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COURT OF JUSTICE

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 October 2001

in Joined Cases C-49/98, C-50/98, C52/98 to C-54/98 and C-68/98 to C-71/98 (references for a preliminary ruling from the Arbeitsgericht Wiesbaden): Finalarte Sociedade de Construção Civil Ld.ª v Urlaubs- und Lohnausgleichskasse der Bauwirtschaft, Urlaubs- und Lohnausgleichskasse der Bauwirtschaft v Amilcar Oliveira Rocha and Others, Portugaia Construções Ld.ª v Urlaubs- und Lohnausgleichskasse der Bauwirtschaft, Engil Sociedade de Construção Civil SA v Urlaubs- und Lohnausgleichskasse der Bauwirtschaft [1]

(Freedom to provide services — Temporary deployment of workers for the purposes of performing a contract — Paid leave and holiday pay)

(2002/C 3/01)

(Language of the case: German)

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

In Joined Cases C-49/98, C-50/98, C-52/98 to C-54/98 and C-68/98 to C-71/98: references to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Arbeitsgericht (Labour Court) Wiesbaden (Germany) for a preliminary ruling in the proceedings pending before that court between Finalarte Sociedade de Construção Civil Ld.ª and Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (C-49/98), Urlaubs- und Lohnausgleichskasse der Bauwirtschaft and Amilcar Oliveira Rocha (C-50/98), and Urlaubs- und Lohnausgleichskasse der Bauwirtschaft and Tudor Stone Ltd (C-52/98), Urlaubs- und Lohnausgleichskasse der Bauwirtschaft and Tecnamb-Tecnologia do Ambiente Ld.ª (C-53/98), Urlaubs- und Lohnausgleichskasse der Bauwirtschaft and Turiprata Construções Civil Ld.ª (C-54/98), Urlaubs- und Lohnausgleichskasse der Bauwirtschaft and Duarte dos Santos Sousa (C-68/98), and Urlaubs- und Lohnausgleichskasse der Bauwirtschaft and Santos & Kewitz Construções Ld.ª (C-69/98), Portugaia Construções Ld.ª and Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (C-70/98) and between Engil Sociedade de Construção Civil SA and Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (C-71/98) — on the interpretation of Articles 48 and 59 of the EC Treaty (now, after amendment, Articles 39 EC and 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) and subparagraph (b) of the second indent of the first paragraph of Article 3(1) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1) — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur) and L. Sevón, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 25 October 2001, in which it has ruled:

1. *Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) do not preclude a Member State from imposing national rules, such as those laid down by the first sentence of Article 1(3) of the Arbeitnehmerentsendegesetz (German law on the posting of workers) guaranteeing entitlement to paid leave for posted workers, on a business established in another Member State which provides services in the first Member State by posting workers for that purpose, on the two-fold condition that: (i) the workers do not enjoy an essentially similar level of protection under the law of the Member State where their employer is established, so that the application of the national rules of the first Member State confers a genuine benefit on the workers*

concerned, which significantly adds to their social protection, and (ii) the application of those rules by the first Member State is proportionate to the public interest objective pursued.

2. (a) *Articles 59 and 60 of the Treaty do not preclude the extension of the rules of a Member State which provide for a longer period of paid leave than that provided for by Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time to workers posted to that Member State by providers of services established in other Member States during the period of the posting.*

(b) *Articles 59 and 60 of the Treaty do not preclude national rules from allowing businesses established in the Federal Republic of Germany to claim reimbursement of expenditure on holiday pay and holiday allowances from the fund, whereas it does not provide for such a claim in the case of businesses established in other Member States, but instead provides for a direct claim by the posted workers against the fund, in so far as that is justified by objective differences between businesses established in the Federal Republic of Germany and those established in other Member States.*

(c) *It is for the national court to determine the type of information that the German authorities may reasonably require of providers of services established outside the Federal Republic of Germany, having regard to the principle of proportionality. For this purpose, the national court should consider whether the objective differences between the position of businesses established in Germany and that of businesses established outside Germany objectively require the additional information required of the latter.*

3. *Articles 59 and 60 of the Treaty preclude the application of a Member State's scheme for paid leave to all businesses established in other Member States providing services to the construction industry in the first Member State where businesses established in the first Member State, only part of whose activities are carried out in that industry, are not all subject to that scheme in respect of their workers engaged in that industry.*

(1) OJ C 137 of 2.5.1998; OJ C 166 of 30.5.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 20 September 2001

in Case C-263/98: Kingdom of Belgium v Commission of the European Communities [1]

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

(2002/C 3/02)

(Language of the case: Dutch)

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

In Case C-263/98: Kingdom of Belgium (Agents: J. Devadder and, subsequently, A. Snoecx, and H. Gilliams) v Commission of the European Communities (Agent: H. van Vliet) — application for the partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 L 163, p. 28), in so far as it disallows, in respect of the applicant, Community financing for the sum of BEF 382 208 436 by way of expenditure incurred for the advance payment of export refunds — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet, R. Schintgen, F. Macken (Rapporteur) and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 20 September 2001, in which it:

1. *Dismisses the application;*

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

(1) OJ C 278 of 5.9.1998.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 November 2001

in Case C-277/98: French Republic v Commission of the European Communities [1]

(EAGGF — Clearance of accounts — 1994 — Supplementary levy on milk — Disputes between those liable to the levy and the competent national authorities — Proceedings before national courts — Negative corrections applied to Member States for supplementary levies not yet recovered)

(2002/C 3/03)

(Language of the case: French)

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

In Case C-277/98: French Republic (Agents: K. Rispal-Bellanger and C. Vasak), supported by Kingdom of Spain (Agent: S. Ortiz Vaamonde) v Commission of the European Communities (Agent: G. Berscheid) — application for partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1998 L 163, p. 28), in so far as it applies to the French Republic 'negative corrections' for sums in respect of supplementary levies the recovery of which was being disputed in proceedings pending before national courts at the date of that decision — the Court (Sixth Chamber), composed of: N. Colneric (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 13 November 2001, in which it:

1. *Annuls Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it applies to the French Republic 'negative corrections' for sums in respect of supplementary levies the recovery of which was being disputed in proceedings pending before national courts at the date of that decision;*

2. *Orders the French Republic and the Commission of the European Communities to bear their own costs;*

3. *Orders the Kingdom of Spain to bear its own costs.*

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[1] OJ C 278 of 5.9.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 November 2001

in Case C-338/98: Commission of the European Communities v Kingdom of the Netherlands [1]

(Failure of a Member State to fulfil its obligations — Articles 17(2)(a) and 18(1)(a) of the Sixth VAT Directive — National legislation allowing an employer to deduct, as input tax, a certain percentage of an allowance paid to an employee for business use of a private vehicle)

(2002/C 3/04)

(Language of the case: Dutch)

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

In Case C-338/98: Commission of the European Communities (Agents: initially E. Mennens and E. Traversa, subsequently E. Traversa and H.M.H. Speyart) v Kingdom of the Netherlands (Agent: M.A. Fierstra, C. Wissels and J. van Bakel), supported by United Kingdom of Great Britain and Northern Ireland (Agent: M. Ewing, assisted by N. Pleming) — application for a declaration that by providing, in breach of Articles 17(2)(a) and 18(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), in the version resulting from Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388 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), that an employer who is a taxable person for the purposes of value added tax may deduct part of an allowance paid to an employee for

business use of a private car, the Kingdom of the Netherlands has failed to fulfil its obligations under the EC Treaty — the Court (Fifth Chamber), composed of: S. von Bahr, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola (Rapporteur), M. Wathelet and C.W.A. Timmermans, Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 November 2001, in which it:

1. *Declares that by providing, in breach of Articles 17(2)(a) and 18(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, in the version resulting from Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388 and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them, that an employer who is a taxable person, for the purposes of value added tax may deduct part of an allowance paid to an employee for business use of a private car, the Kingdom of the Netherlands has failed to fulfil its obligations under the EC Treaty;*

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

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

([1]) OJ C 340 of 7.11.1998.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 October 2001

in Case C-398/98: Commission of the European Communities v Hellenic Republic ([1])

(Failure by a Member State to fulfil its obligations — Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — Obligation to maintain minimum stocks of petroleum products)

(2002/C 3/05)

(Language of the case: Greek)

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

In Case C-398/98: Commission of the European Communities (Agents: D. Triantafyllou and O. Couvert-Castéra) v Hellenic Republic (Agents: P. Mylonopoulos and N. Dafniou) — application for a declaration that, by establishing and maintaining a system for stocks of petroleum products which directly links the facility to transfer the storage obligation to refineries established in Greece to an obligation to obtain supplies of petroleum products from those refineries, and by prohibiting service stations from obtaining supplies from refineries or from another Member State, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC) — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, L. Sevón and M. Wathelet, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 25 October 2001, in which it rules:

1. *By establishing and maintaining a system for the compulsory maintenance of emergency stocks of petroleum products which directly links the facility for companies which market those products to transfer their storage obligation to refineries established in Greece to an obligation to obtain their supplies of those products from those refineries, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC).*

2. *The Hellenic Republic is ordered to pay the costs.*

([1]) OJ C 397 of 19.12.1998.

JUDGMENT OF THE COURT

(Third Chamber)

of 13 November 2001

in Case C-59/99: Commission of the European Communities v Manuel Pereira Roldão & Filhos Ld.ª, Instituto Superior Técnico and King, Taudevin & Gregson (Holdings) Ltd ([1])

(Arbitration clause — Reimbursement of advance payments made under a contract terminated by the Commission for non-performance)

(2002/C 3/06)

(Language of the case: Portuguese)

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

In Case C-59/99: Commission of the European Communities (Agents: initially F. de Sousa Fialho and O. Couvert-Castéra,

subsequently H. van Lier and A. Caeiros, assisted by E. Braga) v Manuel Pereira Roldão & Filhos Ld.ª, established in Marinha Grande (Portugal), Instituto Superior Técnico, established in Lisbon (Portugal), represented by J.L. da Cruz Vilaga and T. Aragão Morais, advogados, and King, Taudevin & Gregson (Holdings) Ltd — application by the Commission pursuant to Article 181 of the EC Treaty (now Article 238 EC) for recovery of an advance payment which it had granted to the defendants under Contract No IN 90/91 PO/UK relating to activities concerning the promotion of energy technology in Europe (Thermie programme) — the Court (Third Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 13 November 2001, in which it:

1. *Orders Manuel Pereira Roldão & Filhos Ld.ª and the Instituto Superior Técnico jointly and severally to pay to the Commission of the European Communities the sum of EUR 357 813;*

2. *Orders Manuel Pereira Roldão & Filhos Ld.ª to pay to the Commission of the European Communities the sum of EUR 185 833,78 in interest due as at 1 January 1999 and contractual interest from that date until full payment of the principal sum due;*

3. *Orders Manuel Pereira Roldão & Filhos Ld.ª and the Instituto Superior Técnico to pay the costs.*

([1]) OJ C 121 of 1.5.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 November 2001

in Case C-127/99: Commission of the European Communities v Italian Republic ([1])

(Failure by a Member State to fulfil its obligations — Inadequate implementation of Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources)

(2002/C 3/07)

(Language of the case: Italian)

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

In Case C-127/99: Commission of the European Communities (Agent: P. Stancanelli) v Italian Republic (Agent: U. Leanza, assisted by P.G. Ferri) — application for a declaration that:

— by failing to establish one or more action programmes having the features, and meeting the conditions, laid down in Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1),

— by failing to carry out fully and correctly the monitoring operations prescribed by Article 6 of that directive; and

— by failing to draw up and submit a full report of the kind required by Article 10 of that directive,

the Italian Republic has failed to fulfil its obligations under Community law — the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, V. Skouris and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 8 November 2001, in which it:

1. *Declares that, by having failed:*

   — *to establish action programmes within the meaning of Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources,*

   — *to carry out the monitoring operations prescribed by Article 6 of the said directive, and*

   — *to submit to the Commission a report of the kind required by Article 10 of the directive,*

   the Italian Republic failed to fulfil its obligations under those provisions of Directive 91/676.

