ISSN 0378–6986

Official Journal

of the European Communities

C 245

Volume 44

1 September 2001

English edition

Information and Notices

Notice No | Contents | Page

(Continued overleaf)

(Continued overleaf)

EN

(Continued on inside back cover)

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Sixth Chamber)

of 3 July 2001

in case C-380/99 (reference for a preliminary ruling from the Bundesfinanzhof): Bertelsmann AG v Finanzamt Wiedenbrück [1]

(Sixth VAT Directive — Article 11A(1)(a) — Taxable amoumt — Delivery costs of bonuses in kind)

(2001/C 245/01)

(Language of the case: German)

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

In Case C-380/99: 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 Bertelsmann AG v Finanzamt Wiedenbrück — on the interpretation of article 11A(1)(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 (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, V. Skouris (Rapporteur), J.-P. Puissochet, R. Schintgen and N. Colneric, Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 3 July 2001, in which it has ruled:

Article 11A(1)(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, is to be interpreted as meaning that the taxable amount for the supply of a bonus in kind constituting consideration for the introduction of a new customer includes, besides the purchase price of that bonus, the costs of delivery, when they are paid by the supplier of the bonus.

---

[1] OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT

(Third Chamber)

of 3 July 2001

in Case C-297/00: Commission of the European Communities v Grand Duchy of Luxembourg [1]

(Failure by a Member State to fulfil its obligations — Directive 98/35/EC — Training of seafarers — Failure to implement within prescribed period)

(2001/C 245/02)

(Language of the case: French)

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

In Case C-297/00: Commission of the European Communities (Agent: B. Mongin) v Grand Duchy of Luxembourg (Agents: initially P. Steinmetz, and subsequently J. Faltz) — application for a declaration that, by failing to bring into force within the prescribed period the laws, regulations and administrative provisions, including any penalties, necessary to comply with Council Directive 98/35/EC of 25 May 1998 amending

Directive 94/58/EC on the minimum level of training of seafarers (OJ 1998 L 172, p. 1), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 249 EC and Article 2 of that directive — the Court (Third Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, for the Registrar, has given a judgment on 3 July 2001, in which it:

1. *Declares that, by failing to bring into force within the prescribed period the laws, regulations and administrative provisions, including any penalties, necessary to comply with Council Directive 98/35/EC of 25 May 1998 amending Directive 94/58/EC on the minimum level of training of seafarers, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of that directive;*

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

([1]) OJ C 273 of 23.9.2000.

ORDER OF THE COURT

(Fourth Chamber)

of 19 June 2001

in Joined Cases C-9/01 to C-12/01 (references for a preliminary ruling from the Hof van Beroep te Gent): Stéphane Monnier v Govan Sports NV, Edwin van Ankeren v Govan Sports NV, Govan Sports NV v Pascal Jacobs and Govan Sports NV v Dannie D'Hondt ([1])

(Article 104(3) of the Rules of Procedure — Activity of procuring employment for professional sportsmen)

(2001/C 245/03)

(Language of the case: Dutch)

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

In Joined Cases C-9/01 to C-12/01: references to the Court under Article 234 EC from the Hof van Beroep te Gent (Court of Appeal, Ghent), Belgium, for a preliminary ruling in the proceedings pending before that court between Stéphane Monnier and Govan Sports NV, Edwin van Ankeren and Govan Sports NV, Govan Sports NV and Pascal Jacobs, and Govan Sports NV and Dannie D'Hondt — on the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Articles 86 and 90(1) of the EC Treaty (now Articles 82 EC and 86(1) EC) — the Court (Fourth Chamber), composed of: A. La Pergola, President of the Chamber, D.A.O. Edward and C.W.A. Timmermans (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 19 June 2001, in which it rules:

Public employment procurement offices are subject to the prohibition in Article 86 of the EC Treaty (now Article 82 EC), provided that the application of that provision does not frustrate the specific function entrusted to them. A Member State which prohibits any activity of mediation and intervention between the seeking and offering of employment which is not carried on by those offices infringes Article 90(1) of the EC Treaty (now Article 86(1) EC) if it creates a situation in which public employment procurement offices are necessarily put in a position where they contravene the provisions of Article 86 of the Treaty. That is the case in particular where the following conditions are met:

— *the public employment procurement offices are manifestly unable to satisfy demand on the labour market for the kind of activities concerned;*

— *the actual carrying on of employment procurement activities by private agencies is rendered impossible by the maintenance in force of provisions of law which prohibit those activities on pain of criminal and administrative penalties;*

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

([1]) OJ C 61 of 24.2.2001.

Appeal brought on 23 May 2001 by T. Port GmbH & Co. KG against the judgment delivered on 20 March 2001 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-52/99 between T. Port GmbH & Co. KG and the Commission of the European Communities

(Case C-213/01 P)

(2001/C 245/04)

An appeal against the judgment delivered on 20 March 2001 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-52/99 between T. Port GmbH & Co. KG and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 23 May 2001 by T. Port GmbH & Co. KG, represented by Gert Meier, Rechtsanwalt, Cologne.

The appellant claims that the Court should:

1. set aside the contested judgment in so far as the Court of First Instance dismissed the plea in law, that the Commission wrongly failed to take into account the quantity judicially determined by the Finanzgericht Hamburg in calculating the reference quantity for the years 1997 to 1999 (paragraph 88); and

2. order the Commission to pay the costs

Pleas in law and main arguments

The Court of First Instance fails to take proper account of the scope of Article 5(2) and (3) of Regulation No 2362/98 [1]. In accordance with that provision, any customs duty paid in respect of the quantity imported constitutes sufficient evidence of the reference quantity to which the operator is entitled. The relevant duty is that which was due from the importer on the day of importation. The duty applicable to the appellant on the day of importation was the quota duty, which the Court of First Instance fails to take into account. The Finanzgericht Hamburg had made an interim order to the effect that the customs must accept the importation of the 'quantity judicially determined' without a certificate, provided the quota duty was paid. The competent Hauptzollamt had decided that the duty due from the appellant was the quota duty. The appellant actually paid it. In relation to the question of actual payment of the customs duty by the appellant in its capacity as importer, the fact that the appeal court annulled the interim order of the Finanzgericht Hamburg, and that the Hauptzollamt subsequently amended the duty notice and determined the normal duty, is irrelevant. In relation to the quantity judicially determined, it is obvious from the wording of Article 5(3)(b) that the duty determined by the customs authorities on the day of importation and paid for the quantity imported constitutes sufficient evidence of the reference quantity to which the appellant was entitled.

---

[1] OJ 1998 L 293, p. 32.

Reference for a preliminary ruling from the Handelsgericht Wien by order of that court of 26 February 2001 in the case of Budejovicky Budvar, n.p. v Rudolf Ammersin GmbH

(Case C-216/01)

(2001/C 245/05)

Reference has been made to the Court of Justice of the European Communities by an order of the Handelsgericht Wien (Commercial Court, Vienna) of 26 February 2001, which was received at the Court Registry on 25 May 2001, for a preliminary ruling in the case of Budejovicky Budvar, n.p. v Rudolf Ammersin GmbH on the following questions:

1. Is the application of a provision of a bilateral agreement concluded between a Member State and a non-member country, under which a simpe/qualified geographical indication which in the country of origin is the name neither of a region nor a place nor a country is accorded the absolute protection, regardless of any misleading, of a qualified geographical indication within the meaning of Regulation No 2081/92 [1], compatible with Article 28 EC and/or Regulation No 2081/92, if on application of that provision the import of a product which is lawfully put on the market in another Member State may be prevented?

2. Does this apply also where the geographical indication which in the country of origin is the name neither of a region nor a place nor a country is not understood in the country of origin as a geographical designation for a specific product, and also not as a simple or indirect geographical indication?

3. Do the answers to Questions 1 and 2 apply also where the bilateral agreement is an agreement which the Member State concluded before its accession to the European Union and continued after its accession to the European Union with a successor State to the original other State party to the agreement by means of a declaration of the Federal Government?

4. Does the second paragraph of Article 307 EC oblige the Member State to interpret such a bilateral agreement, concluded between that Member State and a non-member country before the Member State's accession to the EU, in conformity with Community law as stated in Article 28 EC and/or Regulation No 2081/92, so that the protection laid down therein for a simple/indirect geographical indication which in the country of origin is the name neither of a region nor a place nor a country comprises merely protection against misleading and not the absolute protection of a qualified geographical indication within the meaning of Regulation No 2081/92?

---

[1] OJ L 208 of 24.7.1992, p. 1.

Reference for a preliminary ruling by the Bundesfinanzhof by order of 24 April 2001 in the case of British American Tobacco Manufacturing B.V. v Hauptzollamt Krefeld

(Case C-222/01)

(2001/C 245/06)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 24 April 2001, received at the Court Registry on 5 June 2001, for a preliminary ruling in the case of British American Tobacco Manufacturing B.V. v Hauptzollamt Krefeld on the following questions:

1. Are goods which have been cleared for Community transit removed from customs supervision if the transit document T1 is temporarily removed from the consignment?

2. If the Court answers Question 1 in the negative:
Have goods cleared for Community transit been removed from customs supervision if the customs seal affixed to ensure their identification was opened and the goods were partially unloaded, without the consignment first being duly produced for customs, even though the operation was arranged with the persons in question by customs investigation officers operating incognito and observed in every detail by those officers?

3. If the Court answers one of Questions 1 and 2 in the affirmative:
Do special circumstances exist within the meaning of Article 13 of Regulation No 1430/79 [1] if a customs investigation officer acting undercover has provoked infringements of the Community transit procedure? Does the deception or obviously negligent conduct of persons used by the principal in fulfilling the obligations assumed by him under the Community transit procedure preclude repayment to him of the duties incurred by the removal from customs supervision of goods cleared for Community transit?

---

[1] OJ L 175 of 12.7.1979, p. 1.

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat im Land Niederösterreich by order of that court of 1 June 2001 in the case of an appeal by Susanne Müller

(Case C-229/01)

(2001/C 245/07)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängiger Verwaltungssenat im Land Niederösterreich (Independent Administrative Chamber in the Land of Niederösterreich), of 1 June 2001, received at the Court Registry on 11 June 2001, for a preliminary ruling in the case of an appeal by Susanne Muller on the following questions:

Does

— Council Directive 79/112/EEC of 18 December 1978 [1] on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer in the version prior to the entry into force of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 [2] on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (hereinafter 'Directive 79/112'), and in particular Article 15 thereof; or

— Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (hereinafter 'Directive 00/13'), and in particular Article 18 thereof

preclude a national rule which provides that, where foodstuffs are offered for sale after the period of their minimum durability has expired, that fact must, even though their expiry date is displayed, be communicated clearly and in a generally intelligible manner?

---

[1] OJ 1979 L 33, p. 1.
[2] OJ 2000 L 109, p. 29.

Reference for a preliminary ruling by the Giudice di Pace di Palermo by order of that court of 4 May 2001 in the case of Riunione Adriatica di Sicurtà (RAS) Spa against Dario Lo Bue

(Case C-233/01)

(2001/C 245/08)

Reference has been made to the Court of Justice of the European Communities by order of the Giudice di Pace (District Court), Palermo of 18 June 2001, received at the Court Registry on 18 June 2001, for a preliminary ruling in the case of Riunione Adriatica di Sicurta (RAS) Spa against Dario Lo Bue on the following questions:

(1) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC [1] as amended by Article 6 of Council Directive 92/49/EEC [2], be interpreted as precluding national legislation which, for the purposes of curbing inflation, applies only to insurance against third-party liability in connection with the use of motor vehicles, mopeds and motor cycles and makes no provision for intervention in matters concerning prices of goods and services in general (as distinct from vehicle insurance), which are also factors in the calculation of the consumer price index?

