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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 9 October 2001

in Case C-108/99 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court)): Commissioners of Customs & Excise v Cantor Fitzgerald International [1]

(Sixth VAT Directive — Exemption for the leasing or letting of immovable property — Meaning — Supply of services — Third party taking over a lease for consideration)

(2001/C 348/01)

(Language of the case: English)

In Case C-108/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court) (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Commissioners of Customs & Excise and Cantor Fitzgerald International — on the interpretation of Article 13B(b) of the Sixth Council Directive of 17 May 1977 (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric (Rapporteur), C. Gulmann, J.-P. Puissochet and R. Schintgen, Judges; A. Tizzano, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 9 October 2001, in which it has ruled:

Article 13B(b) of the Sixth Council Directive of 17 May 1977 (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment does not exempt a supply of services which is made by a person who does not have any interest in the immovable property and which consists in the acceptance, for consideration, of an assignment of a lease of that property from the lessee.

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[1] OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 October 2001

in Case C-112/99 (reference for a preliminary ruling from the Landgericht Düsseldorf): Toshiba Europe GmbH v Katun Germany GmbH [1]

(Comparative advertising — Marketing of spare parts and consumable items — References made by a supplier of non-original spare parts and consumable items to the product numbers specific to the original spare parts and consumable items — Directive 84/450/EEC and Directive 97/55/EC)

(2001/C 348/02)

(Language of the case: German)

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

In Case C-112/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Landgericht Düsseldorf (Regional Court, Düsseldorf) (Germany) for a preliminary ruling in the proceedings pending before that court between Toshiba Europe GmbH and Katun Germany GmbH — on the interpretation of Article 2(2a) and Article 3a(1)(c) and (g) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising (OJ 1984 L 250, p. 17), as amended by Directive 97/55/EC of the European Parliament and of the Council of

6 October 1997 (OJ 1997 L 290, p. 18) — the Court, composed of: P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, L. Sevón (Rapporteur) and M. Wathelet, Judges; P. Léger, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 25 October 2001, in which it has ruled:

1. *On a proper construction of Articles 2(2a) and 3a(1)(c) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, the indication, in the catalogue of a supplier of spare parts and consumable items suitable for the products of an equipment manufacturer, of product numbers (OEM numbers) by which the equipment manufacturer designates the spare parts and consumable items which he himself sells may constitute comparative advertising which objectively compares one or more material, relevant, verifiable and representative features of goods.*

2. *On a proper construction of Article 3a(1) (g) of Directive 84/450/EEC as amended by Directive 97/55/EC, where product numbers (OEM numbers) of an equipment manufacturer are, as such, distinguishing marks within the meaning of that provision, their use in the catalogues of a competing supplier enables him to take unfair advantage of the reputation attached to those marks only if the effect of the reference to them is to create, in the mind of the persons at whom the advertising is directed, an association between the manufacturer whose products are identified and the competing supplier, in that those persons associate the reputation of the manufacturer's products with the products of the competing supplier. In order to determine whether that condition is satisfied, account should be taken of the overall presentation of the advertising at issue and the type of persons for whom the advertising is intended.*

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(1) OJ C 188 of 3.7.1998.

JUDGMENT OF THE COURT

(Second Chamber)

of 11 October 2001

in Case C-267/99 (reference for a preliminary ruling from the Tribunal d'arrondissement de Luxembourg): Christiane Adam, épouse Urbing v Administration de l'enregistrement et des domaines (1)

(Sixth VAT directive — Concept of liberal profession — Managing agent of buildings in co-ownership)

(2001/C 348/03)

(Language of the case: French)

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

In Case C-267/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Tribunal d'arrondissement de Luxembourg (Luxembourg) for a preliminary ruling in the proceedings pending before that court between Christiane Adam, épouse Urbing and Administration de l'enregistrement et des domaines — on the interpretation of Annex F(2) 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 (Second Chamber), composed of: N. Colneric, President of the Chamber, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 11 October 2001, in which it has ruled:

It is for each Member State to determine and define the transactions to which may be applied a reduced rate under Article 12(4) 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, until 31 December 1992, and under Article 28(2)(e) of that Directive as amended by Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates), as from 1 January 1993, subject to the necessity to respect the principle of neutrality of the value added tax.

The liberal professions mentioned in Annex F(2) to the Sixth Directive 77/388/EEC are activities which involve a marked intellectual character, require a high-level qualification and are usually subject to clear and strict professional regulation. In the exercise of such an activity, the personal element is of special importance and such exercise always involves a large measure of independence in the accomplishment of the professional activities.

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(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 October 2001

in Case C-354/99: Commission of the European Communities v Ireland (1)

(Failure to fulfil obligations — Directive 86/609/EEC — Incomplete implementation)

(2001/C 348/04)

(Language of the case: English)

In Case C-354/99: Commission of the European Communities (Agent: R. Wainwright) v Ireland (Agents: initially M.A. Buck-

ley, and subsequently L.A. Farrell) — application for a declaration that, by failing to take all the measures necessary to ensure the correct implementation of Articles 2(d), 11 and 12 of Council Directive 86/609/EEC of 24 November 1986 on the approximation of the laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (OJ 1986 L 358, p. 1) and by failing to provide for an adequate system of penalties for non-compliance with the requirements of Directive 86/609/EEC, Ireland has failed to comply with the Directive, in particular Article 25 thereof, and has failed to fulfil its obligations under the EC Treaty, in particular Article 5 thereof (now Article 10 EC) — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola (Rapporteur) and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; R. Grass, for the Registrar, has given a judgment on 18 October 2001, the operative part of which is as follows:

1. *By failing to adopt all the measures necessary to ensure the correct implementation of Articles 2(d), 11 and 12 of Council Directive 86/609/EEC of 24 November 1986 on the approximation of the laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes, and by failing to provide for an adequate system of penalties for non-compliance with the requirements of Directive 86/609/EEC, Ireland has failed to fulfil its obligations under the Directive, in particular Article 25 thereof, and under the EC Treaty, in particular Article 5 thereof (now Article 10 EC);*

2. *Ireland is ordered to pay the costs.*

([1]) OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 9 October 2001

in Case C-379/99 (reference for a preliminary ruling from the Bundesarbeitsgericht): Pensionskasse für die Angestellten der Barmer Ersatzkasse VVaG v Hans Menauer ([1])

(Equal pay for men and women — Occupational pensions — Pension funds entrusted with carrying out the employer's obligation as regards payment of a supplementary pension — Survivor's pension)

(2001/C 348/05)

(Language of the case: German)

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

In Case C-379/99: reference to the Court under Article 234 EC from the Bundesarbeitsgericht (Federal Labour Court) (Germany) for a preliminary ruling in the proceedings pending before that court between Pensionskasse für die Angestellten der Barmer Ersatzkasse VVaG and Hans Menauer — the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann, J.-P. Puissochet and V. Skouris (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 9 October 2001, in which it has ruled:

Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) must be interpreted to the effect that bodies such as German pension funds ('Pensionskassen') entrusted with providing benefits under an occupational pension scheme are required to ensure equal treatment between men and women, even if the employees discriminated against on the basis of sex have, as against those directly liable, namely their employers in their capacity as parties to their employment contracts, a protected right in the event of insolvency that excludes all discrimination.