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

([1]) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 November 2001

in Case C-143/99 (reference for a preliminary ruling from the Verfassungsgerichtshof): Adria-Wien Pipeline GmbH, and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten [1]

(Tax on energy — Rebate granted only to undertakings manufacturing goods — State aid)

(2002/C 3/08)

(Language of the case: German)

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

In Case C-143/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Verfassungsgerichtshof (Constitutional Court) (Austria) for a preliminary ruling in the proceedings pending before that court between Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH and Finanzlandesdirektion für Kärnten — on the interpretation of Article 92 of the EC Treaty (now, after amendment, Article 87 EC) — the Court, composed of: P. Jann, President of the Chamber, A. La Pergola, L. Sevón, M. Wathelet (Rapporteur), and C.W.A. Timmermans, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 November 2001, in which it has ruled:

1. *National measures which provide for a rebate of energy taxes on natural gas and electricity do not constitute State aid within the meaning of Article 92 of the EC Treaty (now, after amendment, Article 87 EC) where they apply to all undertakings in national territory, regardless of their activity.*

2. *National measures which provide for a rebate of energy taxes on natural gas and electricity only in the case of undertakings whose activity is shown to consist primarily in the manufacture of goods must be regarded as State aid within the meaning of Article 92 of the Treaty.*

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[1] OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Second Chamber)

of 8 November 2001

in Case C-228/99 (reference for a preliminary ruling from the Tribunale civile e penale di Cagliari): Silos e Mangimi Martini SpA v Ministero delle Finanze [1]

(Agriculture — Common organisation of the markets — Export refunds — Withdrawal — Interpretation and validity of Regulations (EC) Nos 1521/95 and 1576/95 — Failure to state reasons)

(2002/C 3/09)

(Language of the case: Italian)

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

In Case C-228/99: reference to the Court under Article 234 EC from the Tribunale civile e penale di Cagliari (Italy) for a preliminary ruling in the proceedings pending before that court between Silos e Mangimi Martini SpA and Ministero delle Finanze — on the interpretation and validity of Commission Regulations (EC) Nos 1521/95 of 29 June 1995 and 1576/95 of 30 June 1995 fixing the export refunds on cereal-based compound feedingstuffs (OJ 1995 L 147, p. 65, and OJ 1995 L 150, p. 64) — the Court, composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 8 November 2001, in which it has ruled:

1. *Commission Regulation (EC) No 1521/95 of 29 June 1995 fixing the export refunds on cereal-based compound feedingstuffs applied to the exports for which the competent customs service accepted, on the date of its publication, export declarations stating that an export refund was going to be claimed and for which advance fixing of the export refund had not been requested.*

2. *Commission Regulation (EC) No 1576/95 of 30 June 1995 fixing the export refunds on cereal-based compound feedingstuffs did not revoke Regulation No 1521/95 and therefore had no effect on the applicability of the latter regulation on 30 June 1995.*

3. *Commission Regulation No 1521/95 does not satisfy the requirement to state reasons laid down in Article 190 of the EC Treaty (now Article 253 EC) and is therefore invalid.*

4. *As a result of the invalidity of Commission Regulation No 1521/95, the export refunds for cereal-based feedingstuffs, for which the application was made in export declarations accepted by the competent customs service on 30 June 1995 and for which advance fixing had not been requested, are to be calculated in accordance with Commission Regulation (EC) No 1415/95 of 22 June 1995 fixing the export refunds on cereal-based compound feedingstuffs.*

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(1) OJ C 246 of 28.8.1999.

JUDGMENT OF THE COURT

of 27 September 2001

in Case C-235/99 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court)): The Queen v Secretary of State for the Home Department, ex parte: Eleonora Ivanova Kondova (1)

(External relations — Association Agreement between the Communities and Bulgaria — Freedom of establishment — Leave to enter fraudulently obtained — Obligation on a Member State to pay compensation for damage caused to an individual invoking a right of establishment which is directly effective under the Association Agreement)

(2002/C 3/10)

(Language of the case: English)

In Case C-235/99: reference to the Court under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court), for a preliminary ruling in the proceedings pending before that court between The Queen and Secretary of State for the Home Department, ex parte: Eleanora Ivanova Kondova — on the interpretation of Articles 45 and 59 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, concluded and approved on behalf of the Community by Decision 94/908/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 358, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola (Rapporteur), M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.P. Puissochet, P. Jann, L. Sevón, R. Schintgen and F. Macken, Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 27 September 2001, the operative part of which is as follows:

1. *Article 45(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, concluded and approved on behalf of the Community by Decision 94/908/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994, is to be construed as establishing, within the scope of application of that Agreement, a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals. The direct effect which that provision must therefore be recognised as having means that Bulgarian nationals relying on it have the right to invoke it before the courts of the host Member State, notwithstanding the fact that the authorities of that State remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment, in accordance with Article 59(1) of that Agreement.*

2. *The right of establishment, as defined by Article 45(1) of the above Association Agreement, means that rights of entry and residence, as corollaries of the right of establishment, are conferred on Bulgarian nationals wishing to pursue activities of an industrial or commercial character, activities of craftsmen, or activities of the professions in a Member State. However, it follows from Article 59(1) of that Agreement that those rights of entry and residence are not absolute privileges, inasmuch as their exercise may, in some circumstances, be limited by the rules of the host Member State governing the entry, stay and establishment of Bulgarian nationals.*

3. *Articles 45(1) and 59(1) of the above Association Agreement, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources and has reasonable chances of success. Substantive requirements such as those set out in paragraphs 217 and 219 of the United Kingdom Immigration Rules (House of Commons Paper 395) have as their very purpose to enable the competent authorities to carry out such checks and are appropriate for achieving such a purpose.*

4. *Article 59(1) of the above Association Agreement must be construed as meaning that the competent authorities of the host Member State may reject an application made pursuant to Article 45(1) of that Agreement on the sole ground that, when that application was submitted, the Bulgarian national was residing illegally within the territory of that State because of false representations made to those authorities or non-disclosure of material facts for the purpose of obtaining initial leave to enter that Member State on a different basis. Consequently, those authorities may require that national to submit, in due*

and proper form, a new application for establishment on the basis of that Agreement by applying for an entry visa to the competent authorities in his State of origin or, as the case may be, in another country, provided that such measures do not have the effect of preventing such a national from having his situation reviewed at a later date when he submits that new application.

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(1) OJ C 246 of 28.8.1999.

JUDGMENT OF THE COURT

of 20 November 2001

in Case C-268/99 (reference for a preliminary ruling from the Arrondissementsrechtbank te 's-Gravenhage): Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie (1)

(External relations — Association agreements between the Communities and Poland and between the Communities and the Czech Republic — Freedom of establishment — 'Economic activities' — Whether or not they include the activity of prostitution)

(2002/C 3/11)

(Language of the case: Dutch)

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

In Case C-268/99: reference to the Court under Article 234 EC from the Arrondissementsrechtbank te 's-Gravenhage (District Court, The Hague) (Netherlands) for a preliminary ruling in the proceedings pending before that court between Aldona Malgorzata Jany and Others and Staatssecretaris van Justitie — on the interpretation of Articles 44 and 58 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Communities by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1), and of Articles 45 and 59 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, concluded and approved on behalf of the Communities by Decision 94/910/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 360, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken and N. Colneric (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), L. Sevón, M. Wathelet, V. Skouris and C.W.A. Timmermans, Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 20 November 2001, in which it has ruled:

1. *Article 44(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Communities by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993, and Article 45(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, concluded and approved on behalf of the Communities by Decision 94/910/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994, must be construed as establishing, within the respective scopes of application of those two Agreements, a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals.*

   The direct effect which those provisions must therefore be recognised as having means that Polish and Czech nationals relying on those provisions have the right to invoke them before the courts of the host Member State, notwithstanding the fact that the authorities of that State remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment, in accordance with Article 58(1) of the above Agreement with the Republic of Poland and Article 59(1) of the above Agreement with the Czech Republic.

2. *The right of establishment, as defined by Article 44(3) of the above Agreement with the Republic of Poland and by Article 45(3) of the above Agreement with the Czech Republic, means that rights of entry and residence, as corollaries of the right of establishment, are conferred on Polish and Czech nationals wishing to pursue activities of an industrial or commercial character, activities of craftsmen or activities of the professions in a Member State.*

   However, it follows from Article 58(1) of the above Agreement with the Republic of Poland and from Article 59(1) of the above Agreement with the Czech Republic that those rights of entry and residence are not absolute privileges, inasmuch as their exercise may, in some circumstances, be limited by the rules of the host Member State governing the entry, stay and establishment of Polish and Czech nationals.

3. *Articles 44(3) and 58(1) of the above Agreement with the Republic of Poland, read together, and Articles 45(3) and 59(1) of the above Agreement with the Czech Republic, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources for carrying out the activity in question as a self-employed person and has reasonable chances of success.*

   Substantive requirements such as those set out in section 4.2.3 of Chapter B 12 of the Netherlands Vreemdelingencirculaire (Circular on Aliens), in particular the requirement that Polish and Czech nationals wishing to become established in the host Member State must from the outset have sufficient financial resources to carry on the activity in question in a self-employed capacity, are designed precisely to enable the competent authorities of that State to carry out such checks and are appropriate for ensuring that such an objective is attained.

4. *Article 44(4)(a)(i) of the above Agreement with the Republic of Poland and Article 45(4)(a)(i) of the above Agreement with the Czech Republic must be construed to the effect that the 'economic activities as self-employed persons' referred to in those provisions have the same meaning and scope as the 'activities as self-employed persons' referred to in Article 52 of the EC Treaty (now, after amendment, Article 43 EC).*

   The activity of prostitution pursued in a self-employed capacity can be regarded as a service provided for remuneration and is therefore covered by both those expressions.

5. *Article 44 of the above Agreement with the Republic of Poland and Article 45 of the above Agreement with the Czech Republic must be construed to the effect that prostitution is an economic activity pursued by a self-employed person as referred to in those provisions, where it is established that it is being carried on by the person providing the service:*

   — *outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration;*

   — *under that person's own responsibility; and*

   — *in return for remuneration paid to that person directly and in full.*

   It is for the national court to determine in each case, in the light of the evidence adduced before it, whether those conditions are satisfied.

(1) OJ C 265 of 18.9.1999.