(2) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC, as amended by Article 6 of Council Directive 92/49/EEC, be interpreted as precluding national legislation which, for the purposes of curbing inflation, prohibits the alteration, not only of premium rates but also of the number of risk categories, the coefficients for determining the premium and differential premium rate systems under which the premium payable depends on the claims record?

(3) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC, as amended by Article 6 of Council Directive 92/49/EEC, be interpreted as precluding national legislation which, for the purposes of curbing inflation, also requires insurance undertakings, if the client so requests, to draw up policies the terms of which incorporate a bonus-malus arrangement (positive or negative adjustment of the premium on the basis of the claims record) subject to an excess in an amount set between the minimum and the maximum level permitted by law?

(4) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC, as amended by Article 6 of Council Directive 92/49/EEC, be interpreted as precluding national legislation which, for the purposes of curbing inflation, provides that, on expiry of the period during which premium rates were frozen, the insured person may withdraw from the contract if, on the date for annual renewal of the policy, an increase is applied to the premium (not provided for under a customised arrangement) higher than the scheduled rate of inflation decided by the Government?

([1]) OJ L 228 of 16.8.1973, p. 3.
([2]) OJ L 228 of 11.8.1992, p. 1.

Reference for a preliminary ruling by the Finanzgericht Berlin by order of that court of 28 May 2001 in the case of Arnoud Gerritse against Finanzamt Neukölln-Nord

(Case C-234/O1)

(2001/C 245/09)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht (Finance Court), Berlin, of 28 May 2001, which was received at the Court Registry on 19 June 2001, for a preliminary ruling in the case of Arnoud Gerritse against Finanzamt (District Tax Office) Neukölln-Nord on the following question:

Is there an infringement of Article 52 of the EC Treaty (now Article 43 EC) where, under Paragraph 50a(4), first sentence, point (1) and second sentence, of the Einkommensteuergesetz (Law on Income Tax) as in force in 1996 ('EStG 1996'), a Netherlands national who earns in the Federal Republic of Germany taxable net income of approximately DEM 5 000 from self-employed activity in the calendar year is subject to deduction of tax at source by the person liable to pay his fees at the rate of 25 % his (gross) revenue of approximately DEM 6 000 plus solidarity surcharge, where it is not possible, by means of an application for a refund or an application for a tax assessment, for him to recover, in whole or in part, the taxes paid?

Action brought on 19 June 2001 by the Commission of the European Communities against the Italian Republic

(Case C-235/01)

(2001/C 245/10)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 19 June 2001 by the Commission of the European Communities, represented by Bernard Mongin and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to adopt the laws, regulation and administrative provisions necessary for compliance with Council Directive 98/35/EC of 25 May 1998 amending Directive 94/58/EC on the minimum level of training of seafarers ([1]), or in any event by not forwarding those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under that directive;

— Order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

Article 249 EC (formerly Article 189 of the EC Treaty), which provides that a directive is binding on each Member State to which it is addressed as to the result to be achieved, involves an obligation on Member States to respect the periods for transposition laid down in directives. That period expired on 1 July 1999 without the Italian Republic having issued the provisions necessary for compliance with the directive cited in the forms of order sought by the Commission.

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

Action brought on 21 June 2001 by the Federal Republic of Germany against the Commission of the European Communities

(Case C-239/01)

(2001/C 245/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 June 2001 by the Federal Republic of Germany, represented by W.-D. Plessing and J. Sedemund, acting as Agents.

The applicant claims that the Court should:

1. annul Article 5(5) of Commission Regulation (EC) No 690/2001 of 3 April 2001 on special market support measures in the beef sector [1], in so far as that provision requires the Member State concerned to finance 30 % of the cost of the meat purchase referred to in that regulation;

2. order the Commission to pay the costs.

Pleas in law and main arguments

— The Commission had no power to order a compulsory co-financing in the context of an implementing regulation. Article 5(5) of the contested regulation does not serve to 'implement' a corresponding general provision of the basic regulation, allowing co-financing in principle. Rather, it represents a clear departure from the provisions of Council Regulations Nos 1254/1999 and 1258/1999, which assume 100 % financing from the Community budget. The question of the financing of a specific support measure in the agricultural sector necessarily forms part of the essential features of the subject-matter of the legislation, which must be governed in the basic Council regulation. That is especially so since all the decisive questions on the financing of the common agricultural policy — including the Community beef market — are dealt with by Council Regulation No 1258/1999 (or Council Regulation No 1883/78, as the case may be).

— Infringement of the financial provisions of the Treaty. By virtue of the system of the common organisation of the market in beef and the prohibition of State aid laid down by Article 87(1) EC, expressly confirmed in the thirty-third recital in the preamble to Regulation No 1254/1999, the support measures provided for by the contested regulation constitute, despite the partial financing by national budgetary resources, Community aid and therefore 'expenditure of the Community' within the meaning of the first paragraph of Article 268 EC. In accordance with that latter provision, '*all* items of revenue and *expenditure* of the Community [...] shall be included in estimates to be drawn up for each financial year and shall be shown in the budget'. The use of the adjective 'all' (revenue and expenditure) in the first paragraph of Article 268 EC establishes the principle of the completeness/unity of the budget, which is a basic condition for a political weighting of revenue and expenditure in the budget procedure and democratic control of the execution of the budget. That basic principle is not complied with where Community expenditure is (partially) financed on the basis of an imperative regulation of secondary law from sources that are not part of the budgetary plan. For the same reason, the co-financing regulation in dispute amounts to a circumvention of the budgetary provision in the first paragraph of Article 269 EC. Moreover, the capping of own resources in accordance with Articles 269 and 270 EC would not constitute an effective limit on Community expenditure if the Commission had the power to order Community expenditure without it being totally financed by the Community budget. By acting in that way, the procedure laid down in the second paragraph of Article 269 EC, requiring not only a unanimous decision of the Council (after consultation with the Parliament) but also a ratification of that decision by the Parliaments of the Member States, could easily be circumvented.

— Infringement of Article 253 EC. Reference to the limited nature of budgetary resources does not explain either with what justification the Commission purports to modify the principle of total financing of support measures in the beef sector by the Community budget by establishing compulsory co-financing, or why basis for allocation of 70 % — 30 % was necessary.

The applicant suggests that, in so far as it allows the action, the Court should maintain the effects of the regulation in order to protect the position of the operators concerned.

---

[1] OJ L 95, 5.4.2001, p. 8.

Action brought on 21 June 2001 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-240/01)

(2001/C 245/12)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 21 June 2001 by the Commission of the European Communities, represented by Enrico Traversa, Legal Adviser, and Kilian Gross, a member of the Legal Service, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that by applying Paragraph 4(1) Nr. 2(b) of the Mineralölsteuergesetz (law on the taxation of mineral oils) the Federal Republic of Germany has failed to fulfil its obligations under Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils [1] inasmuch as it fails to charge excise duty on all mineral oils intended to be used for heating;

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

Pleas in law and main arguments

The action concerns the rule laid down in Paragraph 4(1) Nr. 2(b) of the German Mineralölsteuergesetz, and in particular the interpretation given to it in the Decree of the Bundesminister der Finanzen (Federal Minister of Finances) of 2 February 1998 (III A 1 — V 0355 — 10/97). Under that decree, 'combustion' was to be understood as meaning only the intentional use of the thermal value of a material, i.e. the total or partial combustion of mineral oil for the production of heat to be transmitted wholly or partially to another material. That other material, to which heat is transmitted, must thereby acquire the character of a new carrier of energy or heat. The use of the new heat carrier as a means of heating justifies the conclusion that the mineral oil used to produce that heat carrier has been heated. In accordance with that interpretation, there is no 'heating' where the material receiving the energy from the combustion is itself subjected to heat with a view to the manufacture of a product and it thereby loses its material characteristics. The same must therefore apply where the flame comes into direct contact with the material to be worked/transformed or destroyed. Nor can there be 'combustion' where a pilot light is maintained with mineral oil in order to burn harmful gas emissions or where mineral oil is mixed in a combustion chamber with emissions that are to be destroyed and is completely consumed.

According to the Commission, that interpretation infringes Article 2(2) of Directive 92/81. The words used in that provision, namely 'intended for use ... as heating fuel' must be interpreted independently and in the light of Community law. The wording, purpose and system of the directive support the interpretation that 'combustion' must be interpreted in broad terms and that any consumption of mineral oil for heating must be regarded as a combustion. In particular, it appears to be irrelevant whether the heat produced is used indirectly by means of a heat carrier for the warming of an object, or directly, in order to initiate or continue a chemical or industrial process.

[1] OJ L 316, 31.10.1992, p. 12.

Reference for a preliminary ruling from the Conseil d'État, Judicial Section, by decision of that court of 28 May 2001 in the case of National Farmers' Union against the General Secretariat of the French Government

(Case C-241/0l)

(2001/C 245/13)

Reference has been made to the Court of Justice of the European Communities by decision of the Conseil d'État (French Council of State) Judicial Section, of 28 May 2001, received at the Court Registry on 22 June 2001, for a preliminary ruling in the case of National Farmers' Union against the General Secretariat of the French Government on the following questions:

(1) whether, having regard to the legislative nature of Commission Decision 98/692/EC of 25 November 1998 [1] and Commission Decision 99/514/EC of 23 July 1999 [2], and notwithstanding the expiry of the time limit for challenging them, a Member State may validly invoke significant changes in the factual or legal circumstances occurring after the expiry of that time-limit, where the changes in question are such as to cast doubt on the decisions' validity;

(2) whether, at the date of the decisions taken by the French authorities, the abovementioned Commission decisions were valid, having regard to the precautionary principle laid down in Article 174 of the Treaty establishing the European Community;

(3) whether a Member State may draw from the provisions of Article 30 EC (formerly Article 36 of the EC Treaty) the power to prohibit imports of agricultural products and live animals, inasmuch as Directives 89/662/EEC [3] and 90/425/EEC [4] cannot be regarded as harmonising the measures needed in order to attain the specific objective of protecting the health and life of humans provided for by that article.

[1] Commission Decision 98/692/EC of 25 November 1998 amending Decision 98/256/EC as regards certain emergency measures to protect against bovine spongiform encephalopathy (OJ L 328 of 4.12.1998, p. 28).

[2] Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Council Decision 98/256/EC (OJ L 195 of 28.7.1999, p. 42).

[3] Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ L 395 of 30.12.1989, p. 13).

[4] Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra- Community trade in certain live animals and products with a view to the completion of the internal market (OJ L 224 of 18.8.1990, p. 29).