([1]) OJ C 366 of 18.12.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 October 2001

in Joined Cases C-396/99 and C-397/99: Commission of the European Communities v Hellenic Republic ([1])

(Failure by a Member State to fulfil its obligations — Directives 90/388/EEC and 96/2/EC — Market for telecommunications services — Mobile and personal communications)

(2001/C 348/06)

(Language of the case: Greek)

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

In Joined Cases C-396/99 and C-397/99: Commission of the European Communities (Agents: B. Doherty and D. Triantafyllou) v Hellenic Republic (Agents: N. Dafniou and S. Chala) — application for a declaration that, by failing to take, within the prescribed period, all the measures necessary to comply with Article 2(1) (Case C-396/99) and Article 2(2) (Case C-397/99) of Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and

personal communications (OJ 1996 L 20, p. 59), in conjunction with the second and third paragraphs of Article 3a of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10) as amended by Directive 96/2/EC, the Helenic Republic failed to fulfil its obligations under the EC Treaty and those Directives — the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann (Rapporteur), R. Schintgen, V. Skouris, and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 16 October 2001, in which it:

1. *Declares that by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Article 2(1) and (2) of Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications, in conjunction with the second and third paragraphs of Article 3a of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, the Hellenic Republic failed to fulfil its obligations under those Directives;*

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

([1]) OJ C 6 of 8.1.2000, OJ C 366 of 18.12.1999.

JUDGMENT OF THE COURT

of 9 October 2001

in Case C-400/99: Italian Republic v Commission of the European Communities ([1])

(Action for annulment — State aid — Aid to a maritime transport undertaking — Public service contract — Exiting aid or new aid — Initiation of the procedure under Article 88(2) EC — Obligation to suspend — No need to adjudicate or inadmissibility)

(2001/C 348/07)

(Language of the case: Italian)

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

In Case C-400/99: Italian Republic (Agent: U. Leanza, assisted by P.G. Ferri) v Commission of the European Communities (Agents: E. De Persio and D. Triantafyllou) — application for annulment of the Commission decision, notified to the Italian Republic by letter SG(99) D/6463 of 6 August 1999, published in the Official Journal of the European Communities of 23 October 1999 (OJ 1999 C 306, p. 2), to initiate the procedure under Article 88(2) EC concerning State aid C 64/99 (ex NN 68/99) — Italyl — granted to undertakings in the Tirrenia di Navigazione group, in so far as that decision rules on the suspension of the aid in question — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), A. La Pergola, J.-P. Puissochet (Rapporteur), L. Sevón, M. Wathelet, V. Skouris and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 9 October 2001, in which it:

1. *Dismisses the application by the Commission of the European Communities, based on Article 91(1) of the Rules of Procedure of the Court of Justice, for a declaration that there is no need to adjudicate or that the action is inadmissible;*

2. *Declares that the proceedings are to continue as to the substance of the case;*

3. *Reserves the costs.*

([1]) OJ C 20 of 22.1.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 October 2001

in Case C-441/99 (reference for a preliminary ruling from the Högsta domstolen): Riksskatteverket v Soghra Gharehveran ([1])

(Directive 80/987/EEC — Approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer — Scope of the exclusion relating to Sweden provided for in point G of Section I of the Annex to the Directive — Designation of the State as liable to pay guaranteed wage claims — Effect on Directive 80/987/EEC)

(2001/C 348/08)

(Language of the case: Swedish)

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

In Case C-441/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Högsta domstolen

(Supreme Court), Sweden for a preliminary ruling in the proceedings pending before that court between Riksskatteverket and Soghra Gharehveran — on the interpretation of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1) — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola (Rapporteur), L. Sevón, M. Wathelet and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; R. Grass, for the Registrar, has given a judgment on 18 October 2001, in which it has ruled:

1. *Point G of Section I of the Annex to Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, is to be interpreted as not allowing the Kingdom of Sweden to exclude from the group of persons covered by the wage payment guarantee provided for by the Directive employees whose close relative owned, less than six months before the petition in insolvency, at least 20 % of the shares of the company employing them, when the employees concerned did not themselves have any share in the capital of that company.*

2. *Where a Member State has designated itself as liable to fulfil the obligation to meet wage and salary claims guaranteed under Directive 80/987/EEC, an employee whose spouse was owner of the company employing her is entitled to rely on the right to claim pay against the Member State concerned before a national court, notwithstanding the fact that, in breach of the Directive, the legislation of that Member State expressly excludes from the group of persons covered by the guarantee employees whose close relative was owner of at least 20 % of the shares of the company but who did not themselves have any share in the capital of that company.*

([1]) OJ C 34 of 5.2.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 11 October 2001

in Case C-457/99: Commission of the European Communities v Hellenic Republic ([1])

(Failure by a Member State to fulfil its obligations — Directive 95/69/EC — Animal nutrition — Non-implementation)

(2001/C 348/09)

(Language of the case: Greek)

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

In Case C-457/99: Commission of the European Communities (Agent: M. Condou-Durande) v Hellenic Republic (Agents: I.-K. Chalkias and D. Tsagkaraki) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 95/53/EC of 25 October 1995 fixing the principles governing the organisation of official inspections in the field of animal nutrition (OJ 1995 L 265, p. 17),

— Council Directive 95/69/EC of 22 December 1995 laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector and amending Directives 70/524/EEC, 74/63/EEC, 79/373/EEC and 82/471/EEC (OJ 1995 L 332, p. 15), and

— Commission Directive 97/72/EC of 15 December 1997 amending Council Directive 70/524/EEC concerning additives in feedingstuffs (OJ 1997 L 351, p. 55),

the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and those Directives — the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, D.A.O. Edward and A. La Pergola (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 11 October 2001, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 95/69/EC of 22 December 1995 laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector and amending*

Directives 70/524/EEC, 74/63/EEC, 79/373/EEC and 82/471/EEC, the Hellenic Republic has failed to fulfil its obligations under that Directive;

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

(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 23 October 2001

in Case C-510/99 (reference for a preliminary ruling from the Tribunal de grande instance de Grenoble (France)): criminal proceedings against Xavier Tridon, third parties: Fédération départementale des chasseurs de l'Isère and Fédération Rhône-Alpes de protection de la nature (Frapna), section Isère (1)

(Wild fauna and flora — Endangered species — Application in the Community of the Washington Convention)

(2001/C 348/10)

(Language of the case: French)

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

In Case C-510/99: reference to the Court under Article 234 EC from the Tribunal de grande instance de Grenoble (Regional Court, Grenoble) (France) for a preliminary ruling in the criminal proceedings pending before that court against Xavier Tridon, third parties: Fédération départementale des chasseurs de l'Isère and Fédération Rhône-Alpes de protection de la nature (Frapna), section Isère — on the interpretation of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC), Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (OJ 1982 L 384, p. 1), in particular Articles 6 and 15, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora concluded in Washington on 3 March 1973, in particular Articles VII and XIV — the Court, composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), J.-P. Puissochet and R. Schintgen, Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 23 October 2001, in which it has ruled:

1. *As regards species covered by Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, concluded in Washington on 3 March 1973, Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on International Trade in Endangered Species of Wild Fauna and Flora must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.*

   As regards species covered by Annex A to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, that Regulation must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.

2. *As regards species covered by Appendix II to the Convention, Regulation (EEC) No 3626/82 does not prohibit the commercial use of specimens of those species, apart from the case referred to in Article 6(2) where the specimens have been introduced contrary to Article 5 of that Regulation.*

   As regards species covered by Annex B to Regulation (EEC) No 338/97, that Regulation does not prohibit the commercial use of specimens of those species, provided that the conditions laid down in Article 8(5) of that Regulation are met.