JUDGMENT OF THE COURT

of 20 September 2001

in Case C-383/99 P: Procter & Gamble Company v Office, for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Appeal — Admissibility — Community trade mark — Regulation (EC) No 40/94 — Absolute ground for refusal to register — Distinctive character — Marks consisting exclusively of descriptive signs or indications — 'BABY-DRY')

(2002/C 3/12)

(Language of the case: French)

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

In Case C-383/99P: Procter and Gamble Company established in Cincinnatti (United States) represented by T. van Innis, avocat, appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 8 July 1999 in Case T-163/98 Procter & Gamble v OHIM ('BABY-DRY') [1999] ECR II-2383, seeking to have that judgment set aside in so far as the Court of First Instance ruled that the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) had not infringed Article 7(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) in adopting its decision of 31 July 1998 (Case R 35/1998-1), the other party to the proceedings being the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Agents: O. Montalto and E. Joly) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, M. Wathelet and V. Skouris (Presidents of Chambers), J.-P. Puissochet (Rapporteur), P. Jann, L. Sevón, R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges, F.G. Jacobs, Advocate General; D. Louterman-Hubeau for the Registrar, gave a judgment on 20 September 2001, in which it:

1. *Annuls the judgment of the Court of First Instance of 8 July 1999 in Case T-163/98 Procter & Gamble v OHIM ('BABY-DRY'), in so far as it found that the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) did not infringe Article 7(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark in adopting its decision of 31 July 1998 (Case R 35/1998-1);*

2. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal market (Trade Marks and Designs) of 31 July 1998 (Case R 35/1998-1) in so far as it refused the application for registration of 'BABY-DRY' as a trade mark on the basis of Article 7(1)(c) of Regulation No 40/94;*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs both at first instance and on appeal.*

([1]) OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT

of 20 November 2001

in Joined Cases C-414/99 to C-416/99 [reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division (Patent Court)]: Zino Davidoff SA and A & G Imports Ltd (C-414/99), between Levi Strauss & Co., Levi Strauss (UK) Ltd and Tesco Stores Ltd, Tesco plc (C-415/99), and between Levi Strauss & Co., Levi Strauss (UK) Ltd v Costco Wholesale UK Ltd ([1])

(Trade marks — Directive 89/104/EEC — Article 7(1) — Exhaustion of the rights conferred by a trade mark — Goods placed on the market outside the EEA — Imported into the EEA — Consent of the trade mark proprietor — Whether consent required to be express or implied — Law governing the contract Presumption of consent — Non-applicability)

(2002/C 3/13)

(Language of the case: English)

In Joined Cases C-414/99 to C-416/99 (reference to the Court under Article 234 EC) from the High Court of Justice of England and Wales, Chancery Division (Patent Court) (United Kingdom of Great Britain and Northern Ireland) for a preliminary ruling in the proceedings pending before that court between Zino Davidoff SA and A & G Imports Ltd (C-414/99), between Levi Strauss & Co., Levi Strauss (UK) Ltd and Tesco Stores Ltd, Tesco plc (C-415/99), and between Levi Strauss & Co., Levi Strauss (UK) Ltd v Costco Wholesale UK Ltd, formerly Costco UK Ltd (C-410/99) — on the interpretation of Article 7 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), as amended by the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann (Rapporteur), D.A.O. Edward, A. La Pergola, J.-P. Puissochet, L. Sevón, V. Skouris and C.W.A. Timmermans, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 20 November 2001, in which it has ruled:

1. *On a proper construction of Article 7(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, the consent of a trade mark proprietor to the marketing within the European Economic Area of products bearing that mark which have previously been placed on the market outside the European Economic Area by that proprietor or with his consent may be implied, where it follows from facts and circumstances prior to, simultaneous with or subsequent to the placing of the goods on the market outside the European Economic Area which, in the view of the national court, unequivocally demonstrate that the proprietor has renounced his right to oppose placing of the goods on the market within the European Economic Area.*

2. *Implied consent cannot be inferred:*

   — *from the fact that the proprietor of the trade mark has not communicated to all subsequent purchasers of the goods placed on the market outside the European Economic Area his opposition to marketing within the European Economic Area;*

   — *from the fact that the goods carry no warning of a prohibition of their being placed on the market within the European Economic Area;*

   — *from the fact that the trade mark proprietor has transferred the ownership of the products bearing the trade mark without imposing any contractual reservations and that, according to the law governing the contract, the property right transferred includes, in the absence of such reservations, an unlimited right of resale or, at the very least, a right to market the goods subsequently within the European Economic Area.*

3. *With regard to exhaustion of the trade mark proprietor's exclusive right, it is not relevant:*

   — *that the importer of goods bearing the trade mark is not aware that the proprietor objects to their being placed on the market in the European Economic Area or sold there by traders other than authorised retailers, or*

— *that the authorised retailers and wholesalers have not imposed on their own purchasers contractual reservations setting out such opposition, even though they have been informed of it by the trade mark proprietor.*

(1) OJ C 6 of 8.1.2000; OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 September 2001

in Case C-442/99 P: Cordis Obst und Gemüse Grosshandel GmbH (1)

(Appeal — Common organisation of the market — Bananas — Imports from ACP States and third countries — Request for import licences — Transitional measures — Regulation (EEC) No 404/93 — Principle of equal treatment)

(2002/C 3/14)

(Language of the case: German)

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

In Case C-442/99 P: Cordis Obst und Gemüse Grosshandel GmbH, established in Ostrau (Germany), (Rechtsanwalt: G. Meier) — appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) in Case T-612/97 Cordis v Commission [1999] ECR II-2771, seeking to have that judgment set aside, the other parties to the proceedings being: Commission of the European Communities (Agent: K.-D. Borchardt) and French Republic (Agents: K. Rispal-Bellanger and C. Vasak) — the Court (Sixth Chamber), composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet, R. Schintgen, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 27 September 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Cordis Obst und Gemüse Grosshiandel to pay the costs;*

3. *Orders the French Republic to bear its own costs.*

(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Third Chamber)

of 13 November 2001

in Case C-427/00: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (1)

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

(2002/C 3/15)

(Language of the case: English)

In Case C-427/00: Commission of the European Communities (Agent: R.B. Wainwright) v United Kingdom of Great Britain and Northern Ireland (Agent: G. Amodeo, assisted by D. Wyatt) — application for a declaration that by failing to ensure that bathing water in the United Kingdom complies with the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1), the United Kingdom has failed to fulfil its obligations under that Directive — the Court (Third Chamber), composed of. C. Gulmann, acting for the President of the Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 13 November 2001, in which it:

1. *Declares that, since it has not ensured that bathing water complied with the limit values set in accordance with Article 3 of Council Directive 761160/EEC of 8 December 1975, concerning the quality of bathing water, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that Directive.*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

(1) OJ C 28 of 27.1.2001.

ORDER OF THE COURT

(Fourth Chamber)

of 18 October 2001

in Case C-241/00 P: Kish Glass Co. Ltd v Commission of the European Communities and Pilkington United Kingdom Ltd [1]

(Appeal — Competition — Dominant position — Market in float glass — Rights of the complainant — Appeal manifestly unfounded)

(2002/C 3/16)

(Language of the case: English)

In Case C-241/00 P: Kish Glass Co. Ltd, established in Dublin (Ireland), represented by P. Watson BL and M. Byrne, Solicitor, appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) in Case T-65/96 Kish Glass v Commission [2000] ECR II-1885 seeking to have that judgment set aside and the forms of order sought by the applicant at first instance granted, the other parties to the proceedings being: Commission of the European Communities (Agent: R. Lyal, assisted and by N. Khan) and Pilkington United Kingdom Ltd, established in Saint Helens, Merseyside (United Kingdom), represented by J. Kallaugher — the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, A. La Pergola and C.W.A. Timmermans (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given an order on 18 October 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Kish Glass Co. Ltd to pay the costs.*

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[1] OJ C 247 of 26.8.2000.

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat of the Land Vorarlberg by orders of 4 September 2001, 10 September 2001 and 11 September 2001 in the appeals brought by Kurt Beck, Christian Kröll and Manfred Laaber

(Cases C-339/01, C-343/01 and C-357/01)

(2002/C 3/17)

Reference has been made to the Court of Justice of the European Communities by orders of 4 September 2001, 10 September 2001 and 11 September 2001 by the Unabhängiger Verwaltungssenat of the Land Vorarlberg (Independent Administrative Chamber of the Land Vorarlberg), which were received at the Court Registry on 10 September 2001 (C-339/01), 12 September 2001 (C-343/01) and on 20 September 2001 (C-357/01), for a preliminary ruling in the appeals brought by Kurt Beck, Christian Kröll and Manfred Laaber on the following questions:

1. Does Article 2(1)(b) of Council Directive 79/112/EEC [1] of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (now consolidated in European Parliament and Council Directive 2000/13/EC of 20 March 2000, OJ 2000 L 109, p. 29; hereinafter 'the labelling Directive'), under which — subject to Community provisions applicable to natural mineral waters and to foodstuffs for particular nutritional uses, the labelling and methods used may not attribute to any foodstuff the property of preventing, treating or curing a human disease, or suggest that it possesses such properties, preclude national legislation which makes it an offence when marketing foodstuffs:

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

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

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

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

(1) OJ L 33, p. 1.

Reference for a preliminary ruling by the Oberlandesgericht, Frankfurt am Main, by order of that court of 10 July 2001 in the case of Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa AG

(Case C-363/01)

(2002/C 3/18)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht (Higher Regional Court), received at the Court Registry on 24 September 2001, for a preliminary ruling in the case of Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa AG on the following questions:

1. Is Council Directive 96/67/EC(1) of 15 October 1996 on access to the groundhandling market, in particular Article 16(3) thereof, in conjunction with recital 25 in the preamble thereto, to be interpreted as meaning that the managing body of an airport within the meaning of Article 3 is entitled to demand from a self-handler and/or a supplier of handling services to third parties payment of a separate licence fee for the grant of 'access to airport installations' in the sense of an access fee in return for the opening-up of a commercial opportunity in addition to a user fee (rental) payable by the self-handler or a supplier to third parties of handling services for the rental under contract of airport installations, in this case, passenger check-in desks;

   or alternatively, does Directive 96/67 merely provide that, for the purposes of determining a user fee, account is to be taken of the criteria mentioned in Article 16(3) and regard is to be had to the interest of the managing body of the airport in achieving a profit?

2. If the answer to Question 1 — first alternative — is affirmative, does the airport operator also have the right to claim such a licence fee from a self-handler and/or supplier of handling services to third parties (supplier in the situation of the defendant in the main proceedings) in sectors where free access to the ground-handling market was already guaranteed prior to entry into force of Directive 96/67, in particular in regard to land-side handling services?

3. If Question 2 is answered affirmatively, is Directive 96/67 to be interpreted as entitling the managing body within the meaning of Article 3 also to demand payment of an additional licence fee as described in Question 1 for 'access to airport installations' from a self-handler and/or a supplier of services in the situation of the defendant in the main proceedings who, until entry into force of Directive 96/67 or of provisions transposing it into national law, paid (only) rent for the use of the relevant airport installations?

4. May it even be mandatory to demand (additionally) payment of a licence fee by a self-handler and/or supplier of handling services who has hitherto enjoyed free access to that market, or to the self-handling sector, without being required to pay an additional licence fee, in order to prevent unequal treatment in relation to other self-handlers and suppliers of ground-handling services

   (a) who have already hitherto been requested to pay a supplementary licence fee in addition to a user fee;

   (b) who are for the first time granted access to airport installations on the basis of the legal situation created by Directive 96/67 and are henceforth being requested to pay a licence fee for such access in addition to a further user fee for use of the installations?