Reference for a preliminary ruling by the Tribunale di Ascoli Piceno, Italy, by order of that court of 30 March 2001 in criminal proceedings against Piergiorgio Gambelli and Others

(Case C-243/01)

(2001/C 245/14)

Reference has been made to the Court of Justice of the European Communities by an order of the Tribunale di Ascoli Piceno of 30 March 2001, which was received at the Court Registry on 22 June 2001, for a preliminary ruling in the criminal proceedings pending before that court against Piergiorgio Gambelli and Others, on the following question:

A decision is sought as to the compatibility with Article 43 et seq. and Article 49 et seq. of the EC Treaty regarding freedom of establishment and freedom to provide cross-frontier services, and the repercussions thereof within the national legal order, of domestic legislation like the Italian provisions contained in Article 4(1) et seq., Article 4 bis and Article 4 ter of Law No 401 of 13 December 1989 (as most recently amended by Article 37(5) of Law No 388 of 23 December 2000) which impose prohibitions — enforced by criminal penalties — on the pursuit, by any person and at any place, of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, unless the requirements concerning concessions and authorisations prescribed by domestic law have been complied with.

Action brought on 25 June 2001 by the Commission of the European Communities against the Kingdom of the Netherlands.

(Case C-246/0l)

(2001/C 245/15)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 25 June 2001 by the Commission of the European Communities, represented by M. Huttunen and H.M.H. Speyart, acting as Agents.

The applicant claims that the Court should:

1. Rule that, by adopting and maintaining in force Articles 37g and 37j of the Luchtvaartwet (Law on Air Traffic) and Article 1 of the Regulation of the Netherlands Minister of Justice of 9 May 1995 on the exemption of flights on which passengers are subject to checks for dangerous objects, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 3(1) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes;

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

Pleas in law and main arguments

In adopting Regulation No 2408/92 the Council, pursuant to Article 80(2) EC, defined the detailed rules for application of the principle of freedom to supply services within the area of air transport, as set out in Article 49 EC. When the provisions of Regulation No 2408/92 fall to be interpreted, therefore, recourse must be had to that principle, which goes further than simply prohibiting discrimination of a service provider established in another Member State on the ground of that person's nationality, providing as it does also for the removal of any restriction whatsoever — even if applicable without distinction to domestic service providers *and to service providers* from other Member States — which prohibits, obstructs or renders less attractive the activities 'of a service provider who is established in another Member State and lawfully provides similar services there. Under Article 1 of the Netherlands Regulation of 9 May 1995, there is an exemption from mandatory checks for 'flights with a domestic destination. This does not apply in the case of flights on which passengers can mingle with passengers for flights having an international destination'. As a result of this, a cross-border flight within the Community involves the carrier in higher costs than in the case of a comparable domestic flight. The Netherlands Regulation also makes it possible for security checks to be carried out for domestic flights (on the ground that passengers on such flights may mingle with passengers for international flights), but without any charge being levied in that connection.

Reference for a preliminary ruling by the Bundesvergabeamt Wien by order of that court of 25 June 2001 in the review procedure brought by the architect and qualified engineer Werner Hackermüller against 1. BIG Bundesimmobiliengesellschaft mbH and 2. WED Wiener Entwicklungsgesellschaft mbH

(Case C-249/01)

(2001/C 245/16)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesvergabeamt Wien (Federal Contracting Authority, Vienna) of 25 June 2001, received at the Court Registry on 28 June 2001, for a preliminary ruling in the review procedure brought by the architect and qualified engineer Werner Hackermüller against 1. BIG Bundesimmobiliengesellschaft mbH and 2. WED Wiener Entwicklungsgesellschaft mbH on the following questions:

Question 1:

Is Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 [1] on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts to be interpreted as meaning that any person seeking the award of a specific pending public contract is entitled to institute a review procedure?

Question 2:

In the event that the answer given to Question 1 is no:

Is the abovementioned provision to be understood as meaning that, if a tenderer's bid is not eliminated by the contracting authority, but the review body finds in the course of the review procedure that the contracting authority would have been bound to eliminate it, the tenderer has been or risks being harmed by the infringement alleged by him — in this case the finding by the contracting authority that a rival tenderer submitted the best bid — and that he must therefore have the right to bring a review procedure?

---

[1] OJ L 395, p. 33.

Appeal brought on 2 July 2001 by Mario Costacurta against the order delivered on 7 June 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-202/00 between Mr Costacurta and the Commission of the European Communities

(Case C-250/01 P)

(2001/C 245/17)

An appeal against the order delivered on 7 June 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-202/00 between Mr Costacurta and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 2 July 2001 by Mario Costacurta, represented by Mr Petit, of the Luxembourg Bar, with an address for service in Luxembourg.

The appellant claims that the Court should:

— find the present appeal admissible;

— find the appeal well founded as to the substance;

— order, if the Rules of Procedure of the Court of Justice allow it, the present appeal to be joined to the appeal against the order of the Court of First Instance (Second Chamber) of 7 June 2001 in Case T-328/00 concerning the same dispute and lodged this day;

— set aside the order delivered by the Court of First Instance (Second Chamber) of 7 June 2001 in Case T-202/00 Costacurta v Commission;

— make a decision as to how Case T-202/00 Costacurta v Commission is to proceed in accordance with Article 54 of the Rules of Procedure of the Court of Justice;

— order the Commission of the European Communities already to pay the costs of the interlocutory proceedings and of the present appeal;

— reserve the costs as to the substance; find, none the less, that Article 88, rather than Article 87(2), of the Rules of Procedure of the Court of First Instance are applicable;

— reserve to the appellant all other rights, dues, pleas and actions.

Pleas and main arguments

— Lack of jurisdiction of the Court of First Instance and breach of Community law.

— Prejudice to the appellant's interests, misuse of powers.

— Error in law inasmuch as the Court of First Instance ruled that retirement meant that the appellant no longer had any right to seek annulment of the contested act: the appellant claims the right to have his administrative status regularised a posteriori.

Appeal brought on 2 July 2001 by Mario Costacurta against the order delivered on 7 June 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-328/00 between Mr Costacurta and the Commission of the European Communities

(Case C-251/01 P)

(2001/C 245/18)

An appeal against the order delivered on 7 June 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-328/00 between Mr Costacurta and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 2 July 2001 by Mario Costacurta, represented by Mr Petit, of the Luxembourg Bar, with an address for service in Luxembourg.

The appellant claims that the Court should:

— find the present appeal admissible;

— find the appeal well founded as to the substance;

— order, if the Rules of Procedure of the Court of Justice allow it, the present appeal to be joined to the appeal against the order of the Court of First Instance (Second Chamber) of 7 June 2001 in Case T-328/00 concerning the same dispute and lodged this day;

— set aside the order delivered by the Court of First Instance (Second Chamber) of 7 June 2001 in Case T-328/00 Costacurta v Commission;

— make a decision as to how Case T-328/00 Costacurta v Commission is to proceed in accordance with Article 54 of the Rules of Procedure of the Court of Justice;

— order the Commission of the European Communities already to pay the costs of the interlocutory proceedings and of the present appeal;

— reserve the costs as to the substance; find, none the less, that Article 88, rather than Article 87(2), of the Rules of Procedure of the Court of First Instance are applicable;

— reserve to the appellant all other rights, dues, pleas and actions.

Pleas in law an main arguments

The pleas and main arguments are the same as those in Case C-250/01 P.

Action brought on 29 June 2001 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-252/01)

(2001/C 245/19)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 29 June 2001 by the Commission of the European Communities, represented by H. van Lier, acting as Agent, assisted by J. Stuyck, advocaat.

The applicant claims that the Court should:

1. Pursuant to the first paragraph of Article 226 EC, declare that:

   — by failing, in respect of a contract to perform services involving coastal surveillance by means of aerial photography, to place a notice in the *Official Journal of the European Communities*, as required under Directive 92/50/EEC [1] relating to the coordination of procedures for the award of public service contracts; and

   — by unjustifiably awarding the contract in question through application of a negotiated procedure without prior publication of a notice,

   the Kingdom of Belgium has failed to fulfil its obligations under that directive, in particular Articles 11(3) and 15(2) thereof;

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

Pleas in law and main arguments

According to the Commission, the Belgian Government has failed to demonstrate that performance of the services in question involves special security measures, since undertakings holding the required military security certificate may perform the contract without thereby taking any such special security measures into account.

Although the contract in question involves services relating to aerial photography which, considered in se, ought to come under the [United Nations Central Product Classification] CPC Category No 87504.1 as 'specialty photography services', it covers a much wider remit, closely connected to the monitoring programme established by the administration for the coastal zone and which, with a view to guaranteeing the

security of the coast and of its inhabitants, is designed to acquire an appropriate insight into the dynamics of the coastal area. The contract thus comes under the categories indicated by CPC Reference No 86753 ('surface surveying services') and No 86754 ('map making services'), and thus under the services indicated in Category No 12 in Annex I A to the directive: 'architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; *related scientific and technical consulting services* ...' Pursuant to Article 8 of the directive, contracts having as their object services listed in Annex I A are to be awarded in accordance with the provisions of Titles III to VI (which include the placing of an indicative notice and a notice in the *Official Journal* and the following of an open or restricted procedure).

Finally, the Commission is unable to accept the invocation of Article 11(3(b) of the directive, in particular the technical reasons referred to therein. It is extremely unlikely that there would, in other Member States with a seacoast, not be any undertakings in a technical and financial position to perform the contract.

(1) OJ 1992 L 209, p. 1.

Action brought on 3 July 2001 by Commission of the European Communities against Republic of Finland

(Case C-254/01)

(2001/C 245/20)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 3 July 2001 by the Commission of the European Communities, represented by M. Huttunen and M. Wolfcarius, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that the Republic of Finland has failed to adopt the laws, regulations or administrative provisions required to comply with Directive 96/48/EC (1) and has thus failed to fulfil its obligations under the directive, other than the obligation to notify the responsible body under Article 20(1);

2. Order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The third paragraph of Article 249 EC states that a directive is binding, as to the result to be achieved, on each Member State to which it is addressed.

The first paragraph of Article 10 EC states that Member States are to take all appropriate measures, whether general or specific, to ensure fulfilment of the obligations arising out of the Treaty or resulting from actions taken by the institutions of the Community.

This obligation deriving directly from the Treaty is repeated expressly in Article 23 of Directive 96/48/EC, according to which the Member States are to amend and adopt their laws, regulations and administrative provisions so as to authorise the use of constituents of interoperability of the trans-European high-speed rail system and the putting into service and operation of subsystems which comply with the directive, no later than 30 months after entry into force of the directive. They are to inform the Commission thereof forthwith. In this connection, it should be emphasised that even in the absence of the technical specifications for interoperability under Chapter II of the directive, Chapters III and IV of the directive are fully in force and applicable.

Finland refers to the decision of the Ministry of Transport of 3 March 1999, in which the ministry decided to designate Ratahallintokeskus (Rail Administration Centre) as the control body under Article 20 of Directive 96/48/EC on the interoperability of the trans-European high-speed rail system. The Ministry of Transport also invited the Ratahallintokeskus to take account when making technical decisions of the technical specifications of interoperability adopted on the basis of the above directive.

Apart from that decision, Finland has not notified any other legislative or administrative measures on the basis of which the Commission could find that Finnish legislation together with the administrative measures in force authorise the use of constituents of interoperability of the trans-European high-speed rail system and the putting into service and operation of subsystems which comply with the directive. Finland has notified only that it is preparing an overall recasting of railway legislation and that the aim is to include in the amendments adequate provisions for implementation of the directive on high-speed rail systems.

(1) Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L 235 of 17.9.1996, p. 6).