Those regulations preclude legislation of a Member State imposing a general prohibition in its territory of all commercial use of captive born and bred specimens of those species, in so far as it applies to specimens imported from other Member States, if it is apparent that the objective of protection of the latter, as referred to in Article 15 of Regulation (EEC) No 3626/82 or Article 36 of the EC Treaty (now, after amendment, Article 30 EC), may be achieved just as effectively by measures which are less restrictive of intra-Community trade.

(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 October 2001

in Case C-78/00: Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil its obligations — Articles 17 and 18 of the Sixth VAT Directive — Issue of Government bonds to refund excess VAT — Category of taxable persons whose tax position is in credit)

(2001/C 348/11)

(Language of the case: Italian)

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

In Case C-78/00: Commission of the European Communities (Agent: E. Traversa) v Italian Republic (Agent: U. Leanza, assisted by G. De Bellis) — application for a declaration that, by providing that the category of taxable persons whose tax position for 1992 is in credit be belatedly issued with government bonds instead of refunds of value added tax, the Italian Republic has failed to fulfil its obligations under Articles 17 and 18 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them (OJ 1995 L 102, p. 18) — the Court (Fifth Chamber), composed of: S. von Bahr (Rapporteur), President of the Fourth Chamber, acting as President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet and C.W.A. Timmermans, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 25 October 2001, in which it:

1. *Declares that by providing that the category of taxable persons whose tax position for1992 is in credit be belatedly issued with government bonds instead of refunds of the excess value added tax the Italian Republic has failed to fulfil its obligations under Articles 17 and 18 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them;*

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

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[1] OJ C 149 of 27.5.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 11 October 2001

in Case C-110/00: Commission of the European Communities v Republic of Austria [1]

(Failure by a Member State to fulfil its obligations — Directive 97/59/EC)

(2001/C 348/12)

(Language of the case: German)

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

In Case C-110/00: Commission of the European Communities (Agent: N. Yerrell and C. Ladenburger) v Republic of Austria (Agent: C. Pesendorfer) — application for a declaration that, by failing to adopt and/or notify to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 97/59/EC of 7 October 1997 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/301/EEC) (OJ 1997 L 282, p. 33), the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that Directive — the Court (Fourth Chamber), composed of S. von Bahr, President of the Chamber, D.A.O. Edward and A. La Pergola (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, for the Registrar, has given a judgment on 11 October 2001, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Commission Directive 97/59/EC of 7 October 1997 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that Directive;*

2. *Orders the Republic of Austria to pay the costs.*

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(1) OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 11 October 2001

In Case C-111/00: Commission of the European Communities v Republic of Austria (1)

(Failure by a Member State to fulfil its obligations — Directive 97/65/EC)

(2001/C 348/13)

(Language of the case: German)

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

In Case C-111/00: Commission of the European Communities (Agents: N. Yerrell and C. Ladenburger) v Republic of Austria (Agent: C. Pesendorfer) — application for a declaration that, by failing to adopt and/or notify to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 97/65/EC of 26 November 1997 adapting, for the third time, to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work, (OJ 1997 L 335, p. 17), the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that Directive — the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, A. La Pergola (Rapporteur) and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 11 October 2001, in which it:

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Commission Directive 97/65/EC of 26 November 1997 adapting, for the third time, to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work, the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that Directive;*

2. *Orders the Republic of Austria to pay the costs.*

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(1) OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT

(First Chamber)

of 25 October 2001

in Case C-189/00 (reference for a preliminary ruling from the Sozialgericht Trier): Urszula Ruhr v Bundesanstalt für Arbeit (1)

(Regulation (EEC) No 1408/71 — Nationals of non-member countries — Members of a worker's family — Rights acquired directly and rights derived through others — Unemployment benefit)

(2001/C 348/14)

(Language of the case: German)

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

In Case C-189/00: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Sozialgericht (Social Court) Trier (Germany) for a preliminary ruling in the proceedings pending before that court between Urszula Ruhr v Bundesanstalt für Arbeit — on the interpretation of Article 2(1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 307/1999 of 8 February 1999 (OJ 1999 L 38, p. 1) — the Court (First Chamber), composed of: P. Jann, President of the Chamber, L. Sevón and M. Wathelet (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 25 October 2001, in which it has ruled:

The interpretation given by the Court of Justice in Case 40/76 Kermaschek continues to hold good in relation to Article 2(1), in conjunction with Articles 67 to 71a, of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 307/1999 of 8 February 1999.

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(1) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Third Chamber)

of 16 October 2001

in Case C-212/00 (reference for a preliminary ruling from the Tribunal du travail de Mons): Salvatore Stallone v Office national de l'emploi (ONEM) (1)

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Unemployment benefit — Condition of living together with the dependent members of the family)

(2001/C 348/15)

(Language of the case: French)

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

In Case C-212/00: reference to the Court under Article 234 EC from the Tribunal du travail de Mons (Labour Court, Mons) (Belgium) for a preliminary ruling in the proceedings pending before that court between Salvatore Stallone and Office national de l'emploi (ONEM) — on the interpretation of Articles 1(f)(i) and 68(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) — the Court (Third Chamber), composed of: C. Gulmann (Rapporteur), acting for the President of the Third Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 16 October 2001, in which it has ruled:

Article 68(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, read in conjunction with Article 1(f)(i) thereof, precludes national rules, such as those at issue in the main proceedings, under which receipt of a higher rate of unemployment benefit is conditional on the unemployed person living together with the members of his family in the territory of the competent Member State.

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(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 October 2001

in Case C-460/00: Commission of the European Communities v Hellenic Republic (1)

(Failure by a Member State to fulfil its obligations — Directive 96/48/EC — Interoperability of the trans-European high-speed rail system)

(2001/C 348/16)

(Language of the case: Greek)

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

In Case C-460/00: Commission of the European Communities (Agents: M. Wolfcarius and M. Patakia) v Hellenic Republic (Agents: N. Dafniou and S. Chala) — application for a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply fully with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ 1996 L 235, p. 6), or, alternatively, by not communicating them to the Commission, within the prescribed period, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty — the Court (Fifth Chamber), composed of: A. La Pergola, President of the Chamber, D.A.O. Edward, L. Sevón (Rapporteur) S. von Bahr and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 25 October 2001, in which it:

1. *Declares that, by not adopting, within the prescribed period, the laws, regulations and administrative provisions necessary to comply fully with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, the Hellenic Republic has failed to fulfil its obligations under that Directive.*

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

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(1) OJ C 45 of 10.2.2001.

Reference for a preliminary ruling by the Landgericht Frankfurt am Main by order of that court of 10 August 2001 in the case of Deutscher Apothekerverband e.V. against DocMorris NV and Jacques Waterval

(Case C-322/01)

(2001/C 348/17)

Reference has been made to the Court of Justice of the European Communities by order of the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) of 10 August 2001, received at the Court Registry on 21 August 2001, for a preliminary ruling in the case of Deutscher Apothekerverband e.V. v Doc Morris NV and Jacques Waterval on the following questions:

1. Are the principles of the free movement of goods under Article 28 et seq. of the Treaty infringed by national legislation which prohibits human medicines, which are required to be handled only through pharmacies, from being imported commercially from other EU Member States in mail-order business through authorised pharmacies on the basis of individual orders placed by consumers over the Internet?