5. In so far as Article 16(3) of Directive 96/67 entitles an airport's managing body to require payment of a supplementary licence fee as described above, does a licence fee which is required to be paid in addition to a fee for use of check-in desks meet the requirements of Article 16(3) in regard to relevance, objectivity, transparency and non-discrimination where it is determined according to numbers of passengers (in this case DM 0,30 per passenger checked in)?

(1) OJ L 272, p. 36.

Reference for a preliminary ruling by the Bundesvergabeamt (Austria) by order of 12 September 2001 in the case of Ortner Gesellschaft m.b.H. v Allgemeine Unfallversicherungsanstalt

(Case C-379/01)

(2002/C 3/19)

Reference has been made to the Court of Justice of the European Communities by order of 12 September 2001 by the Bundesvergabeamt (Austrian Federal Procurement Office), which was received at the Court Registry on 3 October 2001, for a preliminary ruling in the case of Ortner Gesellschaft m.b.H. v Allgemeine Unfallversicherungsanstalt on the following questions:

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

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

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

[1] OJ L 395, p. 33.

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat of the Land Vorarlberg by orders of 8 October 2001 and 17 October 2001 in the appeals brought by Herbert Bregenzer

(Cases C-395/01 and C-417/01)

(2002/C 3/20)

Reference has been made to the Court of Justice of the European Communities by orders of 8 October 2001 (C-395/01) and 17 October 2001 (C417/01) by the Unabhängiger Verwaltungssenat of the Land Vorarlberg (Independent Administrative Chamber of the Land Vorarlberg), which were received at the Court Registry on 10 October 2001 and 22 October 2001 for a preliminary ruling in the appeals brought by Herbert Bregenzer on the following questions:

1. Does Article 2(1)(b) of Council Directive 79/112/EEC [1] of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (now consolidated in European Parliament and Council Directive 2000/13/EC of 20 March 2000, OJ 2000 L 109, p. 29; hereinafter 'the labelling Directive'), under which — subject to Community provisions applicable to natural mineral waters and to foodstuffs for particular nutritional uses, the labelling and methods used may not attribute to any foodstuff the property of preventing, treating or curing a human disease, or suggest that it possesses such properties, preclude national legislation which makes it an offence when marketing foodstuffs:

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

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

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

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

[1] OJ L 33, p. 1.

Reference for a preliminary ruling by the Arbeitsgericht Lörrach by orders of 26 September 2001 in the cases of Bernhard Pfeiffer, Wilhelm Roith, Albert Süss, Michael Winter, Klaus Nestvogel, Roswitha Zeller and Matthias Döbele v Deutsches Rotes Kreuz, Kreisverband Waldshut e.V.

(Cases C-397/01 to C-403/01)

(2002/C 3/21)

Reference has been made to the Court of Justice of the European Communities by orders of 26 September 2001 of the Arbeitsgericht Lörrach (Labour Court) Lörrach, which were received at the Court Registry on 12 October 2001 in the cases of Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süss (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01) and Matthias Döbele (C-403/01) v Deutsches Rotes Kreuz, Kreisverband Waldshut e.V (German Red Cross, Waldshut District Association) for a preliminary ruling on the following questions:

1(a) Is the reference in Article 1(3) of Council Directive 93/104/EC [1] of 23 November 1993 concerning certain aspects of the organisation of working time to Article 2(2) of Council Directive 89/391/EEC [2] of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, under which the directives are not applicable where characteristics peculiar to certain specific activities in the civil protection services inevitably conflict with their application, to be construed as meaning that the plaintiff's activity as a rescue worker is caught by this exclusion?

1(b) Is the concept of road transport in Article 1(3) of Directive 93/104/EC to be construed as meaning that only those driving activities in which by their nature great distances are covered and, consequently, working times cannot be fixed owing to the unforeseeability of any difficulties are excluded from the scope of the directive, or is road transport within the meaning of this provision also to be taken to mean the activity of land-based rescue services, which comprises at least in part the driving of rescue vehicles and attendance on patients during the journey?

2. In view of the judgment in Case C-303/98 Simap [2000] ECR I-0000, paragraphs 73 and 74, is Article 18(1)(b)(i) of Directive 93/104/EC to be construed as meaning that consent given individually by a worker must expressly refer to the extension of working time to more than 48 hours per week, or may such consent also reside in the worker's agreeing with the employer, in the contract of employment, that working conditions are to be governed by a collective agreement which itself allows working time to be extended to more than 48 hours on average?

3. Is Article 6 of Directive 93/104/EC in itself unconditional and sufficiently precise to be capable of being relied on by individuals before national courts where the State has not properly transposed the directive into national law?

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(1) OJ L 307, p. 18.
(2) OJ L 183, p. 1.

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 12 October 2001 in the case of 1. ADIDAS A.G. and 2. ADIDAS BENELUX B.V. against FITNESS WORLD TRADING Ltd

(Case C-408/01)

(2002/C 3/22)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden of 12 October 2001, which was received at the Court Registry on 15 October 2001, for a preliminary ruling in the case of 1. ADIDAS A.G. and 2. ADIDAS BENELUX B.V. against FITNESS WORLD TRADING Ltd on the following questions:

1. (a) Must Article 5(2) of the Directive be interpreted as meaning that, under a national law implementing that provision, the proprietor of a trade mark which is well known in the Member State concerned may also oppose the use of the trade mark or a sign similar to it, in the manner and circumstances referred to therein, in relation to goods or services which are identical with or similar to those for which the trade mark is registered?

(b) If the answer to Question 1(a) is in the negative: where Article 5(2) of the Directive is implemented in a national law, must the concept of 'likelihood of confusion' referred to in Article 5(1)(b) of the Directive be interpreted as meaning that there exists such a likelihood if a person other than the proprietor of the trade mark uses a well-known trade mark or a sign similar to it, in the manner and circumstances referred to in Article 5(2) of the Directive, in relation to goods or services which are identical with or similar to those for which the trade mark is registered?

2. If the answer to Question 1(a) is in the affirmative:

   (a) Must the question concerning the similarity between the trade mark and the sign in such a case be assessed on the basis of a criterion other than that of (direct or indirect) confusion as to origin, and if so, according to what criterion?

   (b) If the sign alleged to be an infringement in such a case is viewed purely as an embellishment by the relevant section of the public, what importance must be attached to that circumstance in connection with the question concerning the similarity between the trade mark and the sign?

Reference for a preliminary ruling by the Landgericht Frankfurt am Main by order of that court of 12 July 2001 in the case of IMS Health GmbH & Co. OHG v NDC Health GmbH & Co

(Case C-418/01)

(2002/C 3/23)

Reference has been made to the Court of Justice of the European Communities by order of the Landgericht Frankfurt am Main (Regional Court) of 12 July 2001, which was received at the Court Registry on 22 October 2001, for a preliminary ruling in the case of IMS Health GmbH & Co. OHG v NDC Health GmbH & Co on the following questions:

1. Is Article 82 EC to be interpreted as meaning that there is abusive conduct by an undertaking with a dominant position on the market where it refuses to grant a licence agreement for the use of a data bank protected by copyright to an undertaking which seeks access to the same geographical and actual market if the participants on the other side of the market, that is to say potential clients, reject any product which does not make use of the data bank protected by copyright because their set-up relies on products manufactured on the basis of that data bank?

2. Is the extent to which an undertaking with a dominant position on the market has involved persons from the other side of the market in the development of the data bank protected by copyright relevant to the question of abusive conduct by that undertaking?

3. Is the material outlay (in particular in regard to costs) in which clients who have hitherto been supplied with the product of the undertaking having a dominant market position would be involved if they were in future to go over to purchasing the product of a competing undertaking which does not make use of the data bank protected by copyright relevant to the question of abusive conduct by an undertaking with a dominant position on the market?

Reference for a preliminary ruling by the Bundesvergabeamt (Austria) by order of 25 September 2001 in the case of Traunfellner GmbH v Österreichische Autobahnen- und Schnellstrassen-Finanzierungs-AG (ÖSAG)

(Case C-421/01)

(2002/C 3/24)

Reference has been made to the Court of Justice of the European Communities by order of 25 September 2001 by the Bundesvergabeamt (Austrian Federal Procurement Office), which was received at the Court Registry on 24 October 2001, for a preliminary ruling in the case of Traunfellner GmbH v Österreichische Autobahnen- und Schnellstrassen-Finanzierungs-AG (ÖSAG) on the following questions:

Question 1

Is an alternative tender that consists in proposing an asphalt surface instead of overlaying the carriageway with concrete as specified in the tender document a 'variant' within the meaning of the first paragraph of Article 19 of Directive 93/37/EEC [1]?

Question 2

Can a criterion established in national legislation to determine the admissibility of the acceptance of a 'variant' within the meaning of the first paragraph of Article 19 of Directive 93/37/EEC, whereby 'the performance of qualitatively equivalent work is ensured' by the variant, properly be regarded as a 'minimum specification' required and stated by the contracting authority in accordance with the first and second paragraphs of Article 19 of Directive 93/37/EEC, if the tender document refers only to the national provision and does not specify the comparative parameters to be used to assess 'equivalence'?

Question 3

Does Article 30(1) and (2) of Directive 93/37/EEC in conjunction with the principles of transparency and equal treatment prohibit a contracting authority from making the acceptance of an alternative tender, which differs from a tender conforming to the tender document in that it proposes a different technical quality, conditional on a positive assessment based on a criterion in national legislation requiring that 'the performance of qualitatively equivalent work is ensured' if the tender document refers only to the national provision and does not specify the comparative parameters to be used to assess 'equivalence'?

Question 4a

If the answer to Question 3 is in the affirmative, may a contracting authority conclude a tendering procedure like that described in Question 3 by awarding the contract?

Question 4b

If the answers to Questions 3 and 4a are in the affirmative, must a contracting authority conducting a tendering procedure as described in Question 3 reject variants proposed by tenderers without examining their contents, at any rate if it has not defined contract award criteria for assessing the technical differences between the variant and the tender document?

Question 5

If the answers to Questions 3 and 4a are in the affirmative and the answer to Question 4b is in the negative, must a contracting authority conducting a tendering procedure as described in Question 3 accept a variant whose technical differences from the tender document it is unable to assess on the basis of contract award criteria owing to the absence of appropriate statements in the tender document if this variant is the cheapest tender and contract award criteria have not otherwise been defined?

([1]) OJ L 199, p. 54.

Reference for a preliminary ruling by the Verwaltungsgericht Neustadt an der Weinstrasse by order of that court of 30 July 2001 in the case of Emil Färber GmbH & Co. v Stadt Neustadt/Weinstrasse

(Case C-423/01)

(2002/C 3/25)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht (Administrative Court) Neustadt an der Weinstrasse of 30 July 2001, which was received at the Court Registry on 26 October 2001, for a preliminary ruling in the case of Emil Färber GmbH & Co. v Stadt Neustadt/Weinstrasse on the following questions:

1. On a proper construction of the second subparagraph of Chapter I(2) in Annex A to Council Directive 85/73/EEC([1]) as amended and consolidated by Council Directive 96/43/EC([2]), is an establishment which is situated in the same building as a cutting plant but whose operator is a natural or legal person other than the operator of the cutting plant also to be regarded as the 'establishment where the meat is obtained'?

2. Which criteria are relevant to the fee-levying authority's decision regarding the extent to which it grants a reduction of the fees of up to 55 % as provided for in the second subparagraph of Chapter I(2) in Annex A to the abovementioned directive?