Action brought on 3 July 2001 by the Commission of the European Communities against the Council of the European Union

(Case C-257/01)

(2001/C 245/21)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 3 July 2001 by the Commission of the European Communities, represented by Ms Dominique Maidani and Ms Carmel O'Reilly, acting as agents, with an address for service in Luxembourg.

The Applicant requests that the Court should:

1. Annul Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications [1].

2. Annul Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining carrying out border checks and surveillance [2].

3. Order the defendant to pay the costs.

Pleas in law and main arguments

The Commission submits that the Council has, contrary to Article 202 of the Treaty and to Article 1 of Decision 1999/468/CE [3], improperly and irregularly reserved implementing powers to itself and that, in any event, the Council has neither adequately nor properly motivated the said reservation of implementing powers to itself. The Commission is, furthermore, of the view that the procedure set up respectively by Article 2 of Regulation (CE) 789/2001 and by Article 2 of Regulation (CE) 790/2001 whereby, in essence, the Member States themselves amend certain factual information respectively contained in the Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts, in Executive Committee decisions SCH/Com-ex (98) 56, SCH/Com-ex (99) 14 and SCH/Com-ex (94) 15, and in the Common Manual is irregular and contrary to Article 202 of the Treaty.

(1) OJ L 116, 26.4.2001, p. 2.
(2) OJ L 116, 26.4.2001, p. 5.
(3) Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

Action brought on 3 July 2001 by Commission of the European Communities against Portuguese Republic

(Case C-258/01)

(2001/C 245/22)

An action against the Portuguese Republic was brought before the Court of Justice on 3 July 2001 by the Commission of the European Communities, represented by Bernard Mongin and Francisco Miguel França, acting as Agents, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, also of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court of Justice should:

— Declare that, by failing to transpose Article 6(1) and (4) of Directive 94/57/EC [1] on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations and in particular by not establishing a working relationship regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements with the classification societies and by not providing the Commission with precise information on that working relationship, the Portuguese Republic has failed to fulfil its obligations under Article 6(1) and (4) of Directive 94/57/EC;

— Order the Portuguese Republic to pay the costs.

Contentions and principal arguments

Directive 94/57/EC was transposed into Portuguese law by Decree-Law No 115/96 of 6 August 1996.

According to the information received by the Commission through the committee established by Article 7 of Directive 94/57/EC, the Portuguese Republic delegates certain responsibilities to a number of classification societies (American Bureau of Shipping, Det Norske Veritas, Germanischer Lloyd, Lloyd's Register of Shipping, Nippon Kaiiji Kyokai). The Commission considers that the formalised written and non-discriminatory agreements or equivalent legal arrangements (Article 6(2) of Directive 94/57/EC), which determine the tasks and specific functions to be undertaken by the organisations and which should have been concluded or adopted and forwarded to the Commission immediately after the said delegation of responsibilities, have not yet been entered into, a fact which, moreover, the Portuguese authorities admit. Furthermore, Article 6(4) of Directive 94/57/EC provides that each Member State is to provide the Commission with precise information on the working relationship established with the classification societies. However, the Portuguese authorities have not yet sent that information to the Commission, which is under an obligation then to pass it to the other Member States.

(1) OJ L 319 of 12.12.1994, p. 20.

Action brought on 4 July 2001 by the European Parliament against the Council of the European Union

(Case C-260/01)

(2001/C 245/23)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 4 July 2001 by the European Parliament, represented by R. Passos and A. Caiola, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

— annul, pursuant to Article 230 EC, Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations.

Pleas in law and main arguments

— Infringement of the EC Treaty, and in particiular Article 255 thereof: it is clear on reading Articles 255 EC and 207 EC that the act of the Council mentioned in Article 207 must be consistent with the general principles and limits laid down in the basic act referred to in Article 255(2) EC. It is of fundamental importance that the heirarchical order of these provisions is complied with in full by the Parliament, the Council and the Commission if acts adopted jointly pursuant to Article 255(2) EC are to be effective. The act pursuant to the codecision procedure must be adopted first. Only then will the three institutions be in a position to lay down their own specific provisions governing the public's right of access to their documents. The basic act in question, namely Regulation (EC) No 1049/2001 of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents, was adopted on 30 May 2001. Whilst the European Parliament and the Commission followed the order prescribed by Article 255 EC, the Council, in infringement thereof, did not, and on 19 March 2001 adopted Decision 2001/264.

— Breach of essential procedural requirements: it is clear from the express purpose and content of Decision 2001/264/EC that it deals with matters going beyond the internal operations of the Council. It has in fact created legal obligations on the part of the Member States and Community satellite organisations. In order to do that, the Council ought not to have availed itself of the provisions of Article 207(3) EC and Article 24 of Council Decision 2000/396/EC of 5 June 2000, but should instead have had recourse to a different legal basis allowing, in any event, for the initiative of the Commission and the involvement of the European Parliament in the legislative procedure, such as Article 255 EC and/or Article 308 EC. By its actions, the Council has thwarted a prerogative power of the European Parliament.

— Failure by the Council to fulfil its duty of sincere cooperation, as guaranteed by Article 10 EC: the Council adopted an implementing act before the relevant basic act had been adopted by the competent institutions. When the Council adopted its decision, that is to say, on 19 March 2001, the legislative procedure leading to the adoption of the act provided for in Article 255(2) EC was already at a very advanced stage. The Council makes no mention in the contested decision of any urgent reasons justifying its approach. Nor did it ever indicate to the Parliament any urgency in connection with the adoption of its security regulation.

— Breach of the principle of institutional balance.

Appeal brought on 5 July 2001 by Carla Giulietti against the judgment delivered on 2 May 2001 by the Second Chamber of the Court of First Instance of the European Communities in Joined Cases T-167/99 and T-174/99 between Carla Giulietti and Others and the Commission of the European Communities

(Case C-263/01 P)

(2001/C 245/24)

An appeal against the judgment delivered on 2 May 2001 by the Second Chamber of the Court of First Instance of the European Comunities in Joined Cases T-167/99 and T-174/99 between Carla Giulietti and Others and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 5 July 2001 by Carla Giulietti, represented by S. Diana, with an address for service in Brussels.

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance of 2 May 2001 in Joined Cases T-167/99 and T-174/99;

— order the European Commission to pay the cost.

Pleas in law and main arguments

— Infringement of the rights of the defence:

The appellant was only informed at the end of the written procedure before the Court of First Instance as to how the group of 250 candidates retained for the tests was broken down as between the two spheres of activity covered by the competition. She was not informed of how many candidates had initially chosen each sphere of activity. The appellant was thus unable to prove inequality of treatment between candidates on the part of the selection board.

— Infringement of the principle of equal treatment:

The Court of First Instance failed to draw all the logical consequences from the selection board's decision to delete certain questions and to take no account of the answers given to them.

Reference for a preliminary ruling, by the Tribunal de Grande Instance de Dinan, by judgment of that court of 28 June 2001, in the case of Ministère Public — partie civile: Comité Région pêches maritimes against Annie Pansard, Gérard Bourret and Marc Kermarrec

(Case C-265/01)

(2001/C 245/25)

Reference has been made to the Court of Justice of the European Communites by judgment of the Tribunal de Grande Instance de Dinan of 28 June 2001, received at the Court Registry on 5 July 2001, for a preliminary ruling in the case of Ministère Public — partie civile: Comite Region pêches maritimes against Annie Pansard, Gérard Bourret and Marc Kermarrec on the following questions:

— Can scallops caught from vessels registered in France (at Saint-Brieuc and Saint-Malo) in the waters of Jersey (the Minkies) under licence issued by the Jersey authorities authorising fishing by diving be regarded as imported products, in spite of the French legislation which applies to fish catches the law of the flag of the fishing vessel?

— Is the validity of the Order of 19 March 1980, which prohibits the unloading of scallops during their close season, affected by the provisions of the Treaty of Maastricht, which prohibit measures having an effect equivalent to quantitative restrictions on imports?

Action brought on 10 July 2001 by the Commission of the European Communities against the Portuguese Republic

(Case C-272/01)

(2001/C 245/26)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 10 July 2001 by the Commission of the European Communities, represented by Teresa Figueira and Gregorio Valero Jordana, acting as Agents.

The applicant claims that the Court should:

(a) Declare that,

— by failing to adopt all the provisions necessary so that the quality of bathing water conformed to the values limits set down in Article 3 of the directive;

— by failing to take samples at the minimum frequency laid down in the annex to the directive;

— by failing to identify all the inshore bathing areas in Portugal,

the Portuguese Republic has failed to fulfil its obligations under Directive 76/160/EEC [1] in particular as provided for in Article 4(1), in conjunction with Article 3, the annex to the directive and with Article 1(2) and those provided for in Article 6(1) and (2);

(b) Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Although a derogation was granted under Article 395 of and Point II-3 of Annex XXXVI to the Act of Accession of Spain and Portugal to the European Economic Community until 31 December 1992, the level of non-conformity with the mandatory values set down in the directive was, for the 2000 bathing season, 7.8 % for coastal bathing areas and 31 % for inland bathing areas, which was even a decrease in conformity by comparison with the 1999 season.

Furthermore, the Portuguese authorities have still not identified all the inland bathing areas. There is a discrepancy between the number of inland bathing areas identified (26) and the number of 'riverside beaches', as described by the Portuguese authorities, eligible for Community funds (91).

Although there has been 100 % sampling in Portugal in both coastal bathing areas and inshore bathing areas, that percentage is only in respect of the bathing areas which have been identified. Thus, by failing to comply with the minimum frequency of sampling operations because an insufficient number of inshore bathing areas have been identified, the Portuguese Republic has failed to comply with its obligations under Article 6(1) and (2) of the directive.

---

[1] Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1).

Information Action brought on 12 July 2001 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-274/01)

(2001/C 245/27)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 12 July 2001 by the Commission of the European Communities, represented by M. Wolfcarius, acting as Agent.

The applicant claims that the Court should:

1. Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive; and

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

Pleas in law and main arguments

Article 2(1) of the directive in question provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 October 1999 and are forthwith to inform the Commission thereof.

The necessary measures have not yet been adopted by Belgium.

[1] OJ 1998 L 277, p. 17.

Appeal brought on 13 July 2001 by European Parliament against the judgment delivered on 3 May 2001 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-99/00 between Ignacio Samper and European Parliament

(Case C-277/01 P)

(2001/C 245/28)

An appeal against the judgment delivered on 3 May 2001 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-99/00 between Ignacio Samper and European Parliament was brought before the Court of Justice of the European Communities on 13 July 2001 by European Parliament, represented by H. Von Herzen and D. Moor, with an address for service in Luxembourg.

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance;

— give a final decision on the dispute by dismissing the action for annulment brought by Mr Samper as unfounded;

— in the alternative, refer the case back to the Court of First Instance for it to adjudicate anew on the action for annulment brought by Mr Samper;

— make an appropriate order as to costs.

Pleas and main arguments

The Parliament claims that the Court of First Instance distorted the clear sense of the evidence and overstepped the limits of judicial review.

Distortion of the clear sense of the evidence:

The Court of First Instance wrongly found, in paragraph 40 of the judgment, that, for 1997, the 'decisive' criterion should be, according to the decision of the appointing authority, the level of responsibility deployed, personal investment made and the consistency of effort vis-à-vis his responsibilities. The decision in question does not, however, make mention of any factors other than those appearing in the staff reports and refers to a comparison between the various duties only to justify its decision to depart from the Promotions Committee's proposals.

The Court of First Instance was wrong to find, at paragraph 47 of the judgment, that the assessment of the Promotions Committee was based on the view that the applicant experienced difficulties in adjusting to his duties as Head, of the Madrid Information Office. According to the minutes of the Committee's meeting, that assessment, however, is no more than an assessment by the Chair of the Committee who does not even have a vote on the Committee.

Finally, the Court of First Instance was wrong to find, at paragraph 48 of the judgment, that the Promotions Committee based itself solely on the marks awarded in the staff reports. It follows, in fact, from the minutes of the meeting of the Committee, that it had decided to take into account the level of responsibility of the duties carried out by the applicant and to uprate the applicant's marks accordingly.

Limits of judicial review:

The Court of First Instance has replaced the assessment of the Promotions Committee with its own subjective assessment of the applicant's merits.

The Court of First Instance wrongly found, at paragraph 52 of the judgment, that the applicant carried out the duties of Head of the Information Office with success and failed, in so doing, to make an objective comparison between the applicant and his colleagues.

The Court of First Instance wrongly takes the view, at paragraph 53 of the judgment, that the appointing authority failed to take proper account of the duties actually carried out by the applicant with success. That subjective assessment does not however support the conclusion that the Promotions Committee committed a manifest error of assessment.

Action brought on 13 July 2001 by the Commission of the European Communities against the Kingdom of Spain

(Case C-278/01)

(2001/C 245/29)

An action against Kingdom of Spain was brought before the Court of Justice of the European Communities on 13 July 2001 by the Commission of the European Communities, represented by Gregorio Valero Jordana, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by failing to adopt, contrary to its obligations under Article 4 of Council Directive 76/160/EEC [1] of 8 December 1975 concerning the quality of bathing water, measures to ensure that the quality of inshore bathing water in Spain conforms to the limit values set by Article 3 of that directive, the Kingdom of Spain has failed to comply with the judgment of the Court of Justice of the European Communities of 12 February 1998 in Case C-92/96 [2], and thus failed to fulfil its obligations under Article 228 of the EC Treaty;

— order the Kingdom of Spain to pay to the Commission of the European Communities, into the 'European Community own resources' account, a penalty payment of EUR 45 600 in respect of every day it delays in taking the measures necessary to comply with the judgment in Case C-92/96, from the date on which judgment is delivered in the present case until such time as the judgment in Case C-92/96 is complied with;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

In Case C-92/96 Commission v Spain, the Court of Justice held that by failing to take all necessary measures to ensure that the quality of inshore bathing waters in Spain conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, the Kingdom of Spain had failed to fulfil its obligations under Article 4 thereof.

Article 228(1) of the EC Treaty requires the Kingdom of Spain to take the measures necessary to comply with the judgment.

There is no doubt whatsoever that the Kingdom of Spain should long ago have adopted the measures necessary to ensure that the quality of bathing water conformed to the limit values set in Article 3 of the directive; more than two years elapsed between the judgment and the reasoned opinion without the Spanish Government having adopted any measures.

Pursuant to Article 228(2) EC, the Commission asks the Court to order the Kingdom of Spain to pay a penalty payment of EUR 45 600 in respect of every day it delays in taking the measures necessary to comply with the judgment in Case C-92/96, as from the date of delivery of the judgment in the present case.

---

[1] OJ 1976 L 31, p. 1.
[2] Case C-92/96 Commission v Spain [1998] ECR I-505.

Action brought on 16 July 2001 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-279/01)

(2001/C 245/30)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 16 July 2001 by the Commission of the European Communities, represented by Lena Ström, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

— declare that by failing to implement correctly in national law Articles 4(5), 5(4), 6(2) to (4), 12, 15 and 16 of Council Directive 92/43/EEC [1] of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended by Directive 97/62/EC [2] the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to bear the costs.

Pleas in law and main arguments

Article 4(5) provides that as soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it is to be subject to the rules in Article 6(2), (3) and (4). According to the Swedish rules notified, the government or the authority which the government appoints is to keep a permanent register of the natural sites which should be given protection in accordance with international undertakings or national objectives for the protection of such sites. A site which is placed on the register is to be given priority in future work on protection. The National Environment Protection Board has been appointed to hold the register. The fact that the National Environment Protection Board keeps a register of natural sites which should be protected does not in itself have the legal effect required by Article 6(2), (3) and (4).

Article 5(4) provides that a site is to be covered by the protection provided for by Article 6(2) during the bilateral consultation period initiated between a Member State and the Commission under Article 5(1) and pending a Council decision pursuant to Article 5(3). Under the Swedish rules the legal protection under Article 6(2) does not take effect before a decision is taken to place the site on a special register. Nor is the protection which then takes effect sufficient to fulfil the requirements of Article 6(2).

Article 6(2) provides that the Member States are to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive. The article presupposes that the Member States have measures at their disposal by which their authorities can stop an operation which may damage natural habitats and habitats of species or disturb the species for which the sites were designated. The Swedish rules notified contain no provisions which allow the authorities to stop an operation which may damage natural habitats and habitats of species or disturb the species for which the site was designated.

Article 6(3) lays down the procedure for the management of plans and projects which may affect the special areas of conservation significantly. Those rules require complete and meticulous transposition into national legislation. The system of rules intended to incorporate Article 6(3) does not cover all the projects or plans outside the area which might be considered to have a significant effect on the area of conservation. Nor does the Swedish legislation provide that all plans are to be assessed in accordance with Article 6(3).

Article 6(4) provides for certain exceptions to the rules on protection of special conservation areas. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons, the Member States are to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. For reasons of legal certainty, Article 6(4), since it is in the nature of an exception, must be reproduced verbatim in legally binding national rules. The Swedish legislation incorporating Article 6(4) does not meet that requirement of legal certainty since the exceptions in the directive are not clearly reproduced in the Swedish legislation.

Under Article 12(1) the Member States are to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) by introducing the prohibitions listed in Article 12(1)(a) to (d). The Swedish legislation and the amendments introduced and included in it do not cover all the species listed in Annex IV(a). Article 12(1)(b) to (d) lists certain activities which the Member states are to prohibit. The Swedish legislation contains no provisions which implement Article 12(1)(b) to (d) adequately.

Under Article 12(4) the Member States are to establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV(a). The Swedish legislation does not cover all the species listed in Annex IV(a).

Under Article 15 Member States are required to prohibit the use of methods and forms of capture etc listed in Annex VI of the species listed in Annex Va, and in cases where, in accordance with Article 16, derogations are applied, of the species listed in Annex IVa. The right to derogate from the prohibition in Article 15 is limited to the situations listed in Article 16. Under Swedish law, however, the government and authorities have a right to investigate freely in certain cases where derogations are to be granted from the rules on prohibition laid down by Article 15.

Article 16(1) lists the situations in which it is possible to derogate from the rules in Articles 12 to 14 and 15(a) and (b). A general condition for allowing a derogation is that there is no satisfactory alternative and that the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range. In addition, one of the reasons in Article 12(1)(a) to (e) must obtain. For reasons of legal certainty it is necessary that the situations and requirements set out in a rule on derogation such as Article 16 be transposed verbatim into national rules or that there be a direct reference to the directive. Under the Swedish legislation the government can allow derogations on the basis of various considerations. The Swedish rules on derogation therefore do not conform to Article 16 and nor do they refer to those provisions in the directive.

(1) OJ L 206, 22.7.1992, p. 7.
(2) OJ L 305, 8.11.1997, p. 42.

Action brought on 17 July 2001 by the Commission of the European Communities against the Portuguese Republic

(Case C-282/01)

(2001/C 245/31)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 17 July 2001 by the Commission of the European Communities, represented by Bernard Mongin and Francisco de Sousa Fialho, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 98/18/EC(1) of 17 March 1998 on safety rules and standards for passenger ships, the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 249 of the EC Treaty and Article 14 of Directive 98/18/EC;

— in the alternative, declare that, by failing to communicate such measures to the Commission, the Portuguese Republic failed to fulfil its obligations under the same provisions; and

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The mandatory nature of the provisions of the third paragraph of Article 249 requires Member States to adopt the measures necessary to transpose directives addressed to them into their domestic law. Despite the expiry of that period, which is laid down in Article 14(1) of Directive 98/18/EC, and despite the specific notification requirement provided for in Article 4(2) of the directive, the Portuguese Republic has not brought into force the necessary provisions and, in any event, has not communicated them to the Commission.

(1) OJ 1998 L 144, p. 1.

Action brought on 19 July 2001 by the Commission of the European Communities against the French Republic

(Case C-286/01)

(2001/C 245/32)

An action against the French Republic was brought before the Court of Justice of the European Communities on 19 July 2001 by the Commission of the European Communities, represented by P. Nemitz and B. Mongin, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 98/10/EC(1), and in particular Article 6(3) and (4) and Articles 10, 21 and 26, the French Republic has failed to fulfil its obligations under Article 32 of that directive and Article 249 of the EC Treaty; and

— Order the French Government to pay the costs.

Pleas in law and main arguments

Article 32 of Directive 98/10/EC provides that Member States are to bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 1998 and forthwith inform the Commission thereof.

There is no question but that the French authorities must adopt the provisions necessary to comply with Article 6(3) and (4) and Articles 10, 21 and 26 of the directive.

(1) Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (OJ 1998 L 101, p. 24).

Action brought on 19 July 2001 by the Commission of the European Communities against the French Republic

(Case C-287/01)

(2001/C 245/33)

An action against French Republic was brought before the Court of Justice of the European Communities on 19 July 2001 by the Commission of the European Communities, represented by P. Nemitz and B. Mongin, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 97/51/EC (1), the French Republic has failed to fulfil its obligations under Article 3 of that directive and Article 249 EC; and

— Order the French Government to pay the costs.

Pleas in law and main arguments

Article 3 of Directive 97/51/EC provides that Member States are to bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1997 and forthwith inform the Commission thereof.

There is no question but that the French authorities must adopt the provisions necessary to comply with first subparagraph of the second indent in Article 4 and Articles 6(1) and (3)(a) and 10(4) of Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (2), as amended by Directive 97/51/EC.

The Commission has not yet been informed of any measures adopted to that effect by the French authorities.

(1) Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJ 1997 L 295, p. 23).

(2) OJ L 165, 19.6.1992, p. 27.

COURT OF FIRST INSTANCE

Action brought on 1 June 2001 by Pescanova SA against Commission of the European Communities

(Case T-119/01)

(2001/C 245/34)

(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 1 June 2001 by Pescanova SA, whose registered office is at Chapela, Pontevedra (Spain), represented by Antonio Creus, Begoña Uriarte and Salvador Rodríguez.

The applicant claims that the Court should:

— annul the Commission's decision of 19 March 2001 in so far as it reduces the contribution granted to that undertaking by way of Commission Decision C(94) 3834/4 final of 21 December 1994 for a project relating to the setting up of a joint company in the fishing sector;

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision, which was adopted on the basis of Regulation No 4253/88 [1], in particular Article 24 thereof, and on the basis of the EC/Argentina Agreement [2], finds that the Community contribution amounting to EUR 1 824 813 granted in 1994 to the applicant is to be reduced to EUR 472 818 over three months, with effect from the date of the decision. According to the decision, the reason for reducing the contribution was that the fishing vessel Orense, which was transferred to Argentina when the joint company was set up, ceased to fish in Argentinian waters, without the prior authorisation of the Commission, eighteen months after the creation of the company, which is tantamount to a serious change in the conditions laid down for the granting of the assistance.

In support of its arguments seeking the annulment of the contested decision, the applicant claims:

— *Lack of legal basis*: The contested decision lacks a proper legal basis, since the EC/Argentina Agreement does not lay down any procedure for reducing or recovering assistance granted to joint companies set up in accordance with the Agreement, neither does it refer to any Community legislation providing for such procedure. Moreover, the Commission has not specified at any time throughout the procedure what actual provisions of the EC/Argentina Agreement or conditions laid down in the decision granting the assistance it considers to have been infringed by the applicant. The applicant takes the view that there has been no infringement of any of the provisions of the EC/Argentina Agreement or of the decision granting the assistance and the contested decision must be annulled on the ground that the Commission erred in its assessment of an infringement for which there is no legal basis.

— *Breach of the principle of sound administration and of the rights of the defence*: The Commission has taken no account of the applicant's complaints, which have been submitted to it on numerous occasions throughout the administrative procedure.

— *Failure to provide a statement of reasons*: First, the Commission does not mention in the contested decision what provisions of applicable legislation it considers to have been infringed. Secondly, neither does it mention the facts which led the Orense to cease fishing in Argentinian waters, so that it did not set out the reasons why it considered that those facts could not be regarded as force majeure, capable of justifying the reduction of the amount of the contribution to be repaid, nor did it set out the grounds on which it decided not to allow such reduction.

— *Breach of the principles of legal certainty and legitimate expectations*: The applicant could not in any event have imagined that the Commission would initiate a procedure to reduce the contribution, since such a procedure is not provided for in the applicable legislation, not least in view of the practice of the Commission at the time and its lack of reaction when the company informed the Argentinian authorities that it was leaving Argentinian waters.

---

[1] Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374. p. 1).

[2] Council Regulation (EEC) No 3447/93 of 28 September 1993 on the conclusion of the Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector (OJ 1993 L 318, p. 1).

Action brought on 8 June 2001 by José Martí Peix against Commission of the European Communities

(Case T-125/01)

(2001/C 245/35)

(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 8 June 2001 by José Martí Peix, residing in Huelva (Spain), represented by Ramón García-Gallardo and María Dolores Domínguez Pérez.

The applicant claims that the Court should:

— uphold the present application;

— annul Commission Decision C(2001)679 final of 19 March 2001, reducing aid granted to José Martí Peix SA by Commission Decision C(91)2474 of 16 December 1991, amended by Commission Decision C(93)1131 final/4 of 12 May 1993, for a project relating to the setting-up of a mixed company in the fishing sector (SM/ESP/17/91);

— make any other order as appropriate requiring the Commission of the European Communities to comply with its obligations under Article 233 EC and, in particular, to re-examine the situation;

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

Pleas in law and main arguments

By this application the applicants seek the annulment of a decision taken by the Commission reducing the financial assistance granted to a project relating to the setting-up of a mixed company in the fishing sector. The applicant claims that the decision is null and void inasmuch as the alleged irregularities found by the Commission do not exist. The applicant bases itself on four grounds:

1. The applicant claims that the decision is null and void since, at the time when it was adopted, it was out of time in order to base its reduction of aid on the facts. Indeed, the Commission has failed to take any administrative action at all on the case and has reduced the assistance only after the statutory time-limit.

2. In the alternative, if the Court of First Instance should take the view that there in nothing in the applicable Community legislation to indicate that the time-limit has expired, the applicant claims that the decision implies that there has been a lack of administrative diligence, since the applicant is now bereft of judicial protection and legal certainty and its legitimate expectations have been dashed and the basic principles enshrined in the Community's case-law have been disregarded.

Likewise, the time which has elapsed between the facts complained of by the Commission took place and the date on which the contested decision was adopted leads to the conclusion that the institution has exceeded the reasonable period in which to adopt a decision so detrimental to the interests of the applicant. In particular, instead of initiating a procedure for reduction immediately after the applicant informed it of the facts in the context of the Regular Activity Reports, the Commission took no action whatsoever and allowed nearly six years to elapse.

3. In the event that the Court should find that the Commission adopted the decision within a reasonable time, the applicant submits that that decision is null and void as regards the substance on the following grounds:

— with regard to one of the vessels, which sank, inasmuch as the withdrawal of assistance was decided upon after an error of assessment was committed, since the Commission states that it was the recipient of 'false information', which is not true. Moreover, the Commission bases its decision on the obligation to replace the lost vessel, an obligation which was not written into the legislation applicable at the time;

— so far as concerns the remaining vessels, the Commission penalises the failure to communicate their departure from the waters of the country referred to in the decision granting the assistance, a merely administrative requirement, while disregarding the fact that the aforementioned vessels continue to operate under the aegis of another mixed company and continue to pursue the objects which prompted the creation of that company.

Action brought on 8 June 2001 by Eduardo Vieira SA against Commission of the European Communities

(Case T-126/01)

(2001/C 245/36)

(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 8 June 2001 by Eduardo Vieira, whose registered office is at Vigo (Spain), represented by Ramón Garcia-Gallardo and Mª Dolores Domínguez Pérez.

The applicant claims that the Court should:

— find the present application admissible;

— join the present action to Case T-44/01,

— annul Commission Decision C(2001) 680 final of 19 March 2001 reducing the assistance granted to 'Sociedad Anónima Eduardo Vieira' by Commission Decision C(95)1910 of 25 July 1995, amended by Decision C(96) 584 final/2 of 4 march 1996, for a project relating to the setting-up of joint companies in the fishing sector (ARG/ESP/SM/26-94);

— order the Commission to pay the costs.

Pleas in law and main arguments

The Commission bases its decision to reduce the Community financial assistance [1] on the fact that the Argentinian joint undertaking which owned the vessel decided that the vessel should fish in international waters, outside Argentinian waters, a decision for which no reasons were given and which, moreover, was never approved by the Commission.

The applicant claims that the contested decision is null and void on the following grounds:

— First, the legal basis used by the Commission in order to determine the applicable procedure in order to reduce the contribution and calculate its amount is erroneous.

The EC/Argentina Agreement contains no provision governing suspension, withdrawal or reduction of Community assistance granted with a view to the setting up of a joint company, nor does it contain any reference to general legislation in that regard. In view of such a legal lacuna, the Commission has deliberately failed to take into account that what is involved is a particular legal framework, namely an international agreement (lex specialis), and has applied general legislation instead, which governs exclusively Community situations in the context of structural funds. The applicant claims that the Commission ought to have based itself on general legislation while taking account of the special nature of international agreements and, in particular, of the role of the joint committee and of the Argentinian authorities.

— Secondly, and in the alternative, the irregularity alleged by the Commission in order to justify its decision to reduce the assistance does not in fact exist.

In the applicant's view, the Commission has misassessed the facts and incorrectly interpreted the EC/Argentina Agreement in so far as, first, the decision taken by the undertaking which owns the vessel, joint company Vieira Argentina SA, to abandon the Argentinian fishing banks was justified, since it was taken, in view of the poor state of stocks of Patagonian toothfish and the measures adopted by the Argentinian authorities, as the only option if the viability of the company was to be maintained and the exported vessel to continue to operate; moreover, the decision was taken with the express authorisation of the Argentinian authorities.

The applicant further states that the contested decision is inconsistent, since it reduces the assistance granted to the Community shipbuilder, but is silent with regard to the financial contribution granted to the joint company (Vieira Argentina SA), which owns and operates the vessel. The Commission thus disregards, once again, the fact that it is a one-off grant of assistance made up of two indissociable parts.

[1] Assistance granted by the Commission in 1995, in the context of Council Regulation (EEC) No 3447/93 of 28 September 1993 on the conclusion of the Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector (OJ 1993 L 318, p. 1).

Action brought on 12 June 2001 by C. Ripa di Meana against the European Parliament

(Case T-127/01)

(2001/C 245/37)

(Language of the case: Italian)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 12 June 2001 by C. Ripa di Meana, represented by W. Viscardini and G. Donà, Lawyers.

The applicant claims that the Court should:

— *first*, annul, pursuant to Article 230 of the EC Treaty, the decision of the European Parliament — section for financial rules relating to Members — of 26 March 2001, reference no 106721 (sent by ordinary post and received by the applicant on 4 April 2001), informing him of the suspension, following his election to the Regional Council of Umbria, of the pension he received as a former Member of the European Parliament;

— *in the alternative*, annul, pursuant to Article 230 of the EC Treaty, the decision of the European Parliament — section for financial rules relating to Members — of 26 March 2001, reference no 106721, in so far as it concerns the suspension of his pension based in the legislation in force between 1979 and 1984;

— *in any event*, order the European Parliament to pay all the costs of the action.

Pleas in law and main arguments

The applicant, who also brought Case T-83/99 [1], challenges the European Parliament's decision to suspend, following his election to the Regional Council of Umbria, the pension which he received as a former Member of the European Parliament. That decision was adopted on the basis of Article 12 of the Regolamento per gli Assegni Vitalizi dei Deputati (the Italian regulation on life-annuities applicable to Members of the Lower Chamber of the Italian Parliament). In this connection, it is apparent that Article 2(1) of Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament refers to the Italian regulation in so far as concerns the amount of, and detailed procedures relating to, the provisional pension.

In support of his claim, the applicant argues that:

— Article 2(1) of Annex III does not refer, purely and simply, to the Italian regulation, but merely aligns the amount of the pension for Italian Members of the European Parliament with the amount which Italian Members of Parliament receive from the Italian Parliament. Consequently, the European Parliament should not be allowed to restrict entitlement to retirement pensions by unlawfully applying to its own Members the suspension of the pension of Members of the national Parliament provided for in Article 12 of the Italian regulation;

— suspending the pension which the applicant receives on account of services provided to the Parliament in the past, and in respect of which he paid contributions, for the simple reason that he currently receives a salary from another 'employer', not only unfairly penalises him, but also results in unjust enrichment of the European Parliament;

— the European Parliament manages an autonomous pension scheme and thus cannot have recourse to the intentions expressed by other political authorities in connection with other autonomous pension schemes provided for other parties;

— the Community legislation at issue does not prohibit the accumulation of pensions due to Members of the European Parliament with income earned from other activities;

— in any event, even if application, by analogy, of Article 12 of the Italian regulation is lawful, suspension of the pension due to a former Member of the European Parliament can only be justified if he is elected to his national Parliament. It cannot be justified if he is elected to a regional council;

— on 1 January 1998, when the Italian regulation came into force, the applicant had already acquired his entitlement to the pension by virtue of the legislation in force between 1979 and 1984.

— Consequently, even if application, by analogy, of Article 12 of the Italian regulation is lawful, the suspension at issue in the present case is only justifiable in respect of pensions based on the legislation in force between 1994 and 1999 and not in respect of pensions based on the legislation in force between 1979 and 1984.

[1] Joined Cases T-83/99, T-84/99 and T-85/99 *Ripa di Meana and Others* v *European Parliament* [2000] ECR II-3493.

Action brought on 7 June 2001 by DaimlerChrysler Corporation against the Office for Harmonisation in the Internal Market

(Case T-128/01)

(2001/C 245/38)

(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 7 June 2001 by DaimlerChrysler Corporation, having its registered office in Michigan (USA), represented by T. Cohen Jehoram of De Brauw Blackstone Westbroek, The Hague (Netherlands).

The applicant claims that the Court should:

— annul the decision of the Board of Appeal in so far as it finds that the mark does not satisfy the conditions as laid down in article 7(1)b and /or Article 7(3) of Regulation nº 40/94 [1];

— order the OHMI to accord a date of registration in respect of the application for a Community trade mark; and

— order the OHMI to compensate DaimlerChrysler for the costs of these proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark:	DaimlerChrysler Corporation
The Community trade mark concerned:	Figurative trademark (grille design) — Application nº 525048 for goods in class 12
Decision of the Examiner:	Rejection of the application
Decision of the Board of Appeal:	Rejection of the appeal
Grounds of claim:	Incorrect interpretation of Articles 7(1)b and 7(3) of Council Regulation nº 40/94.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 11, p. 1).

Action brought on 11 June 2001 by José Alejandro S.L. against Office for the Harmonization of the Internal Market (trade marks and designs) (OHIM)

(Case T-129/01)

(2001/C 245/39)

(Language of the case: Spanish)

An action against Office for Harmonization in the Internal Market (trade marks and designs (OHIM) was brought before the Court of First Instance of the European Communities on 11 June 2001 by José Alejandro S.L., whose registered office is at Elche (Spain), represented by Ignacio Temiño Ceniceros.

The applicant claims that the Court should:

— uphold the present application and alter the contested decision of 20 March 2001 of the First Board of Appeal (R 230/2001-1) dismissing the appeal against the decision to accept the opposition submitted by Anheuser-Bush, Inc. against the application to register 'Budmen' as a Community trade mark (Application No 30.221) submitted by José Alejandro S.L. for goods in Class 25, and grant registration of Community trade mark application No 30221 in Class 25 as applied for;

— in the alternative, uphold the present application and alter the content of the contested administrative act, and grant registration of Community trade mark application No 30221 in Class 25 only in respect of footwear.

— so far as concerns costs, order the parties to bear their own costs and each pay half of the common costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	José Alejandro S.L.
The Community trade mark concerned:	Word mark 'BUDMEN' — Application No 30.221 for certain goods in Classes 10, 16 and 25
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	The opponent
Trade mark or sign asserted by way of opposition in the opposition proceedings:	Word mark 'BUD' registered in Denmark, United Kingdom and Ireland for goods in Classes 16 and 25
Decision of the Opposition Division:	Acceptance of the opposition with respect to the goods in Class 25
Decision of the Board of Appeal:	Dismissal of the appeal

Grounds of claim:	No risk of confusion within the meaning of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, since there is neither a visual nor phonetic similarity between the trade marks nor do they desgignate goods which may be confused

Action brought on 11 June 2001 by Sykes Enterprises Incorp. against the Office for Harmonisation in the Internal Market

(Case T-130/01)

(2001/C 245/40)

(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 11 June 2001 by Sykes Enterprises Incorp., Florida, USA, represented by Eberhard Körner of Lichtenstein Körner & Partners, Stuttgard, Germany.

The applicant claims that the Court should:

— annul the contested decision of 7 March 2001 in Case No. R 0504/2000-3;

— order the Office to publish the trademark application concerned;

— order the Office to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	Sykes Enterprises Inc.
The Community trade mark concerned:	Word mark: 'Real people, real solutions' — Application nº 1040534 for certain services in classes 35, 37 and 42
Decision of the Examiner:	Rejection of the Application
Decision of the Board of Appeal:	Rejection of the Appeal
Grounds of claim:	Incorrect interpretation of article 7 (1) b) of Council Regulation 40/94 [1].

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, p. 1).

Action brought on 18 June 2001 by Hans Fuchs Versandschlachterei KG against the Commission of the European Communities

(Case T-134/01)

(2001/C 245/41)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 June 2001 by Hans Fuchs Versandschlachterei KG, Duisburg (Germany), represented by Ulrich Schrömbergs and Lothar Harings, Rechtsanwälte.

The applicant claims that the Court should:

— order the Commission to pay the applicant DEM 13 130,04 plus interest at 8 % per annum as from 1 March 2000;

— in the alternative, order the Bundesanstalt für Landwirtschaft und Ernährung to pay the applicant DEM 13 130,04 plus interest at 8 % per annum as from 1 March 2000;

— order the Commission to pay the costs.

Pleas in law and main arguments

In connection with a programme to supply agricultural products to the Russian Federation [1], two tendering procedures took place: one for procuring the products and the other for their delivery to Russia. Commission Regulation (EC) No 1135/1999 [2] was to constitute the basis for the procurement of the products. Transport was dealt with by Commission Regulation (EC) No 1955/1999 [3].

The applicant submitted a tender for the procurement of pork for subsequent delivery to Russia and obtained the contract for the procurement of one lot. A third party obtained the contract for delivery.

The dispute between the parties concerns the question of the costs which the applicant must bear, in accordance with Article 6 of Regulation (EC) No 1135/1999, in its capacity as a party awarded a contract for the procurement of agricultural products.

The applicant argues that Article 6 of Regulation (EC) No 1135/1999 does not oblige the party awarded the procurement contract to draw up the transport documents for the delivery of the goods to Russia by the party awarded the transport contract, or to bear the costs thereof. All costs arising from the transport side of the tender were the responsibility of the party awarded the transport contract. It was impossible for the procurer to supply appropriate transport documents.

In the alternative, the applicant bases its claim on failure by the Commission to fulfil its precontractual duty of providing information. As the interpretation of the provision in dispute, and thus the scope of the contractual obligation, was not clearly formulated, the Commission should have informed the applicant on the point. Failure to provide such information caused loss to the applicant.

---

(1) In accordance with Council Regulation (EC) No 2802/98 of 17 December 1998 on a programme to supply agricultural products to the Russian Federation (OJ 1998 L 349, p. 12) and Commission Regulation (EC) No 111/1999 of 18 January 1999 laying down general rules for the application of Council Regulation (EC) No 2802/98 on a programme to supply agricultural products to the Russian Federation (OJ 1999 L 14, p. 3).
(2) OJ 1999 L 135, p. 85.
(3) OJ 1999 L 242, p. 13.

Action brought on 19 June 2001 by Stadtsportverband Neuss e.V. against Commission of the European Communities

(Case T-137/01)

(2001/C 245/42)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 June 2001 by Stadtsportverband Neuss e.V. of Neuss, Germany, represented by Heinz Günther Hüsch, lawyer.

The applicant claims that the Court should:

— Annul the recovery decision of the European Commission of 9 April 2001, account number 3240302372;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests the abovementioned recovery decision of the Commission demanding partial repayment of a total sum of EUR 20 000 transferred to the applicant in the context of the Eurathlon programme, in the amount of DEM 31 911,11, on the ground of impermissible profit.

The applicant submits that the conditions for a demand for repayment of the subsidy given, agreed between the parties when the subsidy was granted, are not met. In particular, the final accounts for the project do not show a profit, so that the demand for repayment is unlawful. The defendant might at most be entitled to a proportionate share of 18,4 % of the surplus. It is, however, demanding payment of the entire (incorrectly calculated) surplus.

Moreover, the applicant relies on limitation of the defendant's claims. It submits that the ISO 1994 event took place in 1994, and any claims for repayment arose in that year. The notice to pay dates from 9 April 2001, however, and was therefore made at least six years in law after the alleged debt arose.

Action brought on 19 June 2001 by Comafrica SpA and Dole Fresh Fruit Europe Ltd. & Co. against the Commission of the European Communities

(Case T-139/01)

(2001/C 245/43)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 June 2001 by Comafrica SpA, Genoa, Italy, and Dole Fresh Fruit Europe Ltd. & Co., Hamburg, Germany, represented by Bernard O'Connor and Philip Bastos G. Martin of O'Connor and Company, Brussels (Belgium).

The applicant claims that the Court should:

— declare the application admissible;

— declare void, pursuant to Articles 230 and 231 EC, Commission Regulation (EC) No 896/2001 in so far as it affects the applicants, or in the alternative to declare the said regulation void erga omnes;

— declare void, pursuant to Articles 230 and 231 EC, Commission Regulation (EC) No 1121/2001 in so far as it affects the applicants, alternatively, to declare the said regulation void erga omnes;

— order the Commission, pursuant to Articles 235 and the second paragraph of 288 EC, to make good the damage caused to the applicants by the wrongful adoption of either or both Regulation No 896/2001 and Regulation No 1121/2001, and to pay compensatory interest on all sums found to be due, such interest to run from the date on which the damage materialised;

— make any orders which the Court considers necessary and in particular, pursuant to Article 65 of the Rules of Procedure of the Court of First Instance, to request the Commission to provide figures concerning the actual licence usage for 1994, 1995, 1996; and

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The present application concerns two regulations:

— Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community [1]; and

— Commission Regulation (EC) No 1121/2001 of 7 June 2001 fixing the adjustment coefficients to be applied to each traditional operator's reference quantity under the tariff quotas for imports of bananas [2].

The applicants submit that:

— The method which the Commission has adopted in Article 4(1) of Regulation No 896/2001 for calculating operator reference quantities is illegal, inasmuch as it fixes those quantities by reference to total figures which the Commission must know to be substantially incorrect. In addition, Regulation No 896/2001 precludes the correction of reference quantities either by the Commission itself or by the Member States acting as its agents.

— Regulation No 1121/2001 fixes the Applicant's entitlement to licences for the second half of 2001 and was adopted on the basis of Article 5 of Regulation No 896/2001. As to what is claimed to be the incorrect reference quantities adopted on the basis of Article 4 of Regulation No 896/2001, an essential element in the calculation of the adjustment coefficient, the adjustment coefficient itself is incorrect and illegal.

— In adopting both these Regulations, on the basis of facts that the Commission must know to be incorrect, the Commission has exceeded the powers granted to it by the Council to manage the banana Common Market Organisation lawfully in accordance with good administrative practice.

— The Commission has infringed the applicants' right to have their full entitlement to licences respected, and has allowed certain operators to gain inappropriate rights.

(1) OJ L 126 of 8.5.01, p. 6.
(2) OJ L 153 of 8.6.01, p. 12.

Action brought on 18 June 2001 by Paul Doyle against Commission of the European Communities

(Case T-140/01)

(2001/C 245/44)

(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 18 June 2001 by Paul Doyle, residing in Brussels, represented by Jean-Noël Louis and Véronique Peere, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission to limit to EUR 1 880 .10 the amount transferable to the United Kingdom with effect from October 2000;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an Irish national, has lived for several years in the United Kingdom, having been assigned to a post in Brussels. He challenges the Commission's decision to limit the amount transferable to the United Kingdom to 19 % of his net salary. In support of his application, the applicant alleges infringement of Article 17 of Annex VII to the Staff Regulations and invalidity of the general provisions implementing it. According to the applicant, the Commission was required to transfer a higher rate on account of the regular expenditure which he continues to incur in the United Kingdom and in respect of his dependent children who are pursuing their studies there.

Action brought on 21 June 2001 by Organización de Productores de Túnidos Congelados (OPTUC) against Commission of the European Communities

(Case T-142/01)

(2001/C 245/45)

(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 21 June 2001 by Organización de Productores de Túnidos Congelados (OPTUC), whose registered office is in Bermeo (Spain), represented by Ramón Garcia-Gallardo and Marta Moya.

The applicant claims that the Court should:

— find the present action admissible;

— annul the provisions adopted by the European Commission reducing the quantities eligible for compensatory allowances in respect of OPTUC, namely:

(a) Commission Regulation (EC) No 584/2001 of 26 March 2001 amending Regulations (EC) No 1103/2000 and (EC) No 1926/2000 providing for the granting of compensation to producers' organisations in respect of tuna delivered to the processing industry from 1 July to 30 September 1999 and from 1 October to 31 December 1999 ([1]);

(b) Article 2(2) of Commission Regulation (EC) No 585/2001 of 26 March 2001 providing for compensation to producers' organisations for tuna delivered to the processing industry between 1 January and 31 March 2000 and the annex thereto ([2]);

(c) Article 2(2) of Commission Regulation (EC) No 808/2001 of 26 April 2001 providing for compensation to producers' organisations for tuna delivered to the processing industry between 1 April and 30 June 2000 and the annex thereto ([3]); and

(d) Article 2(2) of Commission Regulation (EC) No 1163/2001 of 14 June 2001 providing for compensation to producers' organisations for tuna delivered to the processing industry between 1 July and 30 September 2000 ([4]).

— make any other appropriate order to the effect that the Commission should fulfil its obligations under Article 233 EC and, in particular, that the Commission should re-examine the situation;

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

Pleas in law and main arguments

The applicant is a Spanish frozen tunny producers' organisation, whose members are associations of tunny freezer vessel owners specialising in fishing for tuna outside Community waters. In its capacity as a producers' organisation, it places reliance on a Community mechanism, set up in order to ensure supply to the Community industry and offer the necessary protection for producers' income, and which consists in the granting of compensatory allowances in periods when prices for the importation of tuna into the Community fall as a result of price movements in the global market. The system for calculating such compensation is based on the level of quarterly deliveries of each producers' organisation (and therefore of its members) with respect to the average quantities sold and delivered by its members during the equivalent quarter in the three preceding fishing years.

The applicant contests a number of Commission regulations which lay down the compensatory allowances for the quarters for the period between 1 July 1999 and 30 September 2000 inasmuch as:

(a) they review the amounts originally granted to the applicant by two earlier regulations, repealing them, on account of the fact that one of its members has now become member of another producers' organisation, whose compensatory allowances have been increased to the detriment of the applicant;

(b) they modify one of the parameters for calculating the compensation due to each of the producers' organisations, acknowledging that the average quantities delivered by its members in the three preceding years — to be compared with the level of deliveries in the quarter in question — might be changed on account of the fact that one of its members has moved to another producers' organisation.

The applicant is of the view that the Commission, by making such changes to the system, and by the way in which it has done so, has erred in two respects:

— *Lack of legal basis*

Commission Regulation (EC) No 142/98 of 21 January 1998 [5], which contains the provisions in force concerning compensatory allowances, does not lay down any specific rule on which the Commission might base itself in order to 'revise downwards' the production averages for the last three fishing years in the event that one of the members leaves a producers' organisation.

— *Breach of the principle of legitimate expectations*

According to the legislation in force when the contested regulations were adopted and entered into force, the applicant legitimately expected to receive higher compensatory allowances. Such expectations were dashed when the applicable rules were changed under the contested provisions.

---

(1) OJ 2001 L 86, p 4.
(2) OJ 2001 L 86, p. 8.
(3) OJ 2001 L 118, p. 12.
(4) OJ 2001 L 159, p. 10.
(5) Commission Regulation (EC) No 142/98 of 21 January 1998 laying down detailed rules for granting the compensatory allowance for tuna intended for the processing industry (OJ 1998 L 17, p. 8).

Action brought on 22 June 2001 by Raymond Maxwell against Commission of the European Communities

(Case T-143/01)

(2001/C 245/46)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 June 2001 by Raymond Maxwell, residing in Lasne (Belgium), represented by Jean-Noël Louis and Véronique Peere, lawyers.

The applicant claims that the Court should:

— annul the decision of the selection board for competition COM/TB/99 to award to the applicant for the oral test a mark too low to allow him to be placed on the reserve list;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant took part in Competition COM/TB/99. He challenges his not being placed on the reserve list for the recruitment of Administrative Assistants, Senior Administrative Assistants and Principal Administrative Assistants.

In support of his application, the applicant claims breach of:

— the principle of equal treatment;

— the procedural guarantees afforded by the Community legal system;

— essential procedural requirements and, in particular, infringement of the rules governing the running of competitions such as those laid down in Article 3(1) of Annex II to the Staff Regulations and in the 'Guide for selection boards and committees';

— the legal framework of the competition notice; and

— the obligation to provide a statement of reasons.

Action brought on 20 June 2001 by Benito Latino against Commission of the European Communities

(Case T-145/01)

(2001/C 245/47)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 June 2001 by Benito Latino, residing in Lauzun (France), represented by George Vandersanden and Laure Levi, lawyers.

The applicant claims that the Court should:

— annul the decision of the appointing authority of 10 August 2000 not to acknowledge the occupational origin of his arthritic symptoms;

— annul the consequential decisions to charge to the applicant the fees and incidental expenses of the doctor appointed by the applicant to the Medical Committee and half of the fees and incidental expenses of the third doctor;

— order the defendant to pay all the costs.

Pleas in law and main arguments

By the present action the applicant, is challenging the appointing authority's refusal to acknowledge the occupational origin of a disease which, according to the applicant himself, was caused by having to carry and lift, as part of his duties, loads of a certain weight.

In support of his arguments, the applicant alleges:

— the allegedly incomprehensible nature of the Medical Committee's findings;

— infringement of Article 73 of the Staff Regulations and Article 3(2) of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease, and failure to observe the duty of care and the principle of proportionality;

— breach of the procedure laid down in Article 21 of the abovementioned rules.

Action brought on 3 July 2001 by Bruno Heim and Franz Gustav Andersson against Office for the Harmonization of the Internal Market (trade marks and designs) (OHIM)

(Case T-149/01)

(2001/C 245/48)

(Language of the case: to be determined in accordance with Article 131(2) of the Rules of Procedure. Language in which the application was drafted: Spanish)

An action against Office for Harmonization in the Internal Market (trade marks and designs (OHIM) was brought before the Court of First Instance of the European Communities on 3 July 2001 by Bruno Heim and Franz Gustav Andersson, both residing in Germany, represented by Juan José Carreño Moreno.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of the Office for Harmonization in the Internal Market (trade marks and designs (OHIM)) of 4 April 2001 in the proceedings in R 588/199-3 dismissing the appeal against the decision to refuse to register the figurative mark 'DockerS by Gerli' as a Community trade mark for goods in Class 25; and

— order a new decision annulling the preceding decision and granting Community trade mark registration application No 22.129 'DockerS by Gerli' for goods in Class 25 of the international classification, of which the applicants are the proprietors.

Pleas in law and main arguments

Applicant for the Community trade mark:	Bruno Heim and Franz Gustav Andersson
The Community trade mark concerned:	Figurative mark 'DockerS by Gerli' — Application No 22.129 for goods in Class 25
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Levi Strauss & Co.
Trade mark or sign asserted by way of opposition in the opposition proceedings:	French and Swedish figurative marks 'DOCKERS' registered for goods in Class 25
Decision of the Opposition Division:	Rejection of the application for registration of the Community trade mark
Decision of the Board of Appeal:	Dismissal of the appeal and confirmation of the rejection of the application for registration of the Community trade mark
Grounds of claim:	— infringement of Articles 34 and 35 of Regulation No 40/94 [1]; — infringement of Article 8(2)(c) of Regulation No 40/94 and Rule 8 of Regulation No 2868/95 [2]; — breach of the concept of 'risk of confusion'

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1993 L 11, p. 1).

[2] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark(OJ 1995 L 303, p. 1).

Action brought on 2 July 2001 by Cristiano Sebastiani against Commission of the European Communities

(Case T-150/01)

(2001/C 245/49)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 July 2001 by Cristiano Sebastiani, residing in Brussels represented by Jean-Noël Louis and Véronique Peere, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the appointing authority of 3 August 2000 inasmuch as it does not acknowledge that the applicant's administrative status is irregular and refuses to compensate him for material and non-material damage suffered by him

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant challenges the decision to bring to a close the administrative inquiry concerning the duties carried out by the applicant, inasmuch as that decision rejects his request for a finding that his administrative status is irregular and to be compensated for material and non-material damage suffered by him. That inquiry shows that the arrangements had broken down both as to the allocation and the execution of tasks entrusted to the applicant.

In support of his application, the applicant alleges:

— breach of the obligation to provide reasons;

— manifest error of assessment;

— breach of the principle of sound administration;

— breach of the rights of the defence.

Removal from the Register of Case T-258/93 [1]

(2001/C 245/50)

(Language of the case: English)

By order of 14 May 2001, the President of the Fourth Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-258/93, H&R Ecroyd Limited v Council of the European Union and Commission of the European Communities.

---

[1] OJ C 165 of 2.7.92.

Removal from the Register of Cases T-31/97 to T-36/97, T-45/97, T-78/97, T-79/97, T-82/97, T-88/97 to T-98/97, T-100/97 to T-105/97, T-114/97 to T-120/97, T-129/97, T-133/97, T-135/97 to T-138/97, T-150/97 to T-153/97, T-157/97, T-158/97, T-174/97, T-180/97, T-208/97 and T-209/97 [1]

(2001/C 245/51)

(Language of the case: French)

By order of 12 June 2001, the President of the Court of First Instance of the European Communities has ordered the removal from the Register of Cases T-31/97 to T-36/97, T-45/97, T-78/97, T-79/97, T-82/97, T-88/97 to T-98/97, T-100/97 to T-105/97, T-114/97 to T-120/97, T-129/97, T-133/97, T-135/97 to T-138/97, T-150/97 to T-153/97, T-157/97, T-158/97, T-174/97, T-180/97, T-208/97 and T-209/97, Francisco Fernandez Ruiz and Others v Commission of the European Communities.

---

[1] OJ C 131 of 26.4.97, C 142 of 10.5.97, C 166 of 31.5.97, C 181 of 14.6.97, C 199 of 28.6.97, C 212 of 12.7.97, C 228 of 26.7.97, C 271 of 6.9.97 et C 7 of 10.1.98.

Removal from the Register of Case T-190/99 [1]

(2001/C 245/52)

(Language of the case: Spanish)

By order of 4 April 2001, the President of the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-190/99, Sniace S.A. v Commission of the European Communities.

---

[1] OJ C 333 of 20.11.99.

Removal from the Register of Case T-36/00 [1]

(2001/C 245/53)

(Language of the case: English)

By order of 14 May 2001, the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-36/00, Sonia Marion Elder and Robert Dale Elder v Commission of the European Communities.

[1] OJ C 135 of 13.5.00.

Removal from the Register of Case T-389/00 [1]

(2001/C 245/54)

(Language of the case: Dutch)

By order of 5 June 2001, the President of the Fifth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-389/00, Campina Melkunie B.V. v Commission of the European Communities.

[1] OJ C 95 of 24.3.01.