   (a) Does such a national prohibition constitute a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 28 of the EC Treaty?

   (b) If it does, is Article 30 EC to be interpreted as meaning that a national prohibition designed to protect the health and life of humans is justified if, before prescription medicines are sent out, a doctor's original prescription must have been produced to the pharmacy sending out the medicines? In such a situation, what requirements should be placed on that pharmacy as regards control of the order, packaging and receipt?

   (c) Are questions 1, 1(a) and 1(b) to be assessed differently in the light of Articles 28 and 30 EC if the imported medicines in question are medicines authorised in the importing State, which a pharmacy in an EU Member State previously obtained from wholesalers in the importing State?

2. Is it compatible with Articles 28 and 30 EC for a national prohibition on advertising medicines by mail order, prescription medicines and medicines available only through pharmacies that are authorised in the State of origin but not the importing State to be interpreted so broadly that the Internet presentation of a pharmacy of an EU Member State, which in addition to presentation of its business describes individual medicines with their product name, prescription status, package size and price and at the same time offers the possibility of ordering those medicines by means of an on-line order form, is classified as prohibited advertising, with the result that cross-border orders of medicines by internet including delivery of those orders is at the very least made substantially more difficult?

   (a) Having regard to Article 1(3) of Directive 2000/31/EC (1) of 8 June 2000 ('Directive on electronic commerce'), do Articles 28 and 30 EC require the Internet presentation of a pharmacy of an EU Member State, as described above, or parts of that presentation, to be excluded from the definition of advertising to the general public for the purposes of Articles 1(3) and 3(1) of Council Directive 1992/28/EEC (2), of 31 March 1992 on the advertising of medicinal products for human use, in order to make it practically possible to offer certain information society services?

   (b) Can any restriction of the definition of advertising that may be required under Articles 28 and 30 EC be justified by the consideration that on-line order forms containing only the minimum information necessary for placing an order, and/or other parts of the Internet presentation of a pharmacy of an EU Member State, are comparable with trade catalogues and/or price lists within the meaning of Article 1(4) of Directive 92/28/EEC?

3. If some aspects of the Internet presentation of a pharmacy of an EU Member State infringe provisions concerning the advertising of medicines, is it to be inferred from Articles 28 and 30 EC that cross-border trade in medicines which does take place with the help of such a presentation must be regarded as legally permissible despite the prohibited advertising, in order more effectively to implement the principle of the free movement of goods across borders?

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(1) OJ L 178, 17.7.2000, p. 1.

(2) OJ L 113, 30.4.1992, p. 13.

Reference for a preliminary ruling, by the Bundesfinanzhof, by order of that court of 17 July 2001, in the case of Hamann International GmbH Spedition and Logistik against Hauptzollamt Hamburg-St. Annen

(Case C-337/01)

(2001/C 348/18)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 17 July 2001, received at the Court Registry on 10 September 2001, for a preliminary ruling in the case of Hamann International GmbH Spedition and Logistik against Hauptzollamt Hamburg-St. Annen, on the following question:

Is there a removal from customs supervision of re-exported non-Community goods resulting in the incurring of a customs debt under Article 203(1) of Council Regulation (EEC) No 2913/92 [1] solely by virtue of the fact that the goods intended for re-export from the customs territory of the Community were not placed under the external transit procedure immediately on removal from the customs warehouse?

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[1] OJ 1992 L 302, p. 1.

References for a preliminary ruling by the Bundesgerichtshof by orders of that court of 3 July 2001 in the cases of 1. AOK Bundesverband, 2. Bundesverband der Betriebskrankenkassen, 3. Bundesverband der Innungskrankenkassen, 4. Bundesverband der landwirtschaftlichen Krankenkassen, 5. Verband der Angestelltenkrankenkassen e.V., 6. Verband der Arbeiter-Ersatzkassen, 7. Bundesknappschaft and 8. See-Krankenkasse against Gödecke Aktiengesellschaft and Intersan, Institut für pharmazeutische und klinische Forschung GmbH, respectively

(Cases C-354/01 and C-355/01)

(2001/C 348/19)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesgerichshof of 3 July 2001, received at the Court Registry on 20 September 2001, for a preliminary ruling in the cases of 1. AOK Bundesverband, 2. Bundesverband der Betriebskrankenkassen, 3. Bundesverband der Innungskrankenkassen, 4. Bundesverband der landwirtschaftlichen Krankenkassen, 5. Verband der Angestelltenkrankenkassen e.V., 6. Verband der Arbeiter-Ersatzkassen, 7. Bundesknappschaft and 8. See-Krankenkasse against Gödecke Aktiengesellschaft and Intersan, Institut für pharmazeutische und klinische Forschung GmbH on the following questions:

1. Are Articles 81 and 82 EC to be interpreted as precluding national rules under which national leading associations of statutory sickness insurance determine binding maximum amounts for all statutory sickness funds and compensatory sickness funds up to which the funds bear the costs of medicines, where the legislature defines the criteria by which the maximum amounts are to be calculated, providing in particular that the fixed amounts must ensure comprehensive and quality-assured treatment of insured persons as well as an adequate range of therapeutic alternatives, and the determination is subject to comprehensive review by the courts, which may be initiated by both insured persons and affected medicinal product manufacturers?

2. If question 1 is answered in the affirmative:

   Does Article 86(2) EC exempt such a determination from Articles 81 and 82 EC where the purpose of the determination is to safeguard, in the manner provided for in paragraph 35 SGB V, a sickness insurance scheme whose existence was endangered by a significant increase in costs?

3. If question 1 is answered in the affirmative and question 2 in the negative:

   Are leading associations such as the defendants liable to claims under Community law for damages and an injunction even where in determining maximum amounts they follow a statutory direction, notwithstanding that national law does not impose any penalty for refusal to assist in the making of such a determination?

Reference for a preliminary ruling by the Bundessozialgericht by order of that court of 2 August 2001 in the case of Nadi Sahin against Bundesanstalt für Arbeit

(Case C-369/01)

(2001/C 348/20)

Reference has been made to the Court of Justice of the European Communities by order of the Bundessozialgericht

(Federal Social Court) of 2 August 2001, received at the Court Registry on 25 September 2001, for a preliminary ruling in the case of Nadi Sahin against Bundesanstalt für Arbeit (Federal Labour Office) on the following question:

1. Is Article 41(1) of the Additional Protocol of 23 November 1970 to the Agreement establishing an Association between the European Economic Community and Turkey to be interpreted as meaning:

   (a) that a Turkish worker is entitled to plead a restriction on the freedom to provide services which is contrary to the Additional Protocol and, if so,

   (b) that there is also a restriction on the freedom to provide services where a Member State of the Community abolishes an existing work permit exemption for Turkish drivers engaged in international haulage who are employed by a (Turkish) employer with its seat in Turkey?

2. Does such a restriction concern exclusively the freedom to provide services or does it also or solely concern conditions of access to employment within the meaning of Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey?

3. Is Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey also to be applied to Turkish employees of an employer with its seat in Turkey who, as long-distance lorry drivers engaged in international haulage, regularly pass through a Member State of the Community without belonging to the (legitimate) labour force of that Member State?

Action brought on 26 September 2001 by the Commission of the European Communities against the Hellenic Republic

(Case C-371/01)

(2001/C 348/21)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 26 September 2001 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, and Panos Panagiotopoulos, a national civil servant on secondment to its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt and to notify to the Commission, within the time-limit laid down, the laws, regulations and administrative provisions necessary to comply fully with Council Directive 98/81/EC[1] of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

In accordance with the third paragraph of Article 249 of the Treaty establishing the European Community, directives are binding, as to the result to be achieved, upon each Member State to which they are addressed.

Under the first paragraph of Article 10 of the Treaty, Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

It is not disputed by the Hellenic Republic that it must adopt measures to comply with the abovementioned directive.

The Commission records that until now the Hellenic Republic has not adopted the appropriate measures for the full incorporation of the Directive at issue into Greek law.

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[1] OJ L 330, 5.12.1998, p. 13.

Action brought on 27 September 2001 by the Commission of the European Communities against Ireland

(Case C-375/01)

(2001/C 348/22)

An action against Ireland was brought before the Court of Justice of the European Communities on 27 September 2001 by the Commission of the European Communities, represented by Richard Wainwright, acting as agent, with an address for service in Luxembourg.

The Applicant requests that the Court should:

— declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 97/43/Euratom of 30 June 1997 laying down provisions concerning health protection of individuals against the dangers of ionising radiation in relation to medical exposure, and repealing Directive 84/466/Euratom [1] or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under that Directive,

— order Ireland to pay the costs.

Pleas in law and main argument

Article 249 EC under which a directive shall be binding as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the Directive. That period expired on 13 May 2000 without Ireland having enacted the provisions necessary to comply with the Directive referred to in the conclusions of the Commission.

[1] OJ L 180, 9.7.1997, p. 22.

Action brought on 2 October 2001 by the Commission of the European Communities against the Italian Republic

(Case C-378/01)

(2001/C 348/23)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 2 October 2001 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing adequately to classify as special protection areas the most suitable zones, in terms of number and surface area, for the protection of those species mentioned in Annex I to Council Directive 79/409/EEC [1] and subsequent amendments thereto and other migratory species which regularly return to Italy, and by failing to send to the Commission all the appropriate information relevant to most of the special protection areas classified by it, the Italian Republic has failed to fulfil its obligations under Article 4(1), (2) and (3) of that Directive.

— Order the Italian Republic to pay the costs.

Pleas in law and main argument

In spite of the efforts made by the Italian authorities to fulfil their obligations under Article 4 of the Directive, the Commission finds that the classification of the special protection areas (SPA) still does not meet the requirements of that provision, either in so far as concerns the species of birds mentioned in Annex 1 to the Directive or in so far as concerns the other species of migratory birds which return regularly.

In view of the present number and surface of the SPAs in Italy, it is clear that many bird species listed in Annex I to the Directive and many other migratory species are not adequately protected. Another factor which shows the inadequacy of the classification of the SPAs carried out by the Italian authorities is the fact that a large number of internationally important wetlands have not been designated. Moreover, a comparison between the number of 'Important bird areas' (IBA) and the number of IBAs partly or wholly covered by SPAs, so far as certain autonomous regions and provinces are concerned, shows that, notwithstanding that the situation has improved for a number of regions, there remain some substantial aspects in which they fall short, in particular in respect of some regions which are extremely important for wild birds.

Finally, the information sent by Italy to the Commission is in many ways inadequate. In particular, the ornithological data is often inadequate inasmuch as it is both incomplete and inaccurate. Those deficiencies infringe Article 4(3) of the Directive and prevent the Commission from being able to carry out its coordinating role in order to ensure that the SPAs form a coherent whole which meets the protection requirements of the affected species.

[1] OJ 1979 L 103 of 25.4.1979, p. 1.

Reference for a preliminary ruling from the Verwaltungsgerichtshof by order of that court of 13 September 2001 in the case of Dr Gustav Schneider v Bundesminister für Justiz

(Case C-380/01)

(2001/C 348/24)

Reference has been made to the Court of Justice of the European Communities by an order of the Verwaltungsgerichtshof (Administrative Court, Austria) of 13 September 2001, which was received at the Court Registry on 4 October 2001, for a preliminary ruling in the case of Dr Gustav Schneider v Bundesminister für Justiz on the following question:

Is Article 6 of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1] to be interpreted as meaning that the possibility required by that article of pursuing claims (in the present case, a claim for compensation) by judicial process is not adequately satisfied by the Austrian Verwaltungsgerichtshof (Administrative Court) alone, in view of that court's legally limited powers (a court which hears appeals on points of law only with no fact-finding powers)?

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[1] OJ 1976 L 39, p. 40.

Action brought on 4 October 2001 by the Commission of the European Communities against the Italian Republic

(Case C-381/01)

(2001/C 348/25)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 4 October 2001 by the Commission of the European Communities, represented by Enrico Traversa, acting as Agent.

The applicant claims that the Court should:

— Declare that, by failing to levy value added tax (VAT) on the assistance paid pursuant to Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder [1], the Italian Republic has failed to fulfil its obligations under the Sixth Council VAT Directive 77/388/EEC [2];

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Under Article 11(A)(1)(a) of the Directive, Member States are required to include in the taxable amount not only that which constitutes the consideration paid by the purchaser or to the provider of the service, but also the subsidies provided by third parties to the supplier of the goods or the provider of the service, provided that such subsidies are 'directly linked to the price of such supplies'.

The Commission argues that the assistance paid to the processing undertakings which produce dried fodder constitutes part of the price of the good produced by such undertakings, thus falling within the category 'subsidies directly linked to the price of such supplies' and which must therefore be subject to tax.

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[1] OJ 1995 L 15, p. 11.
[2] OJ 1977 L 145, p. 1.

Action brought on 5 October 2001 against the French Republic by the Commission of the European Communities

(Case C-384/01)

(2001/C 348/26)

An action against the French Republic was brought before the Court of Justice of the European Communities on 5 October 2001 by the Commission of the European Communities, represented by E. Traversa and C. Giolito, acting as Agents, with an address for service in Luxembourg.

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

— Declare that, by applying a reduced rate of VAT to the fixed part of the prices for gas and electricity supplied by the public networks, the French Republic has failed to fulfil its obligations under Article 12(3)(a) and (b) of Sixth Council Directive 77/388/EC 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 [1],

— order the French Republic to pay the costs.

Pleas in law and main arguments

In this action the Commission is seeking a declaration of a failure in two respects to comply with the provisions of the Sixth Directive: first, a failure to comply with the first and third sentences of Article 12(3) (a) thereof, inasmuch as France is applying a reduced rate contrary to that provision and, secondly, a failure to comply with Article 12(3) (b) concerning the procedure for authorisation of application of a reduced rate on supplies of natural gas and electricity.

— On the consultation procedure (Article 12(3)(b)): as long as France had not replied to the request for additional information, the Commission was unable to take a definitive view. In the absence of full information, despite a request to that effect, the Commission was entitled to take the view that the French authorities had withdrawn their request. Consequently, by not forwarding the information requested by the Commission in order to enable it to take a decision under Article 12(32)(b), France has failed to fulfil its obligations under that provision.

— On the substance of the measure (Article 12(3)(a)): if the supply agreement is regarded as a specific service representing fixed costs as distinct from the actual supply of energy, the reduced rate would then have no legal basis in Article 12(3)(a) which refers to Annex H and in which the agreement or the supply of energy does not feature. Moreover, there is no warrant for that reduced rate in Article 12(3)(b) which merely mentions 'supplies of natural gas and electricity'. If, on the other hand, the agreement to supply is viewed as forming part of the actual supply of energy, then France is obliged to apply the same rate to a transaction relating to the same asset in accordance with the principle of a single rate under Article 12(3)(a). Thus, under Article 12(3)(1b) it is then the whole of the transaction (agreement and supply) which should be subject to the same reduced rate. Consequently, notwithstanding all the distinctions which France has sought to draw between the agreement to supply and the actual supply of energy, and however such agreement maybe described, France cannot but be found to have failed to fulfil its obligations under Article 12(3)(a) and (b) of the Sixth VAT Directive.

(1) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling by the Rechtbank van Eerste Aanleg te Veurne by judgment of 4 May 2001 in criminal proceedings brought against Klaus Hans Fritz Brügge; civil party: Benedikt Leliaert

(Case C-385/01)

(2001/C 348/27)

Reference has been made to the Court of Justice of the European Communities by judgment of 4 May 2001 by the Rechtbank van Eerste Aanleg te Veurne (Court of First Instance, Veurne), which was received at the Court Registry on 8 October 2001, for a preliminary ruling in criminal proceedings brought against Klaus Hans Fritz Brügge; civil party: Benedikt Leliaert, on the following question:

Does application of Article 54 of the Schengen Agreement of 19 June 1990 allow the Belgian Openbaar Ministerie (Public Prosecutor's Department) to require a German national to appear before the Belgian criminal courts and allow those courts to sentence that national in the case where the German Public Prosecutor's Department, on the basis of the same facts, has offered that German national the opportunity to make payment in an out-of-court settlement, which that national has accepted?

Action brought on 8 October 2001 by the Commission of the European Communities against the Italian Republic

(Case C-388/01)

(2001/C 348/28)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 8 October 2001 by the Commission of the European Communities, represented by Marian Patakia and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— Declare that, by maintaining in force discriminatory charges for admission to public museums, monuments, galleries, archaeological digs, parks and gardens in Italy, granted by local or decentralised authorises which only favour Italian nationals or residents within the territory of the administrative authority running the cultural sites in question and who are aged over 60 or 65 years, to the exclusion of tourists who are nationals of other Member

States or of persons who are not resident in such areas, despite fulfilling the same age requirement, the Italian Republic has failed to fulfil its obligations under Articles 12 and 49 of the EC Treaty.

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Granting advantageous admission charges only to Italian nationals constitutes a restriction on the right to have access to services to which tourists visiting Italian archaeological and cultural sites are entitled.

The granting of advantageous admission charges to certain categories of visitors, in this case to those aged over 60 or 65 years, on the basis of their residence within the municipality in which the cultural site is located, constitutes indirect discrimination on grounds of nationality since in the end it affects mainly non-Italian Community tourists, whose exclusion from benefiting from the lower charges constitutes the disguised objective.

The lower charges offered by the municipal museums thus infringe Articles 12 and 49 of the EC Treaty inasmuch as they constitute discrimination on grounds of nationality.

Action brought on 9 October 2001 by the Commission of the European Communities against the Portuguese Republic

(Case C-389/01)

(2001/C 348/29)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 9 October 2001 by the Commission of the European Communities, represented by António Caeiros, acting as Agent, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, Wagner Centre.

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 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation [1], the Portuguese Republic has failed to fulfil its obligations under Articles 55(1) of that Directive,

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

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The provisions of the third paragraph of Article 161 and the first paragraph of Article 192 of the EAEC Treaty require Member States to adopt the measures necessary to transpose directives addressed to them into their domestic law before the expiry of the period prescribed for doing so. Despite that period having expired (13 May 2000) the Portuguese Republic has still not brought into force the provisions necessary to transpose Directive 96/29/Euratom into its legal system.

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[1] OJ 1996 L 314, p. 20.

Action brought on 9 October 2001 by the Commission of the European Communities against the Portuguese Republic

(Case C-390/01)

(2001/C 348/30)

An action against the Portuguese Republic as brought before the Court of Justice of the European Communities on 9 October 2001 by the Commission of the European Communities, represented by António Catiros, acting as Agent, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, Wagner Centre.

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 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure, and repealing Directive 84/466/Euratom [1], the Portuguese Republic has failed to fulfil its obligations under Articles 14 of that Directive,

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

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case C-389/01.

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[1] OJ L 180, 9.7.1997, p. 22.

Action brought on 9 October 2001 by the Commission of the European Communities against the Portuguese Republic

(Case C-391/01)

(2001/C 348/31)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 9 October 2001 by the Commission of the European Communities, represented by António Caeiros, acting as Agent, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, Wagner Centre.

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 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1] the Portuguese Republic has failed to fulfil its obligations under Articles 34(1) of that Directive,

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

— 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 and the first paragraph of Article 10 of the EC Treaty requires Member States to adopt the measures necessary to transpose directives addressed to them into their domestic law before the expiry of the period prescribed for doing so. That period expired on 14 May 2000 without the Portuguese Republic having brought into force the necessary provisions to transpose Directive 98/8/EC into its domestic law.

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[1] OJ L 123, 24.4.1998, p. 1.

Action brought on 8 October 2001 by the French Republic against the Commission of the European Communities

(Case C-393/01)

(2001/C 348/32)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 8 October 2001 by the French Republic, represented by G. de Bergues and R. Loosli-Surrans, acting as agents, with an address for service in Luxembourg.

The French Republic claims that the Court should:

— annul Commission Decision 2001/577/EC of 25 July 2001 setting the date on which dispatch from Portugal of bovine products under the date-based export scheme may commence by virtue of Article 22(2) of Decision 2001/376/EC [1],

— order the Commission to pay the costs.

Pleas in law and main arguments

— Infringement of the conditions laid down by Decision 2001/376/EC [2], the Commission adopted Decision 2001/577/EC without having carried out all the inspections prescribed by Article 21 of Decision 2001/376/EC. The last inspection report of the Food and Veterinary Office communicated to the French Republic before the decision of 25 July 2001 was the report of 25 to 27 June 2001 in its final version DG(SANCO)3345/2001, which does not examine the development of the incidence of the disease and the effective enforcement of the relevant national measures and does not contain a risk assessment demonstrating whether appropriate measures to manage any risk have been taken. It is apparent from the conclusions of that report that, at the time when the inspection report was submitted, the desired legislation was not yet in force and certain Food and Veterinary Office inspections were still awaited in order to avoid the risk of 'cross-contamination' which have been revealed in other countries. The Portuguese decree-law which sets out the DBES was not approved until 12 July 2001, that is to say two weeks before the lifting of the ban fixed for 1 August 2001, and the DBES application manual was to be submitted to the Minister for Agriculture on 14 July. The French Government therefore considers that 'effective enforcement of the relevant national measures', within the meaning of Article 21(2) was not ensured at the time when the decision setting the date for the lifting of the ban was adopted.

  Nor could the operational effectiveness of the procedures set up be checked, either in terms of traceability of bovine products or in terms of tests on cattle, on the date on which the contested decision was adopted any more than it could on the date set for the partial lifting of the ban. Accordingly, the Commission infringed Article 22 of Decision 2001/376/EC.

— Infringement of the precautionary principle: while Article 174 EC falls within the framework of Community environmental policy, Community case-law does not confine the precautionary principle to that field alone and extends it to public health objectives. The nature and seriousness of the risks relating to BSE warrant full compliance with the precautionary principle.