   In that regard, may in particular the fact that staff need less time to carry out the controls or inspections also be taken into consideration where the fees in respect of such controls and inspections are determined by the addition of a standard amount pursuant to the first subparagraph under (a) of Chapter I(2) in Annex A to the abovementioned directive?

   Moreover, if Question 1 is answered in the affirmative, when reducing the fee, may account nevertheless be taken of the fact that the establishments situated in one building are attributable to operators regarded in law as distinct, and may this in principle lead to a situation where in such cases less of a reduction is granted than in cases where the slaughterhouse and cutting plant are not only situated in the same building but are also operated by the same natural or legal person?

([1]) OJ L 32 of 5.2.1985, p. 14.
([2]) OJ L 162 of 1.7.1996, p. 1.

Reference for a preliminary ruling by the Bundesvergabeamt (Austria) by order of 25 October 2001 in the case of CS Communications & Systems Austria GmbH v Allgemeine Unfallversicherungsanstalt

(Case C-424/01)

(2002/C 3/26)

Reference has been made to the Court of Justice of the European Communities by order of 25 October 2001 by the Bundesvergabeamt (Austrian Federal Procurement Office), which was received at the Court Registry on 26 October 2001, for a preliminary ruling in the case of CS Communications & Systems Austria GmbH v Allgemeine Unfallversicherungsanstalt on the following questions:

Question 1

When balancing interests prior to deciding an application for interim measures, as required by Article 2(4) of Council Directive 89/665/EEC of 21 December 1989 [1] on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 92/50/EEC of 18 June 1992 [2], is the 'body responsible for review procedures' within the meaning of Article 2(8) of Directive 89/665/EEC required to take into account the prospects of success of an application for an unlawful decision of a contracting authority to be set aside pursuant to Article 2(1)(b) of that Directive?

Question 2

When balancing interests prior to deciding an application for interim measures, as required by Article 2(4) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 92/50/EEC of 18 June 1992, is the 'body responsible for review procedures' within the meaning of Article 2(8) of Directive 89/665/EEC entitled to take into account the prospects of success of an application for an unlawful decision of a contracting authority to be set aside pursuant to Article 2(1)(b) of that Directive?

[1] OJ 1989 L 395, p. 33.
[2] OJ 1992 L 209, p. 1.

Reference for a preliminary ruling by the Tribunal d'Instance, Vienne, by judgment of that court of 19 October 2001 in the case of SA Société ACCEA Finances v Christian Giner

(Case C-426/01)

(2002/C 3/27)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal d'Instance (District Court), Vienne, of 19 October 2001, received at the Court Registry on 29 October 2001 for a preliminary ruling in the case of SA Société ACCEA Finances v Christian Giner on the following questions:

Must Directive 87/102/EEC [1] and Directive 90180/EEC [2] be interpreted as having as their sole purpose consumer protection or, as aiming, beyond that, at the organization and regulation of the single market in credit?

Must the obligation to interpret those directives in conformity with their purpose, and at least in way protective of consumers, prompt the national court to prefer an interpretation of its law that would allow it to raise, of its own motion, issues of irregularity affecting consumer credit agreements, such as a failure to indicate in writing the percentage rate of charge, in actions for payment of a debt brought before it by credit institutions?

[1] Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42 of 12.2.1987, p. 48).
[2] Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 61, 10.3.1990, p. 14).

Reference for a preliminary ruling by the Bundessozialgericht by order of that court of 2 August 2001 in the case of Dülger Trans Uluslararasi Tazimacilik Ltd. Sti v Bundesanstalt für Arbeit

(Case C-427/01)

(2002/C 3/28)

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 30 October 2001, for a preliminary ruling in the case of Dülger Trans Uluslararasi Tazimacilik Ltd. Sti. v Bundesanstalt für Arbeit (Federal Labour Office) on the following questions:

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 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?

4. 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 to be interpreted as prohibiting a Member State of the Community in general from introducing national provisions which, in comparison with the position under national law on 1 December 1980, lay down new restrictions on access to the employment market for Turkish workers, or does that provision prohibit the introduction of new restrictions only in respect of the employment or continued employment of workers who were already legally resident and employed in Germany before the entry into force of the new restriction?

Reference. for a preliminary ruling by the Tribunale di Catania — 4th Civil Section — by order of 15 October 2001 in the case of Costanzo SpA v Elettrica SpA

(Case C-428/01)

(2002/C 3/29)

Reference has been made to the Court of Justice of the European Communities by an order of the Tribunale (District Court) Catania — 4th Civil Section — by order of that court of 15 October 2001, which was received at the Court Registry on 31 October 2001, for a preliminary ruling in the case of Costanzo SpA v Elettrica SpA on the following questions:

1. On an interpretation of Article 87 et seq. EC may transitional rules, such as those laid down in Article 106 of Legislative Decree No 270/99, constitute new State aid and come within the scope of the prohibition under Article 87 EC?

2. If the answer to Question 1 is affirmative, in light of the considerations set out in the grounds hereof can the transitional rules under examination come within the provision in Article 87(3)(b) of the EC Treaty?

3. If the answer to Question 2 is negative, in light of the general principles of Community law and in particular those mentioned in the grounds hereof, can the transitional rules under examination be deemed compatible with the EC Treaty and the Community legal order?

Reference for a preliminary ruling by the Cour d'appel de Mons (6ème chambre fiscale) by judgment of 2 November 2001 in the case of Philippe Mertens against État belge

(Case C-431/01)

(2002/C 3/30)

Reference has been made to the Court of Justice of the European Communities by order of 2 November 2001 of the Cour d'appel de Mons (6ème chambre fiscale) (Court of Appeal, Mons, 6th fiscal chamber), received at the Court Registry on 7 November 2001, for a preliminary ruling in the case of Philippe Mertens against État belge (Belgian State), on the following question:

Does Article 39 and/or Article 43 of the Treaty establishing the European Community preclude legislation by a Member State under which, for assessment to tax of individuals, a business loss suffered in that Member State by an individual residing in that Member State in the course of a previous period of assessment may be deducted from the profit of that individual for a subsequent period of assessment, only to the extent that the business loss may not be set off against emoluments relating to that earlier period of assessment arising from a salaried activity carried on by that individual in another Member State, and if the business loss thus set off may be deducted neither in that Member State nor in the other State from the taxable income of that individual for assessment to tax of individuals, although if the individual had carried on his salaried activity in the same Member State as that in which he carries on the self-employed activity, the business losses could be properly and lawfully deducted from the taxable income of that individual?

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat of the Land Vorarlberg by order of 29 October 2001 in the appeal brought by Helmut Gunz

(Case C-432/01)

(2002/C 3/31)

Reference has been made to the Court of Justice of the European Communities by order of 29 October 2001 by the Unabhängiger Verwaltungssenat of the Land Vorarlberg (Independent Administrative Chamber of the Land Vorarlberg), which was received at the Court Registry on 7 November 2001 for a preliminary ruling in the appeal brought by Helmut Gunz on the following questions:

1. Does Article 2(1)(b) of Council Directive 79/112/EEC [1] of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (now consolidated in European Parliament and Council Directive 2000/13/EC of 20 March 2000, OJ 2000 L 109, p. 29; hereinafter 'the labelling Directive'), under which — subject to Community provisions applicable to natural mineral waters and to foodstuffs for particular nutritional uses, the labelling and methods used may not attribute to any foodstuff the property of preventing, treating or curing a human disease, or suggest that it possesses such properties, preclude national legislation which makes it an offence when marketing foodstuffs:

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

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

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

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

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[1] OJ L 33, p. 1.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 July 2001

in Joined Cases T-202/98, T-204/98 and T-207/98: Tate & Lyle plc and Others v Commission of the European Communities [1]

(Competition — Sugar market — Infringement of Article 85 of the EC Treaty (now Article 81 EC) — Fines)

(2002/C 3/32)

(Language of the case: English)

In Joined Cases T-202/98: Tate & Lyle plc, represented by R. Fowler QC and A. L. Morris, solicitors, with an address for service in Luxembourg, T-204/98: British Sugar plc, represented by T. Sharpe QC and D. Jowell, barristers, and L.R. Lindsay and A. Nourry, solicitors, with an address for service in Luxembourg, Case T-207/98: Napier Brown & Co. Ltd, represented by D. Guy, solicitor, and S. Sheppard, barrister, with an address for service in Luxembourg, against Commission of the European Communities (Agents: B. Doherty and K. Wiedner) — application for annulment of Commission Decision 1999/210/EC of 14 October 1998 relating to a proceeding pursuant to Article 85 of the EC Treaty (Case IV/F-3/33.708 — British Sugar plc, Case IV/F-3/33.709 — Tate & Lyle plc, Case IV/F-3/33.710 — Napier Brown & Company Ltd, Case IV/F-3/33.711 — James Budgett Sugars Ltd) (OJ 1999 L 76, p. 1) — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 12 July 2001, in which it:

1. *Annuls Article 3 of Commission Decision 1999/210/EC of 14 October 1998 relating to a proceeding pursuant to Article 85 of the EC Treaty (Case IV/F-3/33.708 — British Sugar plc, Case IV/F-3/33.709 — Tate & Lyle plc, Case IV/F-3/33.710 — Napier Brown & Company Ltd, Case IV/F-3/33.711 — James Budgett Sugars Ltd) in so far as it concerns the applicant in Case T-202/98;*

2. *Fixes the amount of the fine imposed on the applicant in Case T-202/98 by Article 3 of Decision 1999/210 at 5.6 million euros;*

3. *Orders the Commission to pay its own costs and those of the applicant in Case T-202/98;*

4. *Dismisses the applications in Cases T-204/98 and T-207/98;*

5. *Orders the applicant in Case T-204/98 to pay its own costs and those incurred by the Commission in that case, including those relating to the proceedings for interim relief;*

6. *Orders the applicant in Case T-207/98 to pay its own costs and those incurred by the Commission in that case.*

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[1] OJ C 48 of 20.2.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 July 2001

in Case T-2/99: T. Port GmbH & Co. KG v Council of the European Union [1]

(Bananas — Imports from ACP States and third countries — Regulation (EEC) No 404/93 — Possibility of relying on WTO rules — First paragraph of Article 234 of the EC Treaty (now, after amendment, first paragraph of Article 307 EC) — Action for damages)

(2002/C 3/33)

(Language of the case: German)

In Case T-2/99: T. Port GmbH & Co. KG, established in Hamburg (Germany), represented by G. Meier, lawyer, against the Council of the European Union (Agents: S. Marquardt and J.-P. Hix) supported by the French Republic (Agents: K. Rispal-Bellanger, C. Vasak, S. Seam and F. Million) and by the Commission of the European Communities (Agent: K.-D. Borchardt) — application for compensation for the loss which the applicant has suffered as a result of the Council introducing, under Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas (OJ 1993 L 47, p. 1), provisions which are alleged to conflict with Article I.1 and Article XIII of the General Agreement on Tariffs and Trade (GATT) — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; G. Herzig, Administrator, for the Registrar, has given a judgment on 12 July 2001, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs;*

3. *Orders the Commission and the French Republic to bear their own costs.*

(1) OJ C 71 of 13.3.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 July 2001

in Case T-3/99: Banatrading GmbH v Council of the European Union (1)

(Bananas — Imports from ACP States and third countries — Regulation (EEC) No 404/93 — Possibility of relying on WTO rules — First paragraph of Article 234 of the EC Treaty (now, after amendment, first paragraph of Article 307 EC) — Action for damages)

(2002/C 3/34)

(Language of the case: German)

In Case T-3/99: Banatrading GmbH, established in Hamburg (Germany), represented by G. Meier, lawyer, against the Council of the European Union (Agents: S. Marquardt and J.P. Hix) supported by the French Republic (Agents: K. Rispal-Bellanger, C. Vasak, S. Seam and F. Million) and by the Commission of the European Communities (Agent: K.-D. Borchardt) — application for compensation for the loss which the applicant has suffered as a result of the Council introducing, under Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas (OJ 1993 L 47, p. 1), provisions which are alleged to conflict with Article I.1 and Article XIII of the General Agreement on Tariffs and Trade (GATT) — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; G. Herzig, Administrator, for the Registrar, has given a judgment on 12 July 2001, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs;*

3. *Orders the Commission and the French Republic to bear their own costs.*

(1) OJ C 71 of 13.3.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 June 2001

in Case T-6/99: ESF Elbe-Stahlwerke Feralpi GmbH v Commission of the European Communities (1)

(ECSC Treaty — State aid — Investment aid — Operating aid — Scope of the ECSC Treaty — Principle of protection of legitimate expectations)

(2002/C 3/35)

(Language of the case: German)

In Case T-6/99: ESF Elbe-Stahlwerke Feralpi GmbH, established in Riesa, Germany, represented by W.M. Kühne and S. Bauer, avocats, with an address for service in Luxembourg, supported by Federal Republic of Germany (Agents: W.-D. Plessing and C.-D. Quassowski) and by the Freistaat Sachsen, represented by J. Sedemund and T. Lübbig, avocats, with an address for service in Luxembourg, against Commission of the European Communities (Agents: D. Triantafyllou and P. Nemitz) — application for annulment of Commission Decision 1999/580/ECSC of 11 November 1998 concerning aid granted by Germany to ESF Elbestahlwerk Feralpi GmbH, Riesa, Saxony (OJ 1999 L 220, p. 28) — the Court of First Instance (Third Chamber, Extended Composition), composed of J. Azizi, President, and P. Mengozzi, K. Lenaerts, R.M. Moura Ramos and M. Jaeger, Judges; G. Herzig, Administrator, for the Registrar, has delivered a judgment on 5 June 2001 in which it:

1. *Annuls the first paragraph of Article 1 of Commission Decision 1999/580/ECSC of 11 November 1998 concerning aid granted by Germany to EF Elbestahlwerk Feralpi GmbH, Riesa, Saxony, in so far as the part of the investment grant granted to the applicant in 1995 relating to investments in its cold wire rod drawing plant is declared incompatible with Decision No 2496/96/ESC and the common market for coal and steel;*

2. *Annuls the second paragraph of Article 1 of Decision 1999/580, in so far as it states that the aid element of the guarantees covering the operating loans of DEM 7.2 million and DEM 4.8 million granted at the end of 1994 was not authorised;*

3. *Annuls Article 2 of Decision 1999/580, in so far as the Federal Republic of Germany is required to recover from the applicant the part of the investment grant make to the applicant in 1995 in respect of investment in its cold wire rod drawing plant and the aid element of the guarantees covering the operating loans of DEM 7.2 million and DEM 4.8 million granted at the end of 1994;*

4. *Dismisses the remainder of the application;*

5. *Orders the applicant to pay two-thirds of its costs;*

6. *Orders the Commission to pay, in addition to its own costs, one third of the costs incurred by the applicant;*

7. *Orders the interveners to bear their own costs.*

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(1) OJ C 86, 27.3.1999

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-58/99: Mukand Ltd and Others v Council of the European Union (1)

(Anti-subsidy proceedings — Regulation (EC) No 2450/98 — Stainless steel bright bars — Injury — Causal link)

(2002/C 3/36)

(Language of the case: English)

In Case T-58/99: Mukand Ltd, established in Mumbai (India), Isibars Ltd, established in Mumbai, Ferro Alloys Corporation Ltd, established in Nagpur (India), Viraj Impoexpo Ltd, established in Mumbai, represented by K. Adamantopoulos, lawyer, and J. Branton, Solicitor, with an address for service in Luxembourg, against Council of the European Union (Agents: S. Marquardt, H.-J. Rabe and G. Berrisch), supported by Commission of the European Communities (Agents: V. Kreuschitz and N. Khan) — application for annulment of Council Regulation (EC) No 2450/98 of 13 November 1998 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed (OJ 1998 L 304, p. 1) — the Court of First Instance (First Chamber, Extended Composition), composed of B. Vesterdorf, President, A. Potocki, J. Pirrung, M. Vilaras and N.J. Forwood, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Annuls Council Regulation (EC) No 2450/98 of 13 November 1998 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed, in so far as it concerns imports into the European Community of products manufactured by Mukand Ltd, Isibars Ltd, Ferro Alloys Corporation Ltd and Viraj Impoexpo Ltd;*

2. *The remainder of the application is dismissed as inadmissible;*

3. *The Council shall bear its own costs together with those incurred by the applicants. The Commission shall bear its own costs.*

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(1) OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 October 2001

in Case T-171/99: Corus UK Ltd v Commission of the European Communities (1)

(Action for damages — Recovery of undue payments — Harm suffered by reason of a partially annulled decision)

(2002/C 3/37)

(Language of the case: English)

In Case T-171/99: Corus UK Ltd, formerly British Steel plc, then British Steel Ltd, established in London, represented by P.G.H. Collins and M. Levitt, Solicitors, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall and W. Wils) — application seeking compensation for the harm allegedly suffered by the applicant through the Commission's refusal to pay it interest on the amount repaid pursuant to a judgment of the Court of First Instance reducing the level of the fine imposed on it — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, M. Vilaras and N.J. Forwood, Judges; G. Herzig, Administrator, for the Registrar, has given a judgment on 10 October 2001, in which it:

1. *Orders the Commission to pay to the applicant the sum of EUR 3 016 608, together with simple interest on that sum at the fixed rate of 5.75 % per annum, for the period from 24 April 1999 to the date of the present judgment;*

2. *Orders that the sums referred to in paragraph (1) above shall bear simple interest at the same rate from the date of the present judgment until full and final payment;*

3. *Dismisses the remainder of the application;*

4. *Orders the Commission to pay the costs.*

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(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 June 2001

in Case T-188/99: Euroalliages v Commission of the European Communities (1)

(Dumping — Decision terminating an expiry review — Action for annulment)

(2002/C 3/38)

(Language of the case: French)

In Case T-188/99: Euroalliages, whose head office is in Brussels (Belgium), represented by D. Voillemot and O. Prost, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: initially N. Khan and, subsequently, V. Kreuschitz and A.P. Bentley) — application for annulment of Commission Decision 1999/426/EC of 4 June 1999 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Egypt and Poland (OJ 1999 L 166, p. 91) — the Court of First Instance (Second Chamber, Extended Composition), composed of A.W.H. Meij, President, K. Lenaerts, A. Potocki, M. Jaeger and J. Pirrung, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 20 June 2001, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to pay the costs.*

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(1) OJ C 314 of 30.10.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-337/99: Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/39)

(Language of the case: German)

In Case T-337/99: Henkel KGaA, established in Düsseldorf (Germany), represented by H.F. Wissel and C. Osterrieth, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and S. Laitinen) — application brought against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 1999 (Case R 73/1999-3), which was notified to the applicant on 28 September 1999 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Dismisses the action;*

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

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(1) OJ C 63 of 4.3.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 September 2001

in Case T-344/99: Lucía Recalde Langarica v Commission of the European Communities (1)

(Officials — Expatriation allowance — Article 4(1)(a) of the Staff Regulations — Article 26 of the Staff Regulations — Rights of defence)

(2002/C 3/40)

(Language of the case: Spanish)

In Case T-344/99: Lucía Recalde Langarica, an official of the Commission of the European Communities, residing in

Brussels, represented by R. García-Gallardo and G. Pérez Olmo, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall and J. Rivas Andrés) — application for annulment of the decision of the Commission of 26 February 1999 withdrawing the applicant's expatriation allowance and withholding from her remuneration the amounts paid to her in that respect — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 20 September 2001, in which it:

1. *annuls the decision of the Commission of 26 February 1999;*

2. *dismisses as inadmissible the claim that the Court make an appropriate order requiring the Commission to fulfil its obligations under Article 233 EC;*

3. *orders the Commission to bear its own costs and pay those of the applicant.*

([1]) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-26/00: Lecureur S.A. v Commission of the European Communities ([1])

(Commission Regulation No 2519/97 — Food aid — Arbitration clause — Contractual nature of the dispute — Non-conformity of the goods delivered — Thefts from warehouses — Transfer of the burden of risk — Deductions from payments)

(2002/C 3/41)

(Language of the case: French)

In Case T-26/00: Lecureur S.A., established in Paris (France), represented by L. Funck-Brentano and J. Villette, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agent: P. Oliver) — application for an order for payment of sums withheld by the Commission when paying the balance for a supply of food aid — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; H. Jung, Registrar, has given a judgment on 19 September 2001, in which it:

1. *Orders the Commission to pay the applicant the sum of EUR 109 921, together with post-maturity interest calculated in accordance with Article 18(7) of Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid, as from 6 May 1999 until the debt is paid in full;*

2. *Orders the Commission to pay the costs.*

([1]) OJ C 122 of 29.4.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-30/00: Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Tablet for washing machines or dishwashers — Figurative mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/42)

(Language of the case: German)

In Case T-30/00: Henkel KGaA, established in Düsseldorf (Germany), represented by H.F. Wissel and C. Osterrieth, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and S. Laitinen) — application brought against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 November 1999 (Case R 75/1999-3), which was notified to the applicant on 10 December 1999 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 October 2001

in Case T-111/00: British American Tobacco International (Investments) Ltd v Commission of the European Communities [1]

(Decision 94/90/ECSC, EC, Euratom — Public access to Commission documents — Minutes of the Committee on Excise Duties — Partial access — Exception — Identities of national delegations — Protection of an institution's interest in the confidentiality of its proceedings)

(2002/C 3/43)

(Language of the case: English)

In Case T-111/00: British American Tobacco International (Investments) Ltd, established in London (United Kingdom), represented by S. Crosby, Solicitor, against Commission of the European Communities (Agents: U. Wölker and X. Lewis) — application for annulment of the Commission's decision partially refusing an application for access to certain minutes of the Committee on Excise Duties — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, M. Vilaras and N.J. Forwood, Judges; H. Jung, Registrar, has given a judgment on 10 October 2001, in which it:

1. *Annuls the Commission's decision partially to reject an application for access to certain minutes of the Committee on Excise Duties.*

2. *Orders the Commission to pay the costs.*

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-117/00: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/44)

(Language of the case: English)

In Case T-117/00: Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and C. Røhl Søberg) — application brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 March 2000 (Case R-509/1999-1), which was notified to the applicant on 13 March 2000 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Dismisses the action;*

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

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-118/00: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/45)

(Language of the case: English)

In Case T-118/00: Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and C. Røhl Søberg) — application brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 March 2000 (Case R-516/1999-1), which was notified to the applicant on 7 March 2000 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Dismisses the action;*

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

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-119/00: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/46)

(Language of the case: English)

In Case T-119/00: Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and C. Røhl Søberg) — application brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 February 2000 (Case R-519/1999-1), which was notified to the applicant on 3 March 2000 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Dismisses the action;*

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

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-120/00: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/47)

(Language of the case: English)

In Case T-120/00: Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and C. Røhl Søberg) — application brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 February 2000 (Case R-520/1999-1), which was notified to the applicant on 3 March 2000 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Dismisses the action;*

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

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-121/00: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/48)

(Language of the case: English)

In Case T-121/00: Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and C. Røhl Søberg) — application brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 February 2000 (Case R-529/1999-1), which was notified to the applicant on 3 March 2000 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Dismisses the action;*

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

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-128/00: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/49)

(Language of the case: English)

In Case T-128/00: Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and C. Røhl Søberg) — application brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 March 2000 (Case R-506/1999-1), which was notified to the applicant on 13 March 2000 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 March 2000 (Case R-506/1999-1) in so far as it concerns products falling within Class 3 of the Nice Agreement corresponding to the description 'perfumery, essential oils, cosmetics, hair lotions; dentifrices';*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-129/00: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Shape of a product for washing machines or dishwashers — Three-dimensional mark — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 3/50)

(Language of the case: English)

In Case T-129/00: Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers, with an address for service in Luxembourg against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, D. Schennen and C. Røhl Søberg) — application brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 March 2000 (Case R-508/1999-1), which was notified to the applicant on 13 March 2000 — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 19 September 2001, in which it:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 March 2000 (Case R-508/1999-1) in so far as it concerns products falling within Class 3 of the Nice Agreement corresponding to the description 'perfumery, essential oils, cosmetics, hair lotions; dentifrices';*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 3 October 2001

in Case T-140/00: Zapf Creation AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — 'New Born Baby' — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 40/94)

(2002/C 3/51)

(Language of the case: German)

In Case T-140/00: Zapf Creation AG, established in Rödental (Germany), represented by A. Kockläuner, avocat, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: D. Schennen, A. von Mühlendahl and C. Røhl Søberg) — action brought against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 21 March 2000 (Case R 348/1999-3) relating to the registration of 'New Born Baby' as a Community trade mark — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 3 October 2001, in which it:

1. *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 March 2000 (Case R 348/1999-3);*

2. *Orders the Office to bear its own costs and to pay those of the applicant.*

[1] OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-152/00: E v Commission of the European Communities [1]

(Officials — Candidacy rejected — Infringement of the vacancy notice — Manifest error of assessment — Discrimination — Misuse of powers)

(2002/C 3/52)

(Language of the case: French)

In Case T-152/00: E, a member of the temporary staff of the Commission of the European Communities, residing in Brussels, represented by G. Vandersanden, Avocat, with an address for service in Luxembourg, against the Commission of the European Communities (Agents: G. Valsesia and J. Currall) — first an application for annulment of the rejection of the applicant's candidacy for the post of head of 'Mediterranean' unit, Directorate 'International role' of the 'Science, research and development' Directorate General and of the appointment of P to that post and, secondly, a claim for damages allegedly caused by those two decisions — the Court of First Instance (Second Chamber), composed of A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges; J. Plingers, Administrator, for the Registrar, gave a judgment on 19 September 2001, in which it:

1. *dismisses the application;*

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

[1] OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 September 2001

in Case T-171/00: Peter Spruyt v Commission of the European Communities [1]

(Officials — Protection against the risk of accident and of occupational disease — Entitlement to benefits provided for under Article 73 of the Staff Regulations — Hang-gliding accident)

(2002/C 3/53)

(Language of the case: French)

In Case T-171/00: Peter Spruyt, an official of the Commission of the European Communities, residing in Arolo di Leggiuno (Italy), represented by E. Boigelot, avocat, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall) — application for annulment of the decision of the Commission of 13 September 1999 whereby it refused to apply to the applicant Article 73 of the Staff Regulations of Officials of the European Communities — the Court of First Instance (Third Chamber), composed of J. Azizi, President, K. Lenaerts and M. Jaeger, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 20 September 2001 in which it:

1. *annuls the decision of the Commission of 13 September 1999 refusing to apply to the applicant Article 73 of the Staff Regulations of Officials of the European Communities,*

2. *orders the Commission to reimburse to the applicant all the medical expenses connected with the hang-gliding accident sustained by him on 9 May 1999 other than those which have been reimbursed to him under Article 72 of the Staff Regulations, together with default interest at the annual rate of 6,25 % as from 13 September 1999,*

3. *orders the Commission to bear the cost of paying the benefits referable to total and partial temporary incapacity and partial permanent incapacity of the applicant, linked to the accident, under the conditions laid down in Article 73 of the Staff Regulations and by the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease.*

4. *orders the Commission to pay the costs.*

(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 September 2001

in Case T-95/01: Gérald Coget and Others v Court of Auditors of the European Communities [1]

(Officials — Post of Secretary General — Appeal for candidacies — 'High level' experience — Wide measure of discretion of the institution — Call to interview)

(2002/C 3/54)

(Language of the case: French)

In Case T-95/01: Gérald Coget, an official of the Court of Auditors of the European Communities, residing in Hettange-Grande (France), Pierre Hugé, an official of the Court of Auditors of the European Communities, residing in Bonnevoie (Luxembourg), Emmanuel Gabolde, an official of the Court of Auditors of the European Communities, residing in Metz (France), represented by A. Soulier, avocat, with an address for service in Luxembourg, against Court of Auditors of the European Communities (Agents: J.-M. Stenier, P. Giusta, B. Schäfer and D. Waelbroeck) — application for annulment of the decision of the Court of Auditors of 22 February 2001 to appoint Michel Hervé to the post of Secretary General of the institution with effect from 1 July 2001 — the Court of First Instance (Third Chamber), composed of J. Azizi, President, K. Lenaerts and M. Jaeger, Judges; J. Plingers, Administrator, for the Registrar, gave a judgment on 20 September 2001, in which it:

1. *dismisses the application;*

2. *orders the parties to bear their own costs, including those arising from the application for interim relief.*

(1) OJ C 186 of 30.6.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 July 2001

in Case T-191/00: Werner F. Edlinger v Commission of the European Communities [1]

(Action for failure to act — Actionable omissions — Inadmissibility)

(2002/C 3/55)

(Language of the case: German)

In Case T-191/00, Werner F. Edlinger, resident in Vienna, represented by F. Frisch, lawyer, against the Commission of the European Communities (Agents: U. Wölker and C. Ladenburger) — application for a declaration that the Commission unlawfully failed to act in relation to measures taken on 31 January 2000 against the Republic of Austria by the Heads of State or Government of the fourteen other Member States of the European Union — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President and V. Tiili and R. M. Moura Ramos, Judges; Registrar H. Jung, made an order on 10 July 2001, the operative part of which is the following:

1) *The case is dismissed as inadmissible.*

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

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[1] OJ C 285 of 7.10.2000.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 12 September 2001

in Case T-132/01 R: Euroalliages and Others v Commission of the European Communities

(Application for interim measures — Article 108 of the Rules of Procedure)

(2002/C 3/56)

(Language of the case: French)

In Case T-132/01 R: Euroalliages, established in Brussels, Péchiney électrométallurgie, established in Courbevoie (France), Vargön Alloys AB, established in Vargön (Sweden), Ferroatlántica, established in Madrid, represented by D. Voillemot and O. Prost, avocats, against Commission of the European Communities (Agents: V. Kreuschitz, S. Meany and A.P. Bentley) — application for the amendment of the operative part of the order of the President of the Court of First Instance of 1 August 2001 in Case T-132/01 R Euroalliages and Others v Commission, not yet published in the ECR — the President of the Court of First Instance made an order on 12 September 2001, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The costs are reserved.*

Action brought on 20 September 2001 by Japan Tobacco Inc. and JT International S.A. against the Council of the European Union and the European Parliament

(Case T-223/01)

(2002/C 3/57)

(Language of the case: English)

An action against the Council of the European Union and the European Parliament was brought before the Court of First Instance of the European Communities on 20 September 2001 by Japan Tobacco Inc. and JT International S.A., represented by Mr Onno Brouwer and Mr Paul Lomas of Freshfields Bruckhaus Deringer, London (United Kingdom)

The applicants claim that the Court should:

— annul Article 7 of the Directive in its entirety; alternatively

— annul Article 7 of the Directive to the extent that it precludes the applicants from using their trade mark MILD SEVEN within the European Union; and

— order that, pursuant to Article 87 of the Rules of Procedure of the Court of First Instance, the European Parliament and/or the Council of the European Union pay the costs of these proceedings, including those of the applicants and any third parties.

Pleas in law and main arguments

The Applicants are the owner and the licensee of the trade mark 'MILD SEVEN', used as a cigarette brand worldwide and protected as intellectual property. The Applicants fear that the prohibition, against using descriptors indicating that a tobacco product is less harmful than others, contained in Article 7 of Directive 2001/37, will deprive the Applicants of the possibility of marketing their brand 'MILD SEVEN' in the European Union.

In support of their application, the Applicants claim that there is no sufficient legal basis for the adaptation of Article 7 of the Directive. The Directive in question is based on Articles 95 and 133 of the EC Treaty. Neither of them provides, according to the Applicants, a sufficient basis for Article 7 of this Directive. Article 133 does not apply since the common commercial policy has no relevance to Article 7. Article 95 EC Treaty does not provide a legal basis either since there is no need to harmonise legislation on this point for the establishment of the internal market. According to the Applicants, there is no barrier to trade that needs to be removed. Further, the Applicants claim that Article 7 of the Directive violates Article 152(4)(c) EC Treaty. According to the Applicants, Article 95 EC Treaty is being used as a legal basis for the circumvention of the prohibition contained in Article 152(4)(c) EC Treaty to harmonise legislation designed to protect and improve human health.

The Applicants also claim that Article 7 of the Directive violates their right to property and the principle of proportionality since it would deprive the Applicants of the use of their trade mark in the European market. According to the Applicants, Article 7 is not an appropriate means by which to attain the objective of this Article, which is to promote health and consumer protection. The Applicants claim that the use of descriptors provides the consumer with information that allows him to choose to smoke cigarettes with a lower tar and nicotine content. Article 7 is in any event not the least restrictive method, since provision could have been made for the protection of existing trade marks.

The Applicants claim further that Article 7 of the Directive violates the principle of equal treatment. The Applicants make clear that they are the only tobacco producers in the European Union who would be deprived of the use of a brand as a consequence of Article 7 of the Directive.

Finally, the Applicants submit that the grounds upon which Article 7 of the Directive is based are insufficient.

Action brought on 24 September 2001 by Houghton Durferrit GmbH against the Office for Harmonisation in the Internal Market

(Case T-224/01)

(2002/C 3/58)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 24 September 2001 by Houghton Durferrit GmbH, represented by Ms Patricia Koch Moreno of Madrid (Spain). Kolone Corporation was also a party to the proceedings before the Board of Appeal

The applicant claims that the Court should:

— declare invalid the Decision no. 949/1999 dated 15 October 1999 of the Opposition Division of the Office for Harmonisation in the Internal Market in opposition procedure B4905, and the decision of the First Board of Appeal dated 6 July 2001 that dismissed the remedy of Appeal filed by the applicant against the previous resolution

— declare incompatible the Community trade mark filed by Kolene Corporation, no. 40.568 NU-TRIDE, in classes 1 and 40, on the grounds of its incompatibility with the earlier trade mark belonging to the applicant, no. 764.560, in classes 1, 7 and 11

— refuse the registration of Community trade mark no. 40.568 NU-TRIDE in classes 1 and 40

— order payment of the costs of these proceedings by the holder of the foregoing Community trade mark application, Kolene Corporation.

Pleas in law and main arguments

Applicant for the Community trade mark:	Kolone Corporation
The Community trade mark concerned:	Verbal mark 'NU-TRIDE' — Application no. 40.568, relating to goods in classes 1 and 40 (chemicals for use in the treatment of metals and metal treatment)
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	The Applicant

Trade mark or sign asserted by way of opposition in the opposition proceedings:	Registered German trade mark 'TUFFTRIDE' in classes 1, 7 and 11
Decision of the Opposition Division:	rejection of the Opposition
Decision of the Board of Appeal:	rejection of the Appeal by the applicant
Grounds of claim:	Articles 8(1)(b) and 7(1)(f) of Regulation (EC) no. 40/94 [1]

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

Action brought on 2 October 2001 by SGL Carbon AG against the Commission of the European Communities

(Case T-239/01)

(2002/C 3/59)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 October 2001 by SGL Carbon AG, Wiesbaden (Germany), represented by M. Klusmann, F. Wiemer and C. Canenbley, lawyers.

The applicant claims that the Court should:

— annul decision C(2001) 1986 final of 18 July 2001;

— in the alternative, reduce appropriately the amount of the fine imposed on the applicant in the contested decision;

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

Pleas in law and main arguments

The applicant manufactures various carbon and graphite products, including graphite electrodes. In the course of a procedure seeking information under Article 11 of Regulation No 17/62 concerning suspected anti-competitive agreements between undertakings on the market for graphite electrodes, the applicant stated to the defendant that it was willing to cooperate in the investigation of the case. A similar procedure by the authorities in the USA had ended *inter alia* with the imposition of a fine on the applicant.

In response to the statement of objections the applicant stated to the defendant that it expressly did not contest the facts set out by the defendant. At the same time it submitted that the fine imposed in the USA should be credited when the defendant calculated the fines or at least be appropriately taken into account.

In the contested decision the defendant alleged that the applicant had participated in a cartel and, when it calculated the fine, assumed that there was a world market in graphite electrodes. A fine of Euro 80,2 million was imposed on the applicant.

The applicant contests the decision has a whole in law. It submits that the defendant did not take into account the fact that the applicant had already been penalised in other jurisdictions for the same act. In particular, it gave no credit at all for the fines already imposed in other States and did not take account of the applicability of the rule against double punishment ('ne bis im idem'). As a separate matter, the defendant infringed Article 253 EC and Article 15(2) of Regulation No 17/62 because it wrongly calculated the fine in the light of the application of the guidelines on the method of setting fines [1] and the notice on the non-imposition or reduction of fines in cartel cases [2]. It infringed central principles of equal treatment and proportionality and committed errors of law and of assessment to the detriment of the applicant at each stage of calculating the fine. Moreover, the defendant misassessed *inter alia* the extent of the applicant's cooperation.

[1] OJ C 9 of 14.1.1998,p. 3.
[2] OJ C 207 of 18.7.1996, p. 4.

Action brought on 3 October 2001 by Rica Foods (Free Zone) N.V. against the Commission of the European Communities

(Case T-242/01)

(2002/C 3/60)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 October 2001 by Rica Foods (Free Zone) N.V., established in Oranjestad (Aruba), represented by G. van der Wal, with an address for service in Luxembourg.

The applicant claims that the Court should:

(1) annul Regulation (EC) No 1476/2001;

(2) declare that the Community is liable for the loss and damage suffered by the applicant as a result of the fact that, since 19 July 2001, imports of the products referred to in Regulation No 1476/2001 have been prevented or restricted on account of that regulation, and order that the parties are to seek to reach agreement concerning the extent of the loss and damage suffered by the applicant and that, in the absence of agreement in that regard, the proceedings are to be resumed within a time-limit to be fixed by the Court in order for the extent of the loss and damage to be determined; or, at any rate, order the Community to pay the damages provisionally estimated and yet to be assessed, alternatively order the Community to pay such amount of damages as the Court shall deem fair and equitable, together with interest at the annual rate of 8 % from the date of the application to the date of payment in full;

(3) order the Commission to pay the costs.

Pleas in law and principal arguments

The applicant produces, in Aruba, sugar and sugar/cocoa mixtures. Aruba forms part of the association of overseas countries and territories (OCTs). By virtue of the cumulation of EC/OCT and ACP/OCT originating status, the sugar and sugar/cocoa mixtures produced by the applicant have OCT originating status and may be imported into the EC free from levies.

However, by virtue of Commission Regulation (EC) No 1476/2001 of 18 July 2001 [1] amending Commission Regulation (EC) No 1325/2001 of 29 June 2001 [2], a quota of 6 684 tonnes was introduced for mixtures of sugar and cocoa with ACP/OCT originating status during the period from 19 July to 1 December 2001.

The applicant pleads, first, the illegality of Regulation No 1325/2001, which it is contesting in separate proceedings (Case T-211/01).

In support of its claim in the present proceedings, the applicant maintains that the contested regulation infringes Article 109 of the OCT decision. According to the applicant, the Commission bases its findings concerning the adoption of the safeguard measures in question on incorrect facts. Thus, the serious disturbances or difficulties in a sector of the economy of the Community cited by the Commission do not constitute serious disturbances or difficulties within the meaning of Article 109 of the OCT decision. Moreover, the Commission has failed to prove any causal link between those problems and the deterioration in a sector of the Community's activity. The applicant further claims that the importation of sugar and sugar/cocoa mixtures from the OCT has no impact on those problems.

In addition, the applicant pleads violation of the principle of proportionality and infringement of Articles 3 and 182 to 184 of the EC Treaty. It claims that the contested regulation fails to take account of the preferential treatment afforded by those articles to the OCTs.

Lastly, the applicant pleads misuse of powers on the part of the Commission and a failure to provide a statement of reasons for the contested regulation.

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[1] Commission Regulation (EC) No 1476/2001 of 18 July 2001 amending Regulation (EC) No 1325/2001 as regards safeguard measures with regard to imports from the overseas countries and territories of mixtures of sugar and cocoa with ACP/OCT originating status for the period 1 July to 1 December 2001 (OJ L 195 of 19.7.2001, p. 29).

[2] Commission Regulation (EC) No 1325/2001 of 29 June 2001 providing for the continued application of safeguard measures with regard to imports of sugar sector products with EC/OCT originating status from the overseas countries and territories for the period 1 July to 1 December 2001 (OJ L 177 of 30.6.2001, p. 57).

Action brought on 3 October 2001 by SONY Computer Entertainment Europe Limited against the Commission of the European Communities

(Case T-243/01)

(2002/C 3/61)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 October 2001 by SONY Computer Entertainment Europe Limited, represented by Mr Philippe de Baere of Van Bael & Bellis, Brussels (Belgium)

The applicant claims that the Court should:

— annul Commission Regulation (EC) 1400/2001 [1] as far as it classifies the PlayStation®2 under CN code 9504 10 00 and the accompanying CD-ROM under CN code 852 43 99 0;

— order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

The applicant, a company incorporated in the United Kingdom, is the only importer of the PlayStation®2 Computer Entertainment System, models number SCPH-30003 and SCPH-30004. The applicant was also the holder of Binding Tariff Information GB 105 614 503 classifying the product under CN Code 8471 49 90, until it was revoked as a result of the adoption of the contested Regulation.

The applicant submits that the contested act is not a true regulation but a decision addressed to it. No other product than that imported by the applicant will precisely meet the specifications in the contested decision.

The applicant alleges that the PlayStation®2 should be classified under Heading 8471. The product satisfies the four criteria as defined by Notes 5(A) to Chapter 84 of the Common Customs Tariff. By classifying the product under CN code 9504 10 00, the contested act violates Council Regulation (EEC) No. 2658/87 [2] and the wording of the Harmonised System Explanatory Note (b) to Heading 9504. Furthermore, it incorrectly applies General Rule 3 (b) of the General rules for the interpretation of the Combined Nomenclature by determining the essential character solely on the basis of the functions of the PlayStation®2 rather than on the basis of the materials or components in which these functions must be inherent. Finally, the contested Regulation violates Article 253 of the EC Treaty.

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[1] Commission Regulation (EC) No 1400/2001 of 10 July 2001 concerning the classification of certain goods in the Combined Nomenclature (OJ L 189, p. 5).

[2] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, p. 1).

Action brought on 9 October 2001 by Marc Boixader Rivas against European Parliament

(Case T-249/01)

(2002/C 3/62)

(Language of the case: Spanish)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 9 October 2001 by Marc Boixader Rivas, residing in Fuenlabrada (Madrid), represented by Diego López Garrido, lawyer.

The applicant claims that the Court should:

— annul the decision of the Selection Board not to admit him to Competition PE/90/A

Pleas in law and main arguments

The applicant, who is a qualified Ingeniero Técnico (technical engineer) in Spain, applied for general competition PE/90/A, for the drawing up of a reserve list for the recruitment of assistant administrators of Spanish mother tongue at Grade A 8 [1]. By letter of 27 June 2001, the chairperson of the selection board informed him that he had not been admitted to the competition because he did not have sufficient knowledge of two European Union languages and because he had not completed a course of University studies evidenced by a degree. The applicant contests that decision and challenges the lawfulness both of the competition notice and of the guide for candidates taking part in interinstitutional competitions [2], inasmuch as the requirement is for possession of a Spanish honours degree ('licenciado'), whereas a qualification which is equivalent to a three year degree, such as Ingeniería Técnica (technical engineering), is not accepted.

The pleas in law and main arguments are similar to those relied upon in Case T-208/00 [3].

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[1] OJ 2000 C 162, p. 10.

[2] OJ 2000 C 162, p. 1.

[3] OJ 2000 C 316, p. 26.

Action brought on 10 October 2001 by Dresdner Bank AG against Commission of the European Communities

(Case T-250/01)

(2002/C 3/63)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 October 2001 by Dresdner Bank AG, whose registered office is at Frankfurt am Main, represented by M. Hirsch and W. Bosch, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission of 16 August 2001 refusing to grant the applicant access to certain documents concerning a proceeding pursuant to Article 81 of the EC Treaty (COMP/E-1/37.919) relating to bank charges for currency exchange within the Euro zone: Germany (Dresdner Bank AG) — on the wider application of access to files under Article 8 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of hearing officers in certain competition proceedings;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in T-216/01 Reisebank AG v Commission.

Action brought on 9 October 2001 by Giuseppe Di Pietro against Court of Auditors of the European Communities

(Case T-254/01)

(2002/C 3/64)

(Language of the case: Italian)

An action against the Court of Auditors of the European Communities was brought before the Court of First Instance of the European Communities on 9 October 2001 by Giuseppe Di Pietro, represented by Giovanni Monforte, lawyer.

The applicant claims that the Court should:

— annul the decision of the Court of Auditors of the European Communities of 22 February 2001 whereby it decided to 'appoint' Michel Hervé to the post of Secretary General of the Court;

— order the defendant to pay the costs incurred by the applicant and to make good the damage suffered by him.

Pleas in law and main arguments

The applicant opposes the appointment of a Secretary General of the Court of Auditors.

In support of his claim, he relies on the following pleas:

— the vacancy notice was drawn up in vague terms, inasmuch as it does not make it possible to discern with any certainty the conditions for taking part in the appointment procedure.

— the candidate who was finally appointed does not meet, according to his curriculum vitae published on the internet, the minimum requirