849/92 — Modification of the definitive anti-dumping duty on imports of ball bearings with a greatest external diameter exceeding 30 mm originating in Japan — Reference for a preliminary ruling on whether that regulation is valid — Failure by the plaintiff in the main proceedings to bring an action seeking annulment of the regulation)

(2001/C 173/12)

(Language of the case: German)

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

In Case C-239/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Finanzgericht (Finance Court) Düsseldorf for a preliminary ruling in the proceedings pending before that court between Nachi Europe GmbH and Hauptzollamt Krefeld — on the validity of Article 1(2) of Council Regulation (EEC) No 2849/92 of 28 September 1992 modifying the definitive anti-dumping duty on imports of ball bearings with a greatest external diameter exceeding 30 mm originating in Japan imposed by Regulation (EEC) No 1739/85 (OJ 1992 L 286, p. 2) — the Court, composed of: G.C. Rodriguez Iglesias, President, C. Gulmann, A. La Pergola (Rapporteur), M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and F. Macken, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 15 February 2001, in which it has ruled:

Neither the judgment of the Court of First Instance in Joined Cases T-163/94 and T-165/94 NTN Corporation and Koyo Seiko v Council nor that of the Court of Justice in Case C-245/95 P Commission v NTN and Koyo Seiko affected the validity of Article 1(2) of Council Regulation (EEC) No 2849/92 of 28 September 1992 modifying the definitive anti-dumping duty on imports of ball bearings with a greatest external diameter exceeding 30 mm originating in Japan imposed by Regulation (EEC) No 1739/85 in so far as it fixes an anti-dumping duty applicable to ball bearings manufactured by Nachi Fujikoshi Corporation.

An importer of those products, such as Nachi Europe GmbH, which undoubtedly had a right of action before the Court of First Instance to seek the annulment of the anti-dumping duty imposed on those goods, but which did not exercise that right, cannot subsequently plead the invalidity of that anti-dumping duty before a national court. In such a case, the national court is bound by the definitive nature of the anti-dumping duty applicable under Article 1(2) of Regulation No 2849/92 to ball bearings manufactured by Nachi Fujikoshi Corporation and imported by Nachi Europe GmbH.

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[1] OJ C 246 of 28.8.1999.

JUDGMENT OF THE COURT

of 20 February 2001

in Case C-192/99 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office)): The Queen v Secretary of State for the Home Department, ex parte: Manjit Kaur, intervener: Justice [1]

(Citizenship of the Union — Nationality of a Member State — Declarations by the United Kingdom concerning the definition of the term 'national' — British Overseas Citizen)

(2001/C 173/13)

(Language of the case: English)

In Case C-192/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office) (United Kingdom of Great Britain and Northern Ireland) for a preliminary ruling in the proceedings pending before that court between The Queen and Secretary of State for the Home Department, ex parte: Manjit Kaur, intervener: Justice — on the interpretation of Articles 8 and 8a of the EC Treaty (now, after amendment, Articles 17 EC and 18 EC), of the Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals', annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities (OJ 1972 L 73, p. 196), of the new Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals' (OJ 1983 C 23, p. 1), and of Declaration No 2 on nationality of a Member State, annexed to the Final Act of the Treaty on European Union (OJ 1992 C 191, p. 98) — 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; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 20 February 2001, in which it has ruled:

In order to determine whether a person is a national of the United Kingdom of Great Britain and Northern Ireland for the purposes of Community law, it is necessary to refer to the 1982 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals' which replaced the 1972 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals', annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities.

([1]) OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT

of 20 February 2001

in Case C-205/99 (reference for a preliminary ruling from the Tribunal Supremo, Spain): Asociación Profesional de Empresas Navieras de Líneas Regulares (Analir) and Others v Administración General del Estado ([1])

(Freedom to provide services — Maritime cabotage — Conditions for the grant and continuation of prior administrative authorisation — Concurrent application of the methods of imposing public service obligations and of concluding public service contracts)

(2001/C 173/14)

(Language of the case: Spanish)

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

In Case C-205/99: reference to the Court under Article 234 EC from the Tribunal Supremo (Supreme Court), Spain, for a preliminary ruling in the proceedings pending before that court between Asociación Profesional de Empresas Navieras de Líneas Regulares (Analir) and Others and Administración General del Estado — on the interpretation of Articles 1, 2 and 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann and M. Wathelet (Presidents of Chambers), D.A.O. Edward, P. Jann, L. Sevón, R. Schintgen, F. Macken, N. Colneric, S. von Bahr and C.W.A. Timmermans (Rapporteur), Judges; J. Mischo, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 20 February 2001, in which it has ruled:

1. *The combined provisions of Article 1 and Article 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) permit the provision of regular maritime cabotage services to, from and between islands to be made subject to prior administrative authorisation only if:*

   — *a real public service need arising from the inadequacy of the regular transport services under conditions of free competition can be demonstrated;*

   — *it is also demonstrated that that prior administrative authorisation scheme is necessary and proportionate to the aim pursued;*

   — *such a scheme is based on objective, non-discriminatory criteria which are known in advance to the undertakings concerned.*

2. *Community law permits a Member State to include in the conditions for granting and maintaining prior administrative authorisation as a means of imposing public service obligations on a Community shipowner a condition enabling account to be taken of his solvency, such as the requirement that he have no outstanding tax or social security debts, thus giving the Member State the opportunity to check the shipowner's 'capacity to provide the service', provided that such a condition is applied on a non-discriminatory basis.*

3. *Article 4(1) of Regulation No 3577/92 is to be interpreted as permitting a Member State to impose public service obligations on some shipping companies and, at the same time, to conclude public service contracts within the meaning of Article 2(3) of the regulation with others for the same line or route in order to ensure the same regular traffic to, from or between islands, provided that a real public service need can be demonstrated and in so far as that application of the two methods concurrently is on a non-discriminatory basis and is justified in relation to the public-interest objective pursued.*

([1]) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 22 February 2001

in Case C-393/98 (reference for a preliminary ruling from the Supremo Tribunal Administrative (Portugal)): Ministério Público, António Gomes Valente v Fazenda Pública [1]

(Internal taxation — Special tax on motor vehicles — Second-hand vehicles)

(2001/C 173/15)

(Language of the case: Portuguese)

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

In Case C-393/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Supremo Tribunal Administrativo, (Supreme Administrative Court), Portugal for a preliminary ruling in the proceedings pending before that court between Ministério Público, António Gomes Valente and Fazenda Pública — on the interpretation of Article 95 of the EC Treaty (now, after amendment, Article 90 EC) the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges; N. Fennelly, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 22 February 2001, in which it has ruled:

1. *The fact that the Commission discontinues infringement proceedings against a Member State concerning a piece of legislation has no effect on the obligation upon a court of last instance of that Member State to refer to the Court of Justice, pursuant to the third paragraph of Article 177 of the EC Treaty (now the third paragraph of Article 234 EC), a question of Community law in relation to the legislation concerned.*

2. *The first paragraph of Article 95 of the Treaty does not permit a Member State to apply to second-hand vehicles imported from other Member States a system of taxation in which the depreciation in the actual value of those vehicles is calculated in a general and abstract manner, on the basis of fixed criteria or scales determined by a legislative provision, a regulation or an administrative provision, unless those criteria or scales are capable of guaranteeing that the amount of the tax due does not exceed, even in a few cases, the amount of the residual tax incorporated in the value of similar vehicles already registered in the national territory.*

[1] OJ C 397 of 19.12.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 22 February 2001

in Case C-408/98 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court)): Abbey National plc v Commissioners of Customs and Excise [1]

(VAT — Articles 5(8) and 17(2)(a) and (5) of the Sixth VAT Directive — Transfer of a totality of assets — Deduction of input tax on services used by the transferor for the purposes of the transfer — Goods and services used for the purposes of the taxable person's taxable transactions)

(2001/C 173/16)

(Language of the case: English)

In Case C-408/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court), for a preliminary ruling in the proceedings pending before that court between Abbey National plc and Commissioners of Customs and Excise — on the interpretation of Articles 5(8) and 17(2)(a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (Fifth Chamber), composed of: D.A.O. Edward, acting as President of the Fifth Chamber, P. Jann and L. Sevón (Rapporteur), Judges; F.G. Jacobs, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 22 February 2001, in which it has ruled:

Where a Member State has made use of the option in Article 5(8) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, so that the transfer of a totality of assets or part thereof is regarded as not being a supply of goods, the costs incurred by the transferor for services acquired in order to effect that transfer form part of that taxable person's overheads and thus in principle have a direct and immediate link with the whole of his economic activity. If, therefore, the transferor effects both transactions in respect of which value added tax is deductible and transactions in respect of which it is not, it follows from Article 17(5) of the Sixth Directive 77/388 that he may deduct only that proportion of the value added tax which is attributable to the former transactions. However, if the various

services acquired by the transferor in order to effect the transfer have a direct and immediate link with a clearly defined part of his economic activities, so that the costs of those services form part of the overheads of that part of the business, and all the transactions relating to that part of the business are subject to value added tax, he may deduct all the value added tax charged on his costs of acquiring those services.

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(1) OJ C 1 of 4.1.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 22 February 2001

in Joined Cases C-52/99 and C-53/99 (reference for a preliminary ruling from the Cour du Travail de Liège (Belgium)): Office National des Pensions (ONP) v Giocon-da Camarotto (C-52/99), Giuseppina Vignone (C-53/99) (1)

(Council Regulation (EEC) No 1408/71, as amended by Regulation (EEC) No 1248/92 — Social security Insurance relating to old age and death — Calculation of benefits — Changes to the rules governing calculation of benefits)

(2001/C 173/17)

(Language of the case: French)

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

In Joined Cases C-52/99 and C-53/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Cour du Travail de Liège (Higher Labour Court, Liège) for a preliminary ruling in the proceedings pending before that court between Office National des Pensions (ONP) and Giocon-da Camarotto (C-52/99), Giuseppina Vignone (C-53/99) — on the interpretation of Article 95a of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), as amended by Council Regulation (EEC) No 1248/92 of 30 April 1992 (OJ 1992 L 136, p. 7) — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, D.A.O. Edward (Rapporteur) and P. Jann, Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 22 February 2001, in which it has ruled:

1. *Article 95a of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Council Regulation (EEC) No 1248/92 of 30 April 1992, laying down transitional provisions for application of Regulation No 1248/92, applies to recipients of pensions who, before the date of entry into force of the amendments introduced by the latter regulation, had already brought proceedings before a national court seeking to obtain the right to the pension by contesting the application of the national rules against overlapping, even if a final decision in those proceedings had not yet been given at the time of the entry into force of the new provisions.*

2. *It is for the national court to determine, first, whether its national law requires an application for review to be made either to the competent social security institution within the period prescribed and in accordance with the relevant formal requirements, or to the court itself according to the applicable rules of procedure. Second, it is for that court to ensure that those requirements are not less favourable than those governing similar situations under domestic law and that they are not such as to render impossible in practice or excessively difficult the exercise of the rights conferred on claimants by Regulation No 1408/71, as amended by Regulation No 1248/92.*

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(1) OJ C 100 of 10.4.1999.

JUDGMENT OF THE COURT

(Second Chamber)

of 22 February 2001

in Case C-187/99 (reference for a preliminary ruling from the Supremo Tribunal Administrativo): Fazenda Pública v Fábrica de Queijo Eru Portuguesa L^{da} (1)

(Inward processing relief arrangements — Regulation (EEC) No 1999/85 — Rate of yield of the processing operation — Authorisation issued by the competent customs authority — Power of that authority unilaterally to alter the rate of yield)

(2001/C 173/18)

(Language of the case: Portuguese)

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

In Case C-187/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the the Supremo

Tribunal Administrativo (Supreme Administrative Court) (Portugal) for a preliminary ruling in the proceedings pending before that court between Fazenda Pública and Fábrica de Queijo Eru Portuguesa L[da], intervener Ministério Público — on the interpretation of Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements (OJ 1985 L 188, p. 1) and, in particular, Article 11 thereof — the Court (Second Chamber), composed of: V. Skouris, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 22 February 2001, in which it has ruled:

1. *Article 11 of Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements is to be interpreted as applying not only to the conditions or requirements for the issue of an authorisation under the inward processing relief arrangements but also to the conditions imposed by the authorisation on its holder for the use or functioning of those arrangements and, consequently, the customs authority may unilaterally alter the rate of yield fixed by it at the time when the authorisation was issued where, while the arrangements are being used, the rate of yield proves to be higher than the rate fixed in the authorisation.*

2. *Neither Regulation No 1999/85 nor the principle of legal certainty precludes the customs authority from altering unilaterally a rate of yield fixed by it in the authorisation even if it is proved that the customs authority was supervising and controlling the activities of the holder of the authorisation before it was issued.*

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(1) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 March 2001

in Case C-278/98: Kingdom of the Netherlands v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — 1994 — Cereals, beef and veal)

(2001/C 173/19)

(Language of the case: Dutch)

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

In Case C-278/98: Kingdom of the Netherlands (Agents: M.A. Fierstra and N. Wijmenga) v Commission of the European Communities (Agent: H. van Vliet) — application for partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1998 L 163, p. 28), in so far as it disallows expenditure of NLG 16 378 716,63 incurred by the applicant in connection with the prefinancing of export refunds — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; S. Alber, Advocate General; H.A. Rühl, Registrar, has given a judgment on 6 March 2001, in which it:

1. *Dismisses the application;*

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

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(1) OJ C 299 of 26.9.1998.

JUDGMENT OF THE COURT

of 6 March 2001

in Case C-273/99 P: Bernard Connolly v Commission of the European Communities (1)

(Appeal — Officials — Disciplinary proceedings — Suspension — Statement of reasons — Alleged misconduct — Articles 11, 12 and 17 of the Staff Regulations — Equal treatment)

(2001/C 173/20)

(Language of the case: French)

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

In Case C-273/99 P: Bernard Connolly, a former official of the Commission of the European Communities, residing in London, United Kingdom, represented by J. Sambon and P.-P. van Gehuchten, avocats, with an address for service in Luxembourg, appeal against the judgment of the Court of First Instance of the European Communities (First Chamber) of 19 May 1999 in Case T-203/95 Connolly v Commission [1999] ECR-SC I-A-83 and II-443, seeking to have that

judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: G. Valsesia, and J. Currall, assisted by D. Waelbroeck) — the Court, composed of G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet (Rapporteur) and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Mr Connolly to pay the costs.*

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(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

of 6 March 2001

in Case C-274/99 P: Bernard Connolly v Commission of the European Communities (1)

(Appeal — Officials — Disciplinary proceedings — Articles 11, 12 and 17 of the Staff Regulations — Freedom of expression — Duty of loyalty — Conduct reflecting on an official's position)

(2001/C 173/21)

(Language of the case: French)

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

In Case C-274/99 P: Bernard Connolly, a former official of the Commission of the European Communities, residing in London, United Kingdom, represented by J. Sambon and P.-P. van Gehuchten, avocats, with an address for service in Luxembourg, appeal against the judgment of the Court of First Instance of the European Communities (First Chamber) of 19 May 1999 in Joined Cases T-34/96 and T-163/96 Connolly v Commission [19991 ECR-SC I-A-87 and II-463, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: G. Valsesia and J. Currall, assisted by D. Waelbroeck) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet (Rapporteur) and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Mr Connolly to pay the costs.*

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(1) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 March 2001

in Joined Cases C-397/98 and C-410/98 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division): Metallgesellschaft Ltd and Others (C-397/98), Hoechst AG, Hoechst UK Ltd (C-410/98) v Commissioners of Inland Revenue, H.M. Attorney General (1)

(Freedom of establishment — Free movement of capital — Advance payment of corporation tax on profits distributed by a subsidiary to its parent company — Parent company having its seat in another Member State — Breach of Community law — Action for restitution or action for damages — Interest)

(2001/C 173/22)

(Language of the case: English)

In Joined Cases C-397/98 and C-410/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the High Court of Justice of England and Wales, Chancery Division, (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Metallgesellschaft Ltd and Others (C-397/98), Hoechst AG, Hoechst UK Ltd (C-410/98) and Commissioners of Inland Revenue, H.M. Attorney General — on the interpretation of Articles 6 and 52 of the EC Treaty (now, after amendment, Articles 12 EC and 43 EC), Article 58 of the EC Treaty (now Article 48 EC) and/or Article 73b of the EC Treaty (now Article 56 EC) — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges; N. Fennelly, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 8 March 2001, in which it has ruled:

1. *It is contrary to Article 52 of the EC Treaty (now, after amendment, Article 43 EC) for the tax legislation of a Member State, such as that in issue in the main proceedings, to afford companies resident in that Member State the possibility of benefiting from a taxation regime allowing them to pay dividends to their parent company without having to pay advance corporation tax where their parent company is also resident in that Member State but to deny them that possibility where their parent company has its seat in another Member State.*

2. *Where a subsidiary resident in one Member State has been obliged to pay advance corporation tax in respect of dividends paid to its parent company having its seat in another Member State even though, in similar circumstances, the subsidiaries of parent companies resident in the first Member State were entitled to opt for a taxation regime that allowed them to avoid that obligation, Article 52 of the Treaty requires that resident subsidiaries and their non-resident parent companies should have an effective legal remedy in order to obtain reimbursement or reparation of the financial loss which they have sustained and from which the authorities of the Member State concerned have benefited as a result of the advance payment of tax by the subsidiaries.*

   The mere fact that the sole object of such an action is the payment of interest equivalent to the financial loss suffered as a result of the loss of use of the sums paid prematurely does not constitute a ground for dismissing such an action.

   While, in the absence of Community rules, it is for the domestic legal system of the Member State concerned to lay down the detailed procedural rules governing such actions, including ancillary questions such as the payment of interest, those rules must not render practically impossible or excessively difficult the exercise of rights conferred by Community law.

3. *It is contrary to Community law for a national court to refuse or reduce a claim brought before it by a resident subsidiary and its non-resident parent company for reimbursement or reparation of the financial loss which they have suffered as a consequence of the advance payment of corporation tax by the subsidiary, on the sole ground that they did not apply to the tax authorities in order to benefit from the taxation regime which would have exempted the subsidiary from making payments in advance and that they therefore did not make use of the legal remedies available to them to challenge the refusals of the tax authorities, by invoking the primacy and direct effect of the provisions of Community law, where upon any view national law denied resident subsidiaries and their non-resident parent companies the benefit of that taxation regime.*

([1]) OJ C 1 of 4.1.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 March 2001

in Case C-405/98 (reference for a preliminary ruling from the Stockholms Tingsrätt, Sweden): Konsumentombudsmannen (KO) v Gourmet International Products AB (GIP) ([1])

(Free movement of goods — Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — Freedom to provide services — Articles 56 and 59 of the EC Treaty (now, after amendment, Articles 46 EC and 49 EC) — Swedish legislation on the advertising of alcoholic beverages — Selling arrangements — Measure having an effect equivalent to a quantitative restriction — Justification in the interest of the protection of health)

(2001/C 173/23)

(Language of the case: Swedish)

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

In Case C-405/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Stockholms Tingsrätt, Sweden for a preliminary ruling in the proceedings pending before that court between Konsumentombudsmannen (KO) and Gourmet International Products AB (GIP) — on the interpretation of Articles 30, 36, 56 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 30 EC, 46 EC and 49 EC), — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet (Rapporteur), R. Schintgen and F. Macken, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 8 March 2001, in which it has ruled:

Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) and Articles 56 and 59 of the EC Treaty (now, after amendment, Articles 46 EC and 49 EC) do not preclude a prohibition on the advertising of alcoholic beverages such as that laid down in Article 2 of Lagen 1978:763 med vissa bestämmelser om marknadsföring av alkoholdrycker (Swedish Law laying down provisions on the Marketing of Alcoholic Beverages), as amended, unless it is apparent that, in the circumstances of law and of fact which characterise the situation in the Member State concerned, the protection of public health against the harmful effects of alcohol can be ensured by measures having less effect on intra-Community trade.

([1]) OJ C 1 of 4.1.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 March 2001

in Case C-415/98 (reference for a preliminary ruling from the Bundesfinanzhof): Laszlo Bakcsi v Finanzamt Fürstenfeldbruck [1]

(VAT — Articles 2(1), 5(6) and 11.A(1)(a) of the Sixth VAT Directive — Mixed-use goods — Incorporation into the private or business assets of a taxable person — Sale of a business asset — Second-hand item purchased from a private individual)

(2001/C 173/24)

(Language of the case: German)

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

In Case C-415/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Bundesfinanzhof (Federal Finance Court) (Germany) for a preliminary ruling in the proceedings pending before that court between Laszlo Bakcsi and Finanzamt Fürstenfeldbruck on the interpretation of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (Fifth Chamber), composed of: D.A.O. Edward, acting as President of the Fifth Chamber, P. Jann and L. Sevón (Rapporteur), Judges; A. Saggio, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 8 March 2001, in which it has ruled:

1. *A taxable person who acquires a capital item in order to use it for both business and private purposes may retain it wholly within his private assets and thereby exclude it entirely from the system of value added tax.*

2. *Where a taxable person has chosen to incorporate wholly into his business assets a capital item which he uses for both business and private purposes, the sale of that item is subject in full to value added tax, in accordance with Articles 2(1) and 11.A(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment. Where a taxable person assigns to his business assets only the part of the item used for business purposes, only the sale of that part is subject to value added tax. The fact that the item was purchased second-hand from a non-taxable person and that the taxable person was therefore not authorised to deduct the residual value added tax on that item is irrelevant in this regard. However, if the taxable person withdraws, such an item from his business, the value added tax on that item must be considered not to be deductible for the purposes of Article 5(6) of the Sixth Directive and no tax may therefore be levied on that withdrawal under that provision. If the taxable person subsequently sells the item, he will be carrying out that transaction in a private capacity and the transaction will therefore be excluded from the system of value added tax.*

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[1] OJ C 20 of 23.1.1999.

JUDGMENT OF THE COURT

of 8 March 2001

in Case C-215/99 (reference for a preliminary ruling from the Landesgericht Feldkirch): Friedrich Jauch v Pensionsversicherungsanstalt der Arbeiter [1]

(Social security for migrant workers — Austrian scheme of insurance against the risk of reliance on care — Classification of benefits and lawfulness of the residence condition from the point of view of Regulation (EEC) No 1408/71)

(2001/C 173/25)

(Language of the case: German)

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

In Case C-215/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Landesgericht (Regional Court) Feldkirch, Austria for a preliminary ruling in the proceedings pending before that court between Friedrich Jauch and Pensionsversicherungsanstalt der Arbeiter — on the interpretation of Articles 10a(1) and 19(1) of 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet (Rapporteur), P. Jann, L. Sevón, R. Schintgen, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 March 2001, in which it has ruled:

Article 19(1) of 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 (EC) No 118/97 of 2 December 1996, and the corresponding provisions of the other sections of Chapter 1 of Title III of that regulation preclude entitlement to Pflegegeld (care allowance) under the Bundespflegegeldgesetz (Austrian Federal Law on care allowance) from being subject to the condition that the person reliant on care must be habitually resident in Austria.

([1]) OJ C 226 of 7.8.1999.

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1. *Declares that, by failing to take the necessary measures to ensure that the quality of surface water intended for the abstraction of drinking water conforms to the values laid down pursuant to Article 3 of Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, the French Republic has failed to fulfil its obligations under Article 4 of that directive;*

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

([1]) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 March 2001

in Case C-266/99: Commission of the European Communities v French Republic ([1])

(Failure of Member State to fulfil its obligations — Quality of surface water intended for the abstraction of drinking water — Directive 75/440/EEC — Conditions of drinking water abstraction in Brittany)

(2001/C 173/26)

(Language of the case: French)

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

In Case C-266/99: Commission of the European Communities (Agent: M. Nolin) v French Republic (Agents: K. Rispal-Bellanger and D. Colas) — application for a declaration that, by failing to take the necessary measures to ensure that the quality of surface water intended for the abstraction of drinking water complied with the standards laid down under Article 3 of Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26), the French Republic failed to fulfil its obligations under that directive, and in particular Article 4 thereof — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 8 March 2001, in which it:

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 March 2001

in Case C-278/99 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): Criminal proceedings against Georgius van der Burg ([1])

(Technical standards and regulations — Non-approved transmitting equipment — Advertising)

(2001/C 173/27)

(Language of the case: Dutch)

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

In Case C-278/99: reference to the Court under Article 234 of the EC Treaty from the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the criminal proceedings pending before that court against Georgius van der Burg — on the interpretation of Article 1 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8) — the Court (Sixth Chamber), composed of: C. Gulmann (Rapporteur), President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 8 March 2001, in which it has ruled:

National legislation such as Article C.11.1(1) of the Besluit radio-elektrische inrichtingen, which prohibits commercial advertising for transmitting equipment of a non-approved type, does not constitute, for the purposes of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, a technical regulation which should have been notified to the Commission prior to its adoption.

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(1) OJ C 265 of 18.9.1999.

JUDGMENT OF THE COURT

(First Chamber)

of 8 March 2001

in Case C-316/99: Commission of the European Communities v Federal Republic of Germany (1)

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

(2001/C 173/28)

(Language of the case: German)

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

In Case C-316/99: Commission of the European Communities (Agent: K.-D. Borchardt) v Federal Republic of Germany (Agents: W.-D. Plessing and C.-D. Quassowski) — application for declaration that, by failing to adopt within the prescribed period all the measures necessary to comply with Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of the veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (OJ 1996 L 162, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and that directive — the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 8 March 2001, in which it:

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

2. *Dismisses the remainder of the action;*

3. *Orders the Federal Republic of Germany to pay the costs.*

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(1) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 8 March 2001

in Case C-97/00: Commission of the European Communities v French Republic (1)

(Failure of a Member State to fulfil its obligations — Failure to transpose Directive 97/52/EC)

(2001/C 173/29)

(Language of the case: French)

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

In Case C-97/00: Commission of the European Communities (Agent: M. Nolin) v French Republic (Agents: K. Rispal-Bellanger and S. Pailler) — application for a declaration that, by failing to communicate the laws, regulations and administrative provisions necessary to comply with all the provisions of European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively (OJ 1997 L 328, p. 1), or by failing to adopt the measures necessary to comply therewith, the French Republic has failed to fulfil its obligations under that directive — the Court (Fourth Chamber), composed of: A. La Pergola, President of the Chamber, D.A.O. Edward and S. von Bahr (Rapporteur), Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 8 March 2001, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively, the French Republic has failed to fulfil its obligations under that directive;*

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

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(1) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Third Chamber)

of 8 March 2001

in Case C-266/00: Commission of the European Communities v Grand Duchy of Luxembourg (1)

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

(2001/C 173/30)

(Language of the case: French)

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

In Case C-266/00: Commission of the European Communities (Agents: M. Nolin) v Grand Duchy of Luxembourg (Agents: P. Steinmetz) — application for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 5(4) and (6) and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e) to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive — the Court (Third Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet and F. Macken (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 8 March 2001, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary in order to comply with the obligations laid down in Article 5(4) and (6), and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e), to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

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

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(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

of 13 March 2001

in Case C-379/98 (reference for a preliminary ruling from the Landgericht Kiel, Germany): PreussenElektra AG v Schleswag AG (1)

(Electricity — Renewable sources of energy — National legislation requiring electricity supply undertakings to purchase electricity at minimum prices and apportioning the resulting costs between those undertakings and upstream network operators — State aid — Compatibility with the free movement of goods)

(2001/C 173/31)

(Language of the case: German)

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

In Case C-379/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Landgericht Kiel, Germany, for a preliminary ruling in the proceedings pending before that court between PreussenElektra AG and Schleswag AG in the presence of Windpark Reussenköge III GmbH and Land Schleswig-Holstein — on the interpretation of Article 30 of the EC Treaty (now, after amendment, Article 28 EC), Article 92 of the EC Treaty (now, after amendment, Article 87 EC) and Article 93(3) of the EC Treaty (now Article 88(3) EC), — the Court, composed of: G.C. Rodriguez Iglesias, President, C. Gulmann, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón and R. Schintgen (Rapporteur), Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 13 March 2001, in which it has ruled:

1. *Statutory provisions of a Member State which, first, require private electricity supply undertakings to purchase electricity produced in their area of supply from renewable energy sources at minimum prices higher than the real economic value of that type of electricity, and, second, distribute the financial burden resulting from that obligation between those electricity supply undertakings and upstream private electricity network operators do not constitute State aid within the meaning of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC).*

2. *In the current state of Community law concerning the electricity market, such provisions are not incompatible with Article 30 of the EC Treaty (now, after amendment, Article 28 EC).*

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(1) OJ C 397 of 19.12.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 March 2001

in Case C-165/98 (reference for a preliminary ruling from the Tribunal Correctionnel d'Arlon, Belgium): André Mazzoleni v Inter Surveillance Assistance SARL (1)

(Freedom to provide services — Temporary deployment of workers for performance of a contract — Directive 96/71/EC — Guaranteed minimum wage)

(2001/C 173/32)

(Language of the case: French)

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

In Case C-165/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Tribunal Correctionnel d'Arlon (Criminal Court, Arlon), Belgium, for a preliminary ruling in the criminal proceedings pending before that court against André Mazzoleni, and Inter Surveillance Assistance SARL, as the party civilly liable, third parties: Éric Guillaume and Others — on the interpretation of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1) and of Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) — the Court (Fifth Chamber), composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, J.-P. Puissochet and L. Sevón, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 15 March 2001, in which it has ruled:

Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) do not preclude a Member State from requiring an undertaking established in another Member State which provides services in the territory of the first State to pay its workers the minimum remuneration fixed by the national rules of that State. The application of such rules might, however, prove to be disproportionate where the workers involved are employees of an undertaking established in a frontier region who are required to carry out, on a part-time basis and for brief periods, a part of their work in the territory of one, or even several, Member States other than that in which the undertaking is established. It is consequently for the competent authorities of the host Member State to establish whether, and if so to what extent, application of national rules imposing a minimum wage on such an undertaking is necessary and proportionate in order to ensure the protection of the workers concerned.

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(1) OJ C 209 of 4.7.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 March 2001

in Case C-265/99: Commission of the European Communities v French Republic (1)

(Failure by a Member State to fulfil obligations — Article 95 of the EC Treaty (now, after amendment, Article 90 EC) — Tax on motor vehicles)

(2001/C 173/33)

(Language of the case: French)

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

In Case C-265/99: Commission of the European Communities (Agents: E. Traversa and H. Michard) v French Republic

(Agents: K. Rispal-Bellanger and S. Seam) — application for a declaration that:

— by retaining and applying rules providing for the application of a formula for calculating the engine rating for administrative purposes which is unfavourable to vehicles fitted with a six-speed manual gearbox or five-speed automatic transmission, which has discriminatory or protectionist effects in the case of vehicles manufactured in other Member States compared with similar or competing domestic vehicles, and

— by retaining provisions limiting the K factor for the purposes of calculating the engine rating for tax purposes of vehicles approved on an individual basis between 1 January 1978 and 12 January 1988 and which are regarded as equivalent to type-approved vehicles having an actual power output in excess of 100 kW,

the French Republic has failed to fulfil its obligations under Article 95 of the EC Treaty (now, after amendment, Article 90 EC) — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges; S. Alber, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 15 March 2001, in which it:

1. *Declares that by retaining and applying rules providing for the application of a formula for calculating the engine rating for administrative purposes which is unfavourable to vehicles fitted with a six-speed manual gearbox or five-speed automatic transmission, which has discriminatory or protectionist effects in the case of vehicles manufactured in other Member States compared with similar or competing domestic vehicles, the French Republic has failed to fulfil its obligations under the first paragraph of Article 95 of the EC Treaty (now, after amendment, the first paragraph of Article 90 EC);*

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

(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

(Third Chamber)

of 15 March 2001

in Case C-83/00: Commission of the European Communities v Kingdom of the Netherlands (1)

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 97/24/EC — Components and characteristics of two or three-wheel motor vehicles)

(2001/C 173/34)

(Language of the case: Dutch)

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

In Case C-83/00: Commission of the European Communities (Agent: C. van der Hauwaert) v Kingdom of the Netherlands (Agents: M.A. Fierstra and J. van Bakel) application for a declaration that, by failing within the prescribed period to adopt the laws, regulations and administrative measures necessary in order to comply with Directive 97/24/EC of the European Parliament and of the Council of 17 June 1997 on certain components and characteristics of two or three-wheel motor vehicles (OJ 1997 L 226, p. 1), the Kingdom of the Netherlands has failed to comply with its obligations under the EC Treaty — the Court (Third Chamber), composed of: C. Gulmann, President of the Chamber, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 15 March 2001, in which it:

1. *Declares that, by failing within the prescribed period to adopt the laws, regulations and administrative measures necessary in order to comply with Directive 97/24/EC of the European Parliament and of the Council of 17 June 1997 on certain components and characteristics of two or three-wheel motor vehicles, the Kingdom of the Netherlands has failed to comply with its obligations under the EC Treaty;*

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

(1) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 March 2001

in Case C-108/00 (reference for a preliminary ruling from the Conseil d'État, France): Syndicat des Producteurs Indépendants (SPI) v Ministère de l'Économie, des Finances et de l'Industrie [1]

(Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Second indent of Article 9(2)(e) of the Sixth VAT Directive — Determination of relevant place for tax purposes — Advertising services Inclusion of services provided through the intermediary of a third party)

(2001/C 173/35)

(Language of the case: French)

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

In Case C-108/00: reference to the Court under Article 234 EC from the Conseil d'État, France, for a preliminary ruling in the proceedings pending before that court between Syndicat des Producteurs Indépendants (SPI) and Ministère de l'Economie, des Finances et de l'Industrie — on the interpretation of Article 9(2)(e) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward, P. Jann (Rapporteur) and L. Sevón, Judges; F.G. Jacobs, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 15 March 2001, in which it has ruled:

The second indent of Article 9(2)(e) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as applying not only to advertising services supplied directly and invoiced by the supplier to a taxable advertiser but also to services supplied indirectly to the advertiser and invoiced to a third party who in turn invoices them to the advertiser.

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[1] OJ C 149 of 27.5.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 15 March 2001

in Case C-147/00: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil its obligations — Quality of bathing water — Inadequate implementation of Directive 76/160/EEC)

(2001/C 173/36)

(Language of the case: French)

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

In Case C-147/00: Commission of the European Communities (Agents: J.-F. Pasquier and G. Valero Jordana) v French Republic (Agents: K. Rispal-Bellanger and D. Colas) — application for a declaration that

— by failing to take all necessary measures to ensure that, within 10 years of notification of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1), the quality of bathing water conformed to the limit values set in accordance with the directive, contrary to Article 4(1) thereof,

— by failing to carry out sampling operations, the minimum frequency of which is laid down in the Annex to Directive 76/160 in respect of all parameters and all bathing waters, contrary to Article 6(1), and

— by failing to carry out the sampling operations for the 'total coliform' parameter,

the French Republic has failed to take all measures to comply with its obligations under Directive 76/160 and has failed to fulfil its obligations under Articles 3, 4, 5 and 6 of that directive, — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet, F. Macken, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 15 March 2001, in which it:

1. *Declares that,*

   — *by failing to take all the measures necessary to ensure that, within 10 years of the notification of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, the quality of bathing water conformed to the limit values set in accordance with the directive, contrary to Article 4(1) thereof;*

   — *by failing to carry out sampling operations in line with the minimum frequency laid down in the Annex to Directive 76/160 in respect of inland bathing waters, contrary to Article 6(1), and*

   — *by failing to carry out sampling operations for the 'total coliform' parameter,*

   the French Republic has failed to fulfil its obligations under Articles 3, 4, 5 and 6 of Directive 76/160;

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

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(1) OJ C 176 of 24.6.2000.

ORDER OF THE COURT

(Second Chamber)

of 26 October 2000

in Case C-447/98 P: Molkerei Grossbraunshain GmbH and Bene Nahrungsmittel GmbH v Commission of the European Communities (1)

(Community protection of designations of origin — Commission Regulation registering the designation 'Altenburger Ziegenkäse' — Application for annulment — Inadmissibility — Appeal manifestly ill-founded)

(2001/C 173/37)

(Language of the case: German)

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

In Case C-447/98 P, Molkerei Grossbraunshain GmbH, and Bene Nahrungsmittel GmbH, both established in Altenburg (Germany), represented by M. Lochschelder and T. Klingbell, of the Cologne Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 4 rue Carlo Hemmer — appeal against the order of the Court of First Instance of the European Communities (Second Chamber) of 15 September 1998 in Case T-109/97 Molkerei Grossbraunshain GmbH and Bene Nahrungsmittel GmbH v Commission [1998] ECR II-3533, seeking to have that order set aside, the other parties to the proceedings being: Commission of the European Communities (J. L. Iglesias Buhigues and U. Wölker, assisted by B. Wägenbaur), supported by the French Republic (K. Rispal-Bellanger and C. Vasak), Freistaat Thüringen, represented by G. M. Berrisch, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of G. Harles, 8-10 Rue Mathias Hardt and Molkerei und Weichkäserei K-H. Zimmermann GmbH, established in Falkenhain, (Germany), represented by P. Lotze and S. Lehr, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of R. Faltz, 6 Rue Heinrich Heine, the Court (Second Chamber), composed of V.Skouris, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; P. Léger, Advocate General, R. Grass, Registrar, made an order on 26 October 2000 the operative part of which is as follows:

1. *The appeal is dismissed;*

2. *Molkerei Grossbraunshain GmbH and Bene Nahrungsmittel GmbH are ordered to pay the costs;*

3. *The French Republic and the Freistaat Thüringen shall bear their own costs.*

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(1) OJ C 33 of 6 February 1999.

ORDER OF THE COURT

(Third Chamber)

of 15 December 2000

in Case C-86/98 (reference for a preliminary ruling from the Consiglio di Stato): Questore Macerata v Claudio Peroni (1)

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

(2001/C 173/38)

(Language of the case: Italian)

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

In Case C-86/98: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the the Consiglio di

Stato (Council of State), Italy for a preliminary ruling in the proceedings pending before that court between Questore Macerata v Claudio Peroni — on the interpretation of the provisions of the EC Treaty concerning the freedom to provide services — the Court (Third Chamber), composed of: C. Gulmann, (President of Chamber), J.-P. Puissochet (Rapporteur), F. Macken, Judges; C. Stix-Hackl, Advocate General; R. Grass Registrar, has given an order on 15 December 2000, in which it has ruled:

The EC Treaty provisions on the freedom to provide services do not preclude national legislation, such as the Italian legislation, which reserves to certain bodies the right to take bets on sporting events if that legislation is in fact justified by social-policy objectives intended to limit the harmful effects of such activities and if the restrictions which it imposes are not disproportionate in relation to those objectives.

([1]) OJ C 209 of 4.7.1998.

Reference for a preliminary ruling by the Court of Appeal (England & Wales) (Civil Division), by order of that court of 22 February 2001, in the case of The Queen on the application of Novartis Pharmaceuticals UK Ltd against the Licensing Authority established by the Medicines Act 1968 (acting by the Medicines Control Agency), 1) Sangstat UK Ltd and 2) Imtix-Sangstat UK Ltd, interveners

(Case C-106/01)

(2001/C 173/39)

Reference has been made to the Court of Justice of the European Communities by an order of the Court of Appeal (England & Wales) (Civil Division) of 22 February 2001, which was received at the Court Registry on 5 March 2001, for a preliminary ruling in the case of The Queen on the application of Novartis Pharmaceuticals UK Ltd against the Licensing Authority established by the Medicines Act 1968 (acting by the Medicines Control Agency), Interveners: 1) Sangstat UK Ltd and 2) Imtix-Sangstat UK Ltd, on the following questions:

1. In considering a marketing authorisation for a new product (C) under Article 4.8(a)(iii) of Directive 65/65 ([1]), referencing a product (A) authorised more than 6/10 years ago, is a national competent authority ever entitled to cross-refer, without consent, to data submitted in support of a product (B) which was authorised within the last 6/10 years?

2. If so, may such cross-reference be made in circumstances where:

   (a) product B was authorised under the Article 4.8(a) hybrid abridged procedure, referencing product A; and

   (b) the data to which reference is made consists of clinical trials which the national competent authority indicated would be necessary if the marketing authorisation was to be granted and which were submitted in order to demonstrate that product B, though suprabioavailable to product A when administered in the same dose, is safe?

3. (a) Does the final sub-paragraph of Article 4.8(a) of Directive 65/65 ('the proviso') apply only to applications made under Article 4.8(a)(iii) or to applications made under Article 4.8(a)(i) also?

   (b) Is essential similarity a prerequisite for the use of the proviso?

4. Can products ever be essentially similar for the purposes of Article 4.8(a)(i) and (iii) of Directive 65/65 when they are not bioequivalent, and if so in what circumstances?

5. What is the meaning of the term pharmaceutical form, as used by the Court in its Judgment in Case C-368/96 Generics ([2])? In particular, do two products have the same pharmaceutical form when they are administered to the patient in the form of a solution diluted to a macro-emulsion, micro-emulsion and nano-dispersion respectively?

6. Is it consistent with the general principle of non-discrimination for a national competent authority, faced with hybrid applications for marketing authorisations under Article 4.8(a) of Directive 65/65 referencing product A for two products, neither of which is bioequivalent to product A:

(i) to indicate that it is necessary for a marketing authorisation to be granted for product B to be supported by full clinical data of the type required by Part 4(F) of the Annex to Directive 75/318/EC [3]; but

(ii) having considered the data filed in support of product B, to grant a marketing authorisation for product C if that application is supported by trials not meeting the requirements of Part 4(F) of the Annex to Directive 75/318/EEC?

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(1) Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by Law, Regulation or Administrative Action relating to proprietary medicinal products (OJ 22, 09.02.1965, p. 369 [SE SER 1 (65-66) p. 201]).

(2) ECR 1998 p. I-7967.

(3) Council Directive 75/318/EEC of 20 May 1975 on the approximation of the laws of Member States relating to analytical, pharmaco-toxicological and clinical standards and protocols in respect of the testing of proprietary medicinal products (OJ L 147, 09.06.1975, p. 1).

Reference for a preliminary ruling from the Korkein hallinto-oikeus by order of that court of 5 March 2001 in the proceedings brought by Outokumpu Chrome Oy

(Case C-114/01)

(2001/C 173/40)

Reference has been made to the Court of Justice of the European Communities by an order of the Korkein hallinto-oikeus (Supreme Administrative Court), Finland, of 5 March 2001, which was received at the Court Registry on 14 March 2001, for a preliminary ruling in the proceedings brought by Outokumpu Chrome Oy on the following questions:

(1) Are leftover rock resulting from the extraction of ore and/or ore-dressing sand resulting from the dressing of ore in mining operations to be regarded as waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste [1], as amended by Council Directive 91/156/EEC of 18 March 1991 [2], having regard to points (a) to (d) below?

(a) What relevance, in deciding the above question, does it have that the leftover rock and ore-dressing sand is stored on the area of the mining concession or its ancillary site? Is it relevant generally, with respect to falling within the definition of waste, whether the said by-products of mining operations are stored on the area of the mining concession, its ancillary site or further away?

(b) What relevance does it have, in assessing the matter, that the leftover rock is the same as regards its composition as the basic rock from which it is quarried, and that it does not change its composition regardless of how long it is kept and how it is kept? Should ore-dressing sand which results from the ore-dressing process perhaps be assessed differently from leftover stone in this respect?

(c) What relevance does it have, in assessing the matter, that leftover rock is harmless to human health and the environment, but that, according to the view of the environmental licence authorities, substances harmful to health and the environment dissolve from ore-dressing sand? To what extent generally is importance to be attached to the possible effect of leftover rock and ore-dressing sand on health and the environment in assessing whether they are waste?

(d) What relevance does it have, in assessing the matter, that leftover rock and ore-dressing sand are not intended to be discarded? Leftover rock and ore-dressing sand may be re-used without special processing measures, for example for supporting mine galleries, and leftover rock also for landscaping the mine after it has ceased operation. Minerals may in future with the development of technology be recovered from ore-dressing sand for utilisation. To what extent should attention be paid to how definite plans the person carrying on mining operations has for such utilisation and to how soon after the leftover rock and ore-dressing sand has been tipped on the mining concession or its ancillary site the utilisation would take place?

(2) If the answer to the first question is that leftover rock and/or ore-dressing sand is to be regarded as waste within the meaning of Article 1(a) of the Council Directive on waste, it is further necessary to obtain an answer to the following supplementary questions:

(a) Does 'other legislation' within the meaning of Article 2(1)(b) of the Waste Directive (91/156/EEC), waste covered by which is excluded from the scope of the directive, and which under point (ii) concerns *inter alia* waste resulting from prospecting, extraction, treatment and storage of mineral resources,

mean exclusively the European Community's own legislation? Or may national legislation too, such as certain provisions of the Kaivoslaki and the Jäteasetus in force in Finland, be 'other legislation' within the meaning of the Waste Directive?

(b) If 'other legislation' means also national legislation, does that mean exclusively national legislation which was already in force at the time of entry into force of the Waste Directive 91/156/EEC or also that only enacted afterwards?

(c) If 'other legislation' means also national legislation, do fundamental European Community provisions relating to environmental protection or the principles of the Waste Directive set requirements for national legislation concerning the level of environmental protection as a condition for disapplying the rules of the Waste Directive? What sort of requirements could those be?

(1) OJ L 194 of 25.7.1975, p. 39.
(2) OJ L 78 of 26.3.1991, p. 32.

Reference for a preliminary ruling by the Tribunale di Bologna by order of that court of 20 February 2001 in the case of Condominio 'Facchini Orsini' against Kone Ascensori SpA

(Case C-129/01)

(2001/C 173/41)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Bologna of 20 February 2001, received at the Court Registry on 21 March 2001, for a preliminary ruling in the case of Condominio 'Facchini Orsini' against Kone Ascensori SpA on the following question:

'For the purposes of application of the provisions contained in Council Directive 93/13/EEC(1) of 5 April 1993 on unfair terms in consumer contracts published in Official Journal 1993 L 95, can the co-ownership of buildings referred to in Articles 1117-1139 of the Civil Code be regarded as a consumer where the individual owners are natural persons or are acting for purposes outside their trade, business or profession?'

(1) OJ L 95 of 21.4.1993, p. 29.

Reference for a preliminary ruling by the Employment Tribunal (Leeds), by order of that court of 12 January 2001, in the case of 1) Mr P. Breckon 2) Mr M. Barrett against Secretary of State for Employment

(Case C-137/01)

(2001/C 173/42)

Reference has been made to the Court of Justice of the European Communities by an order of the Employment Tribunal (Leeds) of 12 January 2001, which was received at the Court Registry on 27 March 2001, for a preliminary ruling in the case of 1) Mr P. Breckon 2) Mr M. Barrett against Secretary of State for Employment, on the following question:

'Are the requirements of Directive 80/987(1) fully satisfied by rules of national law which may result in a claim relating to holiday pay against the Guarantee Institution being dismissed owing to unforeseen delay in bringing about a state of insolvency in the employer, which delay was caused by the employer?'

(1) Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.1980, p. 23).

Reference for a preliminary ruling by the Oberster Gerichtshof der Republik Österreich, by orders of 28 February and 14 February 2001 in the cases of Christa Neukomm against Österreichischer Rundfunk and Josef Lauermann against Österreichischer Rundfunk

(Cases C-138/01 and C-139/01)

(2001/C 173/43)

Reference has been made to the Court of Justice of the European Communities by orders of the Oberster Gerichtshof der Republik Österreich of 28 February and 14 February 2001, received at the Court Registry on 27 March 2001, for a preliminary ruling in the cases of Christa Neukomm against Österreichischer Rundfunk and Josef Lauermann against Österreichischer Rundfunk on the following questions:

1. Are the provisions of Community law, in particular those on data protection (Articles 1, 2, 6, 7 and 22 of Directive 95/46/EC(1) in conjunction with Article 6 (formerly Article F) of the Treaty on European Union and Article 8

of the ECHR), to be interpreted as precluding national rules which require a public broadcasting corporation, as a legal entity, to communicate, and a State body to collect and pass on, data on income for the purpose of publishing the names and income of employees of a broadcasting corporation governed by public law?

2. If the Court of Justice of the European Communities rules that the answer to the above question is in the affirmative: Are the provisions precluding national rules of the kind described above directly applicable, in the sense that a corporation obliged to disclose data may rely on them to prevent the application of conflicting national rules, and may not therefore raise, as against the employees concerned by the disclosure, the fact that it is bound to comply with national rules?

([1]) OJ 1995 L 281, p. 31.

Action brought on 29 March 2001 by the Commission of the European Communities against the Italian Republic

(Case C-145/01)

(2001/C 173/44)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 29 March 2001 by the Commission of the European Communities, represented by Antonio Aresu, acting as Agent.

The applicant claims that the Court should:

— Declare that, by failing maintaining in force the provisions in Article 47(5) and (6) of Law No 428 of 29 December 1990, in so far as they:

  (a) provided for the non-application of the automatic transfer of all employment contracts or relationships from the transferor to the transferee, in the case of undertakings which have been the subject of a deed of arrangement involving the transfer of goods or in cases of undertakings under extraordinary liquidation, where the undertakings themselves continue to carry on business after transfer;

  (b) in the case of undertakings declared in a state of 'crisi aziendale' (economic crisis), they do not provide, for the transfer of the workforce and of the debts arising from an employment contract or relationship from the transferor to the transferee,

  the Italian Republic has failed to fulfil its obligations under Council Directive 77/187/EEC ([1]) of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, and in particular Articles 3 and 4 thereof;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 47(5) and (6) of Law No 428 of 1990 provides for the non-application of the rules laid down by Directive 77/187, in the following circumstances:

(a) the undertaking concerned falls into one of the following categories:

  — undertaking or production unit in respect of which the Comitato Interministeriale per la Politica Industriale (Inter-ministerial committee on industrial policy — CIPI) has declared a state of economic crisis in terms of Law No 675 of 1977;

  — undertaking in bankruptcy;

  — undertaking which has been the subject of a deed of arrangement involving the transfer of goods;

  — undertaking whose liquidation has been made public;

  — undertaking under extraordinary liquidation;

(b) an agreement has been concluded between workers' representatives and the employers, with regard to changes to working conditions or maintaining partial employment.

The Commission takes the view that Italy lawfully disapplied Directive 77/187 in respect of undertakings declared bankrupt and those in liquidation. On the other hand, the derogation for deeds of arrangement, extraordinary liquidation and the declaration of a state of economic crisis appear to be clearly contrary to Community law and the case-law of the Court of Justice.

Directive 77/187 makes no provision for exemption from the full effect of its provisions in respect of undertakings which have been the subject of a deed of arrangement involving the transfer of goods or which are subject to extraordinary administration, despite the Italian authorities views to the contrary.

So far as concerns those undertakings in respect of which the CIPI has made a finding of economic crisis within the meaning of Law No 675/77, it must be observed that Article 4a(3) of Directive 77/187 provides, so far as undertakings in grave economic crisis are concerned, that Member States may apply paragraph 2(b) to any transfers where the transferor is in a situation of serious economic crisis, as defined by national law, provided that the situation is declared by a competent public authority and open to judicial supervision, on condition that such provisions already exist in national law by 17 July 1998. According to a Joint Declaration of the Commission and the Council on the adoption of Directive 98/50, only Italy had legislation of that type. Furthermore, in that event also the principle that workers' rights should be protected remains untouched. That principle is not observed by the contested Italian legislation, which provides *sic et simpliciter* for the disapplication of Directive 77/187.

([1]) OJ 1977 L 61, p. 26.

Reference for a preliminary ruling from the Verwaltungsgerichtshof by order of that court of 23 March 2001 in the case of (1) Weber's Wine World HandelsgesmbH, (2) Ernestine Rathgeber, (3) Karl Schlosser, (4) Beta-Leasing GmbH v Abgabenberufungskommission Wien

(Case C-147/01)

(2001/C 173/45)

Reference has been made to the Court of Justice of the European Communities by an order of the Verwaltungsgerichtshof (Administrative Court), Austria, of 23 March 2001, which was received at the Court Registry on 2 April 2001, for a preliminary ruling in the case of (1) Weber's Wine World HandelsgesmbH, (2) Ernestine Rathgeber, (3) Karl Schlosser, (4) Beta-Leasing GmbH v Abgabenberufungskommission Wien on the following question:

Do Article 10 EC (formerly Article 5 of the EC Treaty) and point 3 of the operative part of the judgment of the Court of Justice of the European Communities of 9 March 2000 in Case C-437/97 Evangelischer Krankenhausverein Wien v Abgabenberufungskommission Wien and Wein & Co. HandelsgesmbH, formerly Ikera Warenhandelsgesellschaft mbH v Oberösterreichische Landesregierung [2000] ECR I-1157, according to which Article 3(2) of Directive 92/12/EEC ([1]) may not be relied on in support of claims relating to a tax such as the duty on alcoholic beverages paid or chargeable prior to the date of that judgment, except by claimants who before that date initiated legal proceedings or raised an equivalent administrative claim, preclude the application of the provision, created by the amendment to the Wiener Abgabenordnung (Vienna Tax Code, WAO) of 2 March 2000, LGBI. No 9/2000, and *applicable also to tax liabilities which arose before promulgation of that amendment*, in Paragraph 185(3) of the WAO, under which there is no claim to repayment where the economic burden of the duty was borne by a person other than the taxable person?

([1]) OJ L 76 of 23.3.1992, p. 1.

Action brought on 4 April 2001 by the Hellenic Republic against the Commission of the European Communities

(Case C-148/01)

(2001/C 173/46)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 4 April 2001 by the Hellenic Republic represented by Vasilios Kontolaimos, legal Adviser in the State Legal Service, and Khrisoula Tsiavou, Legal Agent of that Service, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix.

The applicant claims that the Court should:

— grant the application;

— annul or, in the alternative, amend Commission Decision C(2001) 198 Final of 1 March 2001 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF).

Pleas in law and main arguments

The Hellenic Republic contends that a financial correction has been imposed upon it unlawfully so far as concerns the amount of the interest due for late payment of the additional levy in the milk and milk products sector.

The Hellenic Republic contends that the proposed financial correction should be annulled because the applicable legal provisions have been misinterpreted and the statement of reasons is insufficient.

Reference for a preliminary ruling by the Court of Appeal (England & Wales) (Civil Division), by order of that court of 13 March 2001, in the case of Commissioners of Customs and Excise against First Choice Holidays plc

(Case C-149/01)

(2001/C 173/47)

Reference has been made to the Court of Justice of the European Communities by an order of the Court of Appeal (England & Wales) (Civil Division) of 13 March 2001, which was received at the Court Registry on 26 March 2001, for a preliminary ruling in the case of Commissioners of Customs and Excise against First Choice Holidays, on the following questions:

Where a tour operator within the meaning of Article 26 of Council Directive 77/388/EEC [1]

(a) supplies package holidays to customers through the disclosed agency of a travel agent;

(b) permits the agent to arrange the supply of package holidays at a discount from the price published in the tour operator's brochure (the customer being liable to pay only the discounted price for the holiday);

(c) requires the agent who arranges the supply of a package holiday at a discount not only to pass on to the tour operator the price actually charged to the customer but also to pay to the tour operator an additional sum equal to the discount given to the customer (who is unaware of the financial arrangements between the tour operator and the agent), so that the agent accounts to the tour operator for the full brochure price of the holiday;

(d) agrees to pay the agent a commission based on the brochure price of the holiday, which in practice is paid by set-off against the sums due from the agent as mentioned in (c) above;

(e) does not know whether or not the agent has arranged the sale of a particular holiday at a discounted price, or the amount of the discount;

(f) as between itself and the agent, accounts for the sale of the holiday on the basis that it has been paid the full brochure price of the holiday;

1. Having established the above facts, how should the additional sum (referred to in (c) above) paid by the travel agent to the tour operator be characterised for the purposes of Article 26.2?

2. Does 'the total amount to be paid by the traveller' within Article 26.2 include the additional sum referred to in (c) above?

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[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.06.77, p. 1).

Action brought on 9 April 2001 by the Commission of the European Communities against the French Republic

(Case C-150/01)

(2001/C 173/48)

An action against the French Republic was brought before the Court of Justice of the European Communities on 9 April 2001 by the Commission of the European Communities, represented by M. Patakia and B. Mongin, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by retaining legislation which requires intellectual property advisers established in other Member States to appear on the register of French intellectual property advisers, and thus to possess the French qualification and to be ordinarily resident or have a place of business in France, in order to supply services in France, the French Republic has failed to fulfil its obligations under Articles 49 to 55 of the EC Treaty and Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration [1];

2. order the French Republic to pay the costs.

Pleas in law and main arguments

— By making an 'intellectual property adviser' who provides services subject to the same obligations as an 'intellectual property adviser' established in France, the French legislation infringes Article 49 EC. While the pursuit, even as a provider of services, of an activity which is not

harmonised at Community level may be subject to provisions justified in the general interest such as rules concerning organisation of the profession, qualification and professional conduct, the Commission considers that the French legislation lays down disproportionate and excessively restrictive conditions for the exercise in France of the profession in question by intellectual property advisers lawfully established in another Member State and supplying services in France on an isolated occasion. Other measures — less restrictive than mandatory entry on a register preceded by an examination — could be envisaged, for example:

1. a requirement to practice under the home-country title;

2. a requirement that the person practising the profession produces his qualification;

3. a declaration system (such as that provided for in Article 22 of Council Directive 85/384/EEC on the mutual recognition of architects' qualifications) [2].

— Infringement of Article 49 EC by imposing residence or a place of business in France as a condition for the supply of services there on an isolated occasion.

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[1] OJ L 19, 24.1.1989, p. 16.

[2] Council Directive 85/384/EEC on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ No L 223, 21.8.1985, p. 15).

Appeal brought on 9 April 2001 by S.C.E.A. La Conqueste against the order made on 30 January 2001 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-215/00 between S.C.E.A. La Conqueste and the Commission of the European Communities

(Case C-151/01 P)

(2001/C 173/49)

An appeal against the order made on 30 January 2001 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-215/00 between S.C.E.A. La Conqueste and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 9 April 2001 by S.C.E.A. La Conqueste, represented by A. Lyon-Caen, F. Fabiani and F. Thiriez, avocats, with an address for service in Paris.

The appellant claims that the Court should:

— set aside the order of the Court of First Instance of the European Communities of 30 January 2001;

— order the European Commission to pay all the costs, with all the legal consequences which that entails.

Pleas in law and main arguments

— Error of law: given the structure of the appellant company's production chain, which is unique in the south-west, the Court of First Instance should have specifically examined whether, as at the date of its adoption, the contested regulation particularly affected the appellant.

— Distortion of the appellant's claims.

— Absence of a sufficient statement of reasons for the ruling on the plea alleging disregard of the right to seek effective relief by bringing proceedings: the contested order does not deal with the appellant's argument that the Commission's interpretation of Article 7 of Regulation No 2081/92 [1], to the effect that that article restricts the right to object to the procedure at Member State level, disregards the right to seek effective relief by bringing proceedings.

— Misinterpretation of Article 7 of Regulation No 2081/92: disregard by the Community legal order of the guaranteed right to seek effective relief by bringing proceedings, which constitutes a general legal principle: the effect of a failure to act on the part of a Member State must be such as to permit an undertaking which otherwise fulfils the admissibility requirements laid down by Article 7(4) to raise an objection with the Commission.

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[1] Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208 of 24.7.1992, p. 1).

Reference for a preliminary ruling by the Sozialgericht Leipzig by order of that court of 30 March 2001 in the case of Karen Mau against Bundesanstalt für Arbeit

(Case C-160/01)

(2001/C 173/50)

Reference has been made to the Court of Justice of the European Communities by order of the Sozialgericht Leipzig (Social Court, Leipzig) of 30 March 2001, received at the Court Registry on 12 April 2001, for a preliminary ruling in the case of Karen Mau against the Bundesanstalt für Arbeit (Federal Labour Office) on the following questions:

1. Does Paragraph 183(1) of Sozialgesetzbuch III provide for a date within the meaning of Article 3(2) of Council Directive 80/987/EEC([1]) of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer?

2. Has the Federal Republic of Germany effectively limited the liability of the Bundesanstalt für Arbeit in accordance with Article 4 of Directive 80/987/EEC?

3. Is the Federal Republic of Germany liable to pay damages to the plaintiff on account of defective implementation of Directive 80/987/EEC?

4. Does the Court hold to its view that the date to be taken as the basis for determining the reference period is that of the request for the opening of proceedings?

5. Is the calculation of the insolvency benefit period provided for in Paragraph 183(1) of Sozialgesetzbuch III compatible with Article 141 EC?

6. In the case of claimants who are on child raising leave, is the day before that leave was taken the relevant date for the purposes of Article 3(2) of Directive 80/987/EEC?

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

Reference for a preliminary ruling from the Verfassungsgerichtshof by order of that court of 2 March 2001 in the election proceedings brought by the electoral group 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG'

(Case C-171/01)

(2001/C 173/51)

Reference has been made to the Court of Justice of the European Communities by an order of the Verfassungsgerichtshof (Constitutional Court, Vienna) of 2 March 2001, which was received at the Court Registry on 19 April 2001, for a preliminary ruling in the election proceedings brought by the electoral group 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG' on the following questions:

Question 1

Is Article 10(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association to be interpreted as precluding a provision of a Member State which excludes Turkish workers from eligibility to the general assembly of a chamber of workers?

Question 2

If the answer to Question 1 is affirmative: Is Article 10(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association directly applicable Community law?

Action brought on 23 April 2001 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-174/01)

(2001/C 173/52)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 23 April 2001 by the Commission of the European Communities, represented by H. Støvlbæk and J. Adda, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should

— Declare that, by failing to notify the Commission of plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein, in accordance with Article 11 of Council Directive 96/59/EC([1]) of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The provisions of the Grand-Ducal Regulation of 24 February 1988, put forward by the Grand Duchy as its disposal plan, cannot be considered fully to meet the requirements of Article 11(1) of the directive in so far as concerns the equipment included in the inventory provided for by Article 4 thereof. Member States are to determine, on the basis of the inventory provided for under Article 4(1) of the directive, the dates on which it is possible, in view of the quantities of spent PCB and of the number of contaminated pieces of equipment involved and of the available processing capacity, to require that the elimination and decontamination required by the directive be carried out; the Luxembourg authorities, however, have taken no steps to satisfy themselves that what they termed the 'filière de décontamination ou d'élimination' is able to process the equipment and PCB involved within the period prescribed since, other than the laying down of a final deadline of 31 December 2010, no indication is given as to plans regarding the decontamination and elimination of spent equipment and PCB in such a case.

([1]) OJ 1996 L 243, p. 31.

Action brought on 24 April 2001 by the Commission of the European Communities against the French Republic

(Case C-177/01)

(2001/C 173/53)

An action against the French Republic was brought before the Court of Justice of the European Communities on 24 April 2001 by the Commission of the European Communities, represented by H. Støvlbæk and J. Adda, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by failing to send it a summary of inventories compiled of equipment with PCB volumes of more than 5 dm^3, plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein and plans for the separate removal and collection of equipment containing PCBs which is not subject to inventory in accordance with Article 4(1) and as referred to in Article 6(3) of Council Directive 96/59/EC([1]) of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), the French Republic has failed to fulfil its obligations under Articles 4 and 11 of the abovementioned directive;

— Order the French Republic to pay the costs.

Pleas in law and main arguments

Decree No 2001/63 of 18 January 2001 which the French authorities forwarded to the Commission provides for the drawing-up of a national inventory of equipment with a PCB volume of more than 5 dm^3 which is to be the basis for a national plan for decontamination or disposal of inventoried equipment which must subsequently be adopted in accordance with the procedure laid down in Article 7(5) et seq of the aforementioned decree. The Order of 13 February 2001 has as its sole purpose to request those who hold equipment containing PCB to make a declaration before the Prefect. The Commission therefore remains of the view, first, that the implementation of a procedure for drawing up a national inventory does not remedy the complaint regarding failure to communicate to it a summary of inventories pursuant to Article 4(1) of the directive.

Secondly, the adoption of that decree is not sufficient to remedy the complaint that that Member State had not drawn up either a plan for decontamination and/or disposal of contaminated equipment or plans for the collection and subsequent disposal of equipment not subject to inventory.

([1]) OJ 1996 L 243, p. 31.

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven, by judgment of that court of 26 April 2001 in the case of (1) H. Jippes, (2) Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren and (3) Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren against the Minister van Landbouw, Natuurbeheer en Visserij

(Case C-189/01)

(2001/C 173/54)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) of 26 April 2001, received at the Court Registry on 27 April 2001, for a preliminary ruling in the case of (1) H. Jippes, (2) Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren and (3) Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren against the Minister van Landbouw, Natuurbeheer en Visserij on the following questions:

1. Is the ban on vaccination imposed by Article 13 of Directive 85/511/EEC [1] invalid on the ground of inconsistency with Community law, in particular the principle of proportionality?

2. Is the way in which the Commission has applied the aforesaid Article 13, in particular by the adoption of Decision 2001/246/EC [2], as amended by Decision 2001/279/EEC [3], invalid on the ground of inconsistency with Community law?

[1] OJ 1985 L 315, p. 11.
[2] OJ 2001 L 88, p. 21.
[3] OJ 2001 L 96, p. 19.

Removal from the register of Case C-88/00 [1]

(2001/C 173/55)

By order of 9 March 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-88/00: (reference for a preliminary ruling from the Supremo Tribunal Administrativo): Directora-Geral do Departamento para os Assuntos do Fundo Social Europeu (DAFSE) v MOBILCROMO — Indústria de Mobiliário e Revestimentos Metálicos, Ltd.

[1] OJ C 149 of 27.05.2000.

Removal from the register of Case C-403/00 [1]

(2001/C 173/56)

By order of 27 March 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-403/00: Commission of the European Communities v Republic of France.

[1] OJ C 355 of 9.12.2000.

Removal from the register of Case C-264/98 [1]

(2001/C 173/57)

By order of 2 April 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-264/98: (reference for a preliminary ruling from the Tribunal de Première Instance de Charleroi): Tibor Balog v Royal Charleroi Sporting Club ASBL (RCSC).

[1] OJ C 278 of 5.9.1998.

Removal from the register of Case C-377/00 [1]

(2001/C 173/58)

By order of 5 April 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-377/00: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 355 of 9.12.2000.

COURT OF FIRST INSTANCE

ORDER OF THE COURT OF FIRST INSTANCE

of 30 January 2001

in Case T-49/00: Industria Pugliese Olive in Salamoia Erbe Aromatiche Snc (Iposea) v Commission of the European Communities [1]

(Common Customs Tariff — Regulation amending the combined nomenclature — Action for annulment — Inadmissibility)

(2001/C 173/59)

(Language of the case: Italian)

In Case T-49/00: Industria Pugliese Olive in Salamoia Erbe Aromatiche Snc (Iposea), established at Cerignola (Italy), represented by A. Guarino, of the Rome Bar, and A. Lorang, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 2 Rue des Dahlias, v Commission of the European Communities (Agents: J. Schieferer and M. Moretto) — application for annulment of Commission Regulation (EC) No 2626/1999 of 13 December 1999 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1999 L 321, p. 3) — the Court of First Instance (Second Chamber), composed of: A.W.H. Meij, President, and A. Potocki and J. Pirrung, Judges; H. Jung, Registrar, made an order on 30 January 2001, the operative part of which is as follows:

1. *The action is dismissed as inadmissible.*

2. *The applicant is to pay the costs.*

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[1] OJ C 149 of 27.5.2000.

Action brought on 13 March 2001 by Albert Nardone against the Commission of the European Communities

(Case T-59/01)

(2001/C 173/60)

(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 13 March 2001 by Albert Nardone, residing at Piétrain (Belgium), represented by Juan Ramon Iturriagagoitia Bassas, avocat.

The applicant claims that the Court should:

— annul the express decision of the appointing authority of 15 December 2000, in so far as that decision rejects the applicant's request of 23 May 2000 for the grant of an invalidity pension in accordance with the second paragraph of Article 78 of the Staff Regulations of officials;

— order the grant of an invalidity pension calculated in accordance with the second paragraph of Article 78 of the Staff Regulations of officials;

— alternatively, order, by interim judgment, the setting-up of an invalidity committee as provided for in Article 53 of the Staff Regulations of officials, with the task of examining whether the applicant is suffering from total permanent invalidity within the meaning of Article 78 of the Staff Regulations of officials;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant entered the service of the Communities in Luxembourg in 1963. Upon being transferred to the Commission in Brussels in 1970, he was assigned to work in the Berlaymont building. According to the applicant, the working conditions in the workshops at first basement level and mezzanine level in that building were insalubrious and characterised by a dusty atmosphere, caused by asbestos dust discovered at a later date.

In October 1981 the applicant decided to submit his resignation. Following his resignation, the applicant's physical state was such that he could not perform any occupational activities whatsoever.

In November 1999 the applicant, who had previously brought proceedings seeking official recognition of his occupational disease and compensation for the damage which he alleges to have suffered, submitted a request under Article 90 of the Staff Regulations seeking the grant of an invalidity pension pursuant to Article 78 of the Staff Regulations. The Commission refused that request, taking the view that it was not the applicant's invalidity which had caused him to cease working for the Communities.

The applicant claims that the Commission committed an abuse of process when adopting a decision which should have been taken by an invalidity committee in accordance with the Staff Regulations, and pleads that the Commission was under a duty to afford assistance and that he was entitled to the benefit of working conditions which respect the health, safety and dignity of the employee, as well as the right to proper administration.

Action brought on 13 March 2001 by Marie-Josée Bollendorff against the European Parliament

(Case T-60/01)

(2001/C 173/61)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 13 March 2000 by Marie-Josée Bollendorff, residing at Bertrange (Luxembourg), represented by Laurent Mosar, avocat, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision by which the appointing authority took the view that the applicant's absence from 21 March 2000 to 30 April 2000 was irregular and deducted 194 working hours from her annual leave entitlement;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

The applicant's incapacity for work, certified by two doctors, was contested by the institution's medical officer. Those two doctors then confirmed their certificates, and the applicant was absent during the period covered by the certificates. Later on, the applicant discovered that the time for which she had been absent during the period in question had been deducted from her annual leave entitlement.

In support of her claim, the applicant maintains that the deduction decision was adopted in breach of Articles 59 and 60 [of the Staff Regulations] and that it therefore has no legal basis whatever.

According to the applicant, no decision concerning a deduction from her annual leave entitlement was notified to her by the head of the Personnel Division, and the appointing authority at no time communicated to the applicant any decision which would have enabled her to comment on the fact that the certificates were contested. Consequently, the European Parliament has infringed Article 25 of the Staff Regulations.

Action brought on 19 March 2001 by Afrikanische Frucht-Compagnie GmbH against the Council of the European Union and the Commission of the European Communities

(Case T-64/01)

(2001/C 173/62)

(Language of the case: German)

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 19 March 2001 by Afrikanische Frucht-Compagnie GmbH, established in Hamburg (Germany), represented by Gerrit Schohe, Rechtsanwalt, with an address for service in Luxembourg.

The applicant claims that the Court should:

— order the defendants to pay to the applicant EUR 1 358 228 together with interest thereon at the rate of 3,75 % from the date of pronouncement of judgment and reasonable compensation for the inflation which has occurred since 1 January 1999, at the further rate of at least 1,1 % per annum on EUR 1 358 228 ;

— declare that the defendants are obliged to compensate the applicant for all further loss and damage suffered or to be suffered by it as a result of Regulations (EC) Nos 1637/98 and 2362/98 and, in particular, the rules contained therein;

— reserve its decision as to costs.

Pleas in law and main arguments

The applicant has for many years sold bananas from third countries to customers in Austria, Finland and Sweden.

The action concerns the calculation of the applicant's reference quantities for 1999. According to the applicant, that calculation is characterised by three special features which derogate from the rules governing the organisation of the market applying in respect of the years prior to 1999, and as a result of which the market operators existing in the Community up until 31 December 1994 have been placed at a disadvantage, whilst advantageous treatment has been afforded to operators in the new Member States. First, the rule governing the determination of the reference period has been changed. Next, in calculating the reference quantities for 1999, the Community proceeded on the basis of excessively high quantities in so far as concerns market operators in Austria, Finland and Sweden. Lastly, although the reference quantities for 1999 should have been calculated in accordance with Articles 3 and 5 of Regulation No 1442/93 [1], they were in fact calculated in accordance with the criterion of the so-called 'actual importer'.

The applicant claims that those three special features have resulted in the applicant and operators in a similar position being granted lower reference quantities than they would have received if the rules governing the organisation of the market had continued to be applied without being changed.

The applicant seeks, by way of compensation, to be placed in the position in which it would have been had its reference quantity for 1999 been calculated in accordance with the unchanged rules governing the organisation of the market.

In support of its claims, it asserts that the Community has infringed Article 6 of Regulation No 1924/95 [2] and the principle of the protection of legitimate expectations, by failing to determine the applicant's rights of access to the market in 1999 in accordance with Articles 3 and 5 of Regulation No 1442/93. In addition, it maintains that the Community has failed, in its formulation of the prohibition of retroactive effect, to respect the requirement of legal certainty, in that it has retroactively applied the distribution formula prescribed by Regulation No 2362/98 [3] to reference quantities from the years 1994 to 1996.

In addition, the special rules applying to operators in the new Member States infringe the prohibition of discrimination laid down in the second subparagraph of Article 34(2) EC; moreover, no adequate statement of reasons has been given.

Lastly, the Dispute Settlement Body of the World Trade Organisation has declared that the system for the allocation of import licences, as laid down in Regulations Nos 1637/98 and 2362/98, is incompatible in certain essential respects with the law governing the World Trade Organisation. In the applicant's view, the Community has failed to respect the fact that it is bound by that decision.

(1) Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ 1993 L 142, p. 6).

(2) Commission Regulation (EC) No 1924/95 of 3 August 1995 laying down transitional measures for the application of the tariff quota arrangements for imports of bananas as a result of the accession of Austria, Finland and Sweden (OJ 1995 L 185, p. 24).

(3) Commission Regulation (EC) No 2362/98 of 28 October 1998 laying down detailed rules for the implementation of Council Regulation (EEC) No 404/93 regarding imports of bananas into the Community (OJ 1998 L 293, p. 32).

Action brought on 19 March 2001 by Internationale Fruchtimportgesellschaft Weichert & Co. against the Council of the European Union and the Commission of the European Communities

(Case T-65/01)

(2001/C 173/63)

(Language of the case: German)

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 19 March 2001 by Internationale Fruchtimportgesellschaft Weichert & Co., established in Hamburg (Germany), represented by Gerrit Schohe, Rechtsanwalt, with an address for service in Luxembourg.

The applicant claims that the Court should:

— order the defendants to pay to the applicant EUR 3 604 232 together with interest thereon at the rate of 2,9 % from the date of pronouncement of judgment and reasonable compensation for the inflation which has occurred since 1 January 1999, at the further rate of at least 1,1 % per annum on EUR 3 604 232 ;

— declare that the defendants are obliged to compensate the applicant for all further loss and damage suffered or to be suffered by it as a result of Regulations (EC) Nos 1637/98 and 2362/98 and, in particular, the rules contained therein;

— reserve its decision as to costs.

Pleas in law and main arguments

The pleas in law and main arguments are analogous to those advanced in Case T-64/01 (Afrikanische Frucht-Compagnie GmbH v Council and Commission).

Action brought on 23 March 2001 by Carmine Salvatore Tralli against the European Central Bank

(Case T-69/01)

(2001/C 173/64)

(Language of the case: German)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 23 March 2001 by Carmine Salvatore Tralli, of Nidderau (Germany), represented by Norbert Pflüger, Regina Steiner and Silvia Mittländer, Rechtsanwälte.

The applicant claims that the Court should:

— annul the decision of the President of the European Central Bank of 12 March 2001 rejecting the applicant's complaint;

— annul the defendant's notice of termination dated 29 November 2000;

— declare that the employment relationship existing between the parties has not been brought to an end by the notice of termination dated 29 November 2000;

— declare that the employment relationship existing between the parties has continued to exist, without being terminated, after 31 December 2000;

— order the defendant to continue, beyond 31 December 2000, to provide the applicant with employment as a security guard in accordance with the contractually agreed conditions of employment;

— order the defendant to pay the costs.

Pleas in law and main arguments

The action is based on the same facts and circumstances as in Cases T-373/00 Tralli v ECB (OJ C 61 of 24.2.2001, p. 61), T-27/01 Tralli v ECB (not yet published) and T-56/01 Tralli v ECB (not yet published); the pleas in law and arguments advanced are analogous to those put forward in those cases.

Action brought on 30 March 2001 by Territorio Histórico de Alava — Diputación Foral de Alava and Others against Commission of the European Communities

(Case T-77/01)

(2001/C 173/65)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 March 2001 by Territorio Histórico de Alava — Diputación Foral de Alava and Others, Spain, represented by Ramón Falcón, lawyer.

The applicants claim that the Court should:

— annul the defendant's decision, at least in so far as regards Article 43 of the Normas Forales mentioned in Article 1(b), (c) and (d) of that decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action has been brought against Commission Decision of 31 October 2000 on Spain's corporation tax laws [1], in so far as it finds any aid granted by Spain under Article 43 of Provincial Act 3/96 of 26 June 1996 on corporation tax adopted by the Provincial Council of Vizcaya; Article 43 of Provincial Act 7/1996 of 4 July 1996 on corporation tax adopted by the Provincial Council of Guipúzcoa; and Article 43 of Provincial Act 24/1996 of 5 July 1996 on corporation tax adopted by the Provincial Council of Álava, to ECSC steel undertakings established in Spain is incompatible with the common market in coal and steel.

Those fiscal provisions grant a 25 % reduction in respect of investments actually made in, *inter alia*, the creation of branches or permanent establishments abroad as well as the acquisition of shares in foreign companies or the setting-up of subsidiaries directly associated with the export of goods or services.

The contested decision was adopted following the procedure laid down in Article 6(5) of Commission Decision No 2496/96/ECSC ('the Steel Aid Code').

In support of their arguments, the applicants claim that:

— the aid is non-existent, inasmuch as the provisions in issue are horizontal in nature and are of general application which does not result in any advantage either at regional level or with respect to a specific category of undertaking. The aid is non-existent also under the ECSC Treaty, so that the applicants allege infringement of Article 4(c) of that Treaty, as well as misuse of powers, on the ground that the defendant chose the ECSC Treaty as the basis for its decision.

— the Commission has failed to state reasons, in particular inasmuch as the contested decision amounts to a change of assessment criterion on the part of the Commission, which has given no reasons for it.

— the Commission has failed to state reasons and committed an error of assessment, inasmuch as the finding of aid automatically applies to the Normas Forales by the mere fact that they coincide, so far as their content is concerned, with State tax legislation.

— the contested decision is arbitrary and disproportionate, inasmuch as it does not analyse the possibility of excluding from its scope part of the Normas Forales which it envisages.

— the procedure laid down in the 'Steel Aid Code' was infringed, *inter alia* by exceeding the time-limit of 3 months prescribed in Article 6(5) of Decision 2496/96/ECSC.

(1) OJ 2001 L 76, p. 57.

Action brought on 10 April 2001 by Merck KgaA against the Office for Harmonisation in the Internal Market

(Case T-83/01)

(2001/C 173/66)

(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 10 April 2001 by Merck KgaA, a company established under the laws of Germany, represented by Dominique Dupuis Latour of BPDAGI, Paris (France).

The applicant claims that the Court should:

— set aside the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments:

Trade mark concerned:	OSTEOCALCIUM — registration n. 0000955138.
Product or service:	'Pharmaceutical; veterinary and sanitary preparations' (class 5 of the Nice Agreement).
Challenged Decision before the Board of Appeal:	Refusal of registration of the trade mark in question, because of its alleged descriptive character.
Grounds submitted:	Infringement of Article 7 (1) c) and b) of Regulation (EC) No 40/94.

Action brought on 1 April 2001 by the Association Contre l'Horaire d'Été against the European Parliament and the Council of the European Union

(Case T-84/01)

(2001/C 173/67)

(Language of the case: French)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance of the European Communities on 1 April 2001 by the Association Contre l'Horaire d'Été, established at Marly-le-Roi (France), represented by Corinne Lepage and François Steinmetz, avocats.

The applicant claims that the Court should:

— annul Directive 2000/84/EC of the European Parliament and of the Council of 19 January 2001 on summer-time arrangements, published in the *Official Journal of the European Communities* on 2 February 2001.

Pleas in law and main arguments

The applicant in the present case, an association formed to draw the attention of the public to the alleged drawbacks arising from 'changing the clocks', seeks annulment of Directive 2000/84/EC of the European Parliament and of the Council of 19 January 2001 on summer-time arrangements.

In support of its claims, the applicant maintains:

— that the wrong legal basis has been chosen (Article 95 of the Treaty, formerly Article 100a), inasmuch as the directive at issue does not satisfy the twofold condition of participating in the approximation of the provisions laid down by law, regulation or administrative action in Member States and having as its objective the establishment and functioning of the internal market;

— that the directive at issue will result in drawbacks and dangers to individuals, which should be seen as obstacles to the proper functioning of the internal market.

Corrigendum to Notice No 2001/C 150/30

(2001/C 173/68)

(Official Journal of the European Communities C 150 of 19 May 2001)

On the cover page under Notice No 2001/C 150/30 and on page 16:

for: 'Case C-10/01'
read: 'Case C-130/01'