(1) OJ L 203, 28.7.2001, p. 27.

(2) Commission Decision 2001/376/EC concerning measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal and implementing a date-based export scheme (OJ L 132, 15.5.2001, p. 17).

Action brought on 15 October 2001 by the Federal Republic of Germany against the European Parliament and the Council of the European Union

(Case C-406/01)

(2001/C 348/33)

An action against the European Parliament and the Council of the European Union was brought before the Court of Justice of the European Communities on 15 October 2001 by the Federal Republic of Germany, represented by Wolf-Dieter Plessing, Ministerialrat, Moritz Lumma, Oberregierungsrat, both of the Federal Ministry of Finance, 108 Graurheindorfer Straße, D-53117 Bonn, and Jochim Sedemund, Rechtsanwalt, of Freshfields Bruckhaus Deringer, 1 Potsdamer Platz, D-10785 Berlin.

The applicant claims that the Court should:

1. Annul Article 3(1) in conjunction with Article 3(2) of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products [1], in so far as those provisions prohibit the manufacture of cigarettes for export from the European Community to non-member countries;

2. Order the defendants to pay the costs.

Pleas in law and main arguments

— Article 95 EC is not an adequate legal basis for the contested prohibition of export. Approximation measures under Article 95 EC must have as their subject the elimination of differences between the legal systems of the Member States with the aim of eliminating distortions of competition in relations between the Member States or preventing them from occurring. Measures which concern exports to non-member countries are not covered by Article 95 EC. The internal market aim of removing barriers to trade which result from differing national rules is achieved already by the prohibition of marketing. That a prohibition of manufacture is not necessary for that purpose is shown by the fact that all comparable harmonisation directives (for example, in the field of regulating additives to foodstuffs) confine themselves to prohibitions of marketing and do not lay down prohibition of manufacture. The prohibition of manufacture in the contested Directive thus in fact pursues exclusively the aim of the protection

of health of Community citizens, since according to recital 11 of the Directive the prohibition is to ensure that 'the internal market provisions are not undermined' (by illegal reimports). The prohibition of manufacture thus appears, according to its true nature, as a pure prohibition of export. However, in the opinion of the German Government, such a measure cannot be based on Article 95 EC either, since protection against illegal imports (whether the causes are of a State or private character) does not fall within the scope of Article 95 EC. Nor, finally, can Article 95 be an appropriate ground of competence for a general prohibition of manufacture and export in view of the aim of preventing 'evasion' of the rules of the internal market, since so comprehensive a prohibition would be manifestly disproportionate to achieving the aim pursued. That is because it is almost exclusively cigarettes manufactured in non-member countries, not in the Community, which are the object of illegal imports.

— Article 133 EC is not a proper legal basis for the contested prohibition of export. The aim of the contested measure is not in fact the regulation of trade with non-member countries or the influencing of commerce or trade flows, but the prevention of illegal reimports. The measure does not therefore meet the requirements for competence defined by the Court of Justice in opinions 1/94 and 2/92.

  In the alternative: even if the scope of Article 133 EC were available, the prohibition of export cannot, in the opinion of the German Government, be based on Article 133, because it restricts disproportionately the principle of freedom of export to be taken into account by the Community legislature, and hence infringes the third paragraph of Article 5 EC. In view of the trivial extent of reimports of cigarettes manufactured in the Community, the contested provision is not appropriate at all for protecting Community citizens effectively against health risks caused by illegal imports into the Community; that aim can only be effectively attained by a reinforcement of import controls, which are necessary anyway for combating the evasion of customs duty, are much more effective, and involve much lesser competitive disadvantages for Community industry. Since the contested provision does not constitute an 'overt' and 'specific' measure of external trade policy, but is intended to ensure higher health standards in the Community, the reference to Article 133 EC amounts to an evasion of Article 152(4)(c) EC.

— The combination of the above legal bases, each of which is insufficient on its own, does not confer on them a more extensive scope.

(1) OJ L 194 of 18.7.2001, p. 26.

Reference for a preliminary ruling by the Tribunale Civile e Penale di L'Aquila by order of 5 October 2001 in the case of Rolando Salusest v Giovanni Petrucci

(Case C-409/01)

(2001/C 348/34)

Reference has been made to the Court of Justice of the European Communities by order of 5 October 2001 by the Tribunale Civile e Penale di l'Aquila (Civil and Criminal District Court, L'Aquila), which was received at the Court Registry on 16 October 2001, for a preliminary ruling in the case of Rolando Salusest v Giovanni Petrucci on the following questions:

(a) Is the provision of binding minimum tariffs contrary to free competition on the ground that it prevents the free fixing of fees for a lawyer's services, as provided for under Article 81(1)(a) EC, and does it also have the effect of reinforcing the compartmentalisation of markets at national level, thereby hindering the economic integration intended by the Treaty?

  Lawyers who are nationals of other EC Member States and who work in Italy are also required under Article 13 of the Law of 9 February 1982 to comply with the tariff for legal fees and thus also with the rule prohibiting differentiation of amounts below a specified minimum level.

(b) Are Articles 633(1)(2) and 636(1) of the Italian Code of Civil Procedure, under which a lawyer is authorised to have his fees determined by the Council of the order to which he belongs through the adoption of an opinion binding on his client and on the court (in enforcement proceedings), allowing him to obtain entitlement based on that unilateral determination of the professional fee pursuant to the abovementioned minimum tariffs, contrary to free competition on the ground that they prevent the free fixing of fees for a lawyer's services, as provided for under Article 81(1)(a) EC, by reserving such determination to a body consisting exclusively of lawyers?

Action brought on 17 October 2001 by the Commission of the European Communities against the Italian Republic

(Case C-412/01)

(2001/C 348/35)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 17 October 2001 by the Commission of the European Communities, represented by Michel Nolin, acting as Agent, assisted by Massimo Moretto, avvocato.

The applicant claims that the Court should:

— Declare that, by including in Article 2 of Decreto del Presidente del Consiglio dei Ministri (Decree of the President of the Council of Ministers — DPCM), No 116 of 27 February 1997, by reference to Article 14 of Decreto Legislativo (Legislative Decree) No 157 of 17 March 1995, among the criteria for awarding contracts which the awarding authorities may take into consideration when determining the most economically advantageous offer, the selection criteria listed in Article 32 of Directive 92/50/EEC [1] and by including among the criteria for awarding contracts the provision of quality assurance together with 'further information as may be required by the awarding authorities with the purpose of matching the bidder with the service under tender', and by failing, furthermore, to communicate to the Commission the text of DPCM No 116/97, the Italian Republic has failed to fulfil its obligations under Directive 92/50/EEC and, in particular, Articles 23, 32, 36 and 44 thereof,

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission takes the view that the contested provisions of DPCM No 116/97 are clearly in conflict with Directive 92/50/EEC, inasmuch as they provide for the application of assessment criteria concerning the technical ability of competing bidders additionally at the stage of determining the most financially advantageous offer, thereby blurring the distinction between the selection and awarding stages. Furthermore, the Commission is of the view that the DPCM in question infringes Article 36(2) of the Directive and is in breach of the general principle of transparency in that it makes it possible to subdivide the objective criteria for assessing bids into subcategories before the envelopes are unsealed. Finally, the Commission claims that, by failing to notify it of the adoption of DPCM No 116/97 the Italian Republic has also infringed Article 44(2) of the Directive.

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

Action brought on 17 October 2001 by the Commission of the European Communities against the Kingdom of Spain

(Case C-414/01)

(2001/C 348/36)

An action against The Kingdom of Spam was brought before the Court of Justice of the European Communities on 17 October 2001 by the Commission of the European Communities, represented by I. Martínez del Peral, acting as Agent, with an address for service in Luxembourg at the office of L Escobar, of the Commission Legal Service, C-254 Wagner Centre.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force the laws, regulations and administrative provisions necessary to comply with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [1], or, in any event, by failing to communicate to the Commission the adoption of such provisions, the Kingdom of Spain has failed to fulfil its obligations, under Article 15(1) of that Directive,

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Under Article 15(1) of Directive 97/7/EC, the Kingdom of Spain should have adopted the measures necessary to comply therewith by 4 June 2000.

[1] OJ 1997 L 144, p. 19.

Action brought on 23 October 2001 by the Commission of the European Communities against the Kingdom of Spain

(Case C-419/01)

(2001/C 348/37)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 23 October 2001 by the Commission of the European Communities, represented by Gregorio Valero, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, also of its Legal Service, Wagner Centre.

The applicant claims that the Court should:

— Declare that, by having identified sensitive areas in respect of only part of its territory, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment [1],

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Article 5(1) of Directive 91/271/EEC provides that Member States were to identify, by 31 December 1993 sensitive areas according to the criteria laid down in Annex II (freshwater bodies and coastal waters which are found to be eutrophic or which in the near future may become eutrophic, nitrate content of surface freshwater intended for the abstraction of drinking water and water requiring further treatment to fulfil other Community directives). The present action concerns only the failure to identify sensitive areas with respect to waters for which the Autonomous Communities are responsible: waters relating to intra-community river basins and coastal waters.

So far, only the Autonomous Communities of Andalucía, Galicia, Murcia and Cantabria have identified their sensitive areas in respect of coastal waters, gazetted them and communicated them to the Commission. So far as concerns the river basin draining waters only from within the Autonomous Community of Catalonia, the Commission takes the view that identification cannot be considered valid as it does not meet the conditions concerning safety and publication required by Community case-law for the full implementation of directives.

[1] OJ 1991 L 135, p. 40.

Action brought on 26 October 2001 by the Commission of the European Communities against the Portuguese Republic

(Case C-425/01)

(2001/C 348/38)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 26 October 2001 by the Commission of the European Communities, represented by Horstpeter Kreppel and Miguel França, acting as Agents, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— Declare that the Portuguese Republic has failed to fulfil its oligations under Articles 4, 10, 11 and 12 of Council Directive 89/391/EEC [1],

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese Republic has still not adopted any legislation relating to the procedure for electing workers' representatives in health and safety matters at work. The fact that there are no workers' representatives in health and safety matters at the work place — for lack of legislation governing election procedures — makes it impossible for workers to exercise their rights in that regard. Contrary to the Portuguese authorities' contention, if it were not necessary to adopt the legislation proper to the implementation of the electoral procedure to enable workers to elect their representatives, the express mention made by the Portuguese legislature in Article 23(2)(b) of Decree Law No 441/91 of the need to legislate for that electoral procedure would be entirely redundant.

[1] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

Removal from the register of Case C-249/00 [1]

(2001/C 348/39)

By order of 2 August 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-249/00: Commission of the European Communities v Hellenic Republic.

[1] OJ C 247 of 26.8.2000.

Removal from the register of Case C-272/00 [1]

(2001/C 348/40)

By order of 4 September 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-272/00: Commission of the European Communities v Hellenic Republic.

[1] OJ C 259 of 9.9.2000.

Removal from the register of Case C-354/00 [1]

(2001/C 348/41)

By order of 4 October 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-354/00: Commission of the European Communities v Kingdom of Spain.

[1] OJ C 316 of 4.11.2000.

Removal from the register of Case C-443/00 [1]

(2001/C 348/42)

By order of 13 September 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-443/00: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 45 of 10.2.2001.

Removal from the register of Case C-132/01 [1]

(2001/C 348/43)

By order of 8 October 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-132/01: Commission of the European Communities v Republic of Austria.

[1] OJ C 161 of 2.6.2001.

Removal from the register of Case C-133/01 [1]

(2001/C 348/44)

By order of 8 October 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-133/01: Commission of the European Communities v Republic of Austria.

[1] OJ C 161 of 2.6.2001.

Removal from the register of Case C-134/01 [1]

(2001/C 348/45)

By order of 26 September 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-134/01: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 161 of 2.6.2001.

Removal from the register of Case C-190/01 P [1]

(2001/C 348/46)

By order of 4 October 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-190/01 P: Mannesmannröhren-Werke AG v Commission of the European Communities.

[1] OJ C 212 of 28.7.2001.

COURT OF FIRST INSTANCE

Action brought on 25 September 2001 by Territorio Histórico de Alava — Excma. Diputación de Alava, and the Comunidad autónoma del País Vasco — Gobierno Vasco against Commission of the European Communities

(Case T-230/01)

(2001/C 348/47)

(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 25 September 2001 by the Territorio Histórico de Alava — Excma. Diputación de Alava, and the Comunidad autónoma del País Vasco — Gobierno Vasco, Alava (Spain), represented by Ramón Falcón, lawyer.

The applicants claim that the Court should:

— annul in its entirety the decision of the Commission which is contested in this action; in the alternative, annul Article 3 of that decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants contest Commission Decision C(2001) 1760 final of 11 July 2001 declaring incompatible with the common market the tax reductions arising from Article 26 of Norma Foral (Regional Law) No 24/1996 of 5 July 1996 on corporation tax (Boletín Oficial del Territorio Histórico de Alava of 9 August 1996), which provides for a reduction of 99 %, 75 %, 50 % and 25 % of the basis for assessment of the aforementioned tax applicable during the first four tax years for undertakings which set up business in the Territorio Histórico de Alava with effect from the entry into force of the Law, provided that they have disbursed capital amounting to more than ESP 20 million (EUR 120 202), invest more than ESP 80 million (EUR 430 810) and create more than 10 new jobs.

The pleas in law and main arguments put forward by the applicants are identical with those put forward in Case T-227/01.

Action brought on 28 September 2001 by Andreas Stihl AG & Co. against the Office for Harmonization in the Internal Market (Trade Marks and Designs)

(Case T-234/01)

(2001/C 348/48)

(Language of the Case: German)

An action against the Office for Harmonization in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 28 September 2001 by Andreas Stihl AG & Co., Waiblingen (Germany), represented by Rechtsanwalt S. Völker with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal 24 July 2001 in Case R 447/2000-1 relating to Community Trade Mark application No 338 194;

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

Pleas in law and main arguments

Trade mark:	Combination of two particular colours namely an orange (colour Pantone 164c) and a grey (colour Pantone 428u) — Colour mark — Application No 338 194
Goods or services:	Goods in Class 7 (including motor saws, mechanical cutting-off machines with guide devices and mechanical cutting apparatus)

Decision contested before the Board of Appeal:	Refusal of the trade mark application
Decision of the Board of Appeal:	Dismissal of the appeal
Pleas in law:	— no absolute grounds for refusal within the meaning of Article 7(1)(b)and (c) of Regulation (EC) No 40/94 [1]
	— no grounds for refusing to register the mark, in particular no need to keep it free
	— infringement or misinterpretation of the relevant provisions of the Regulation.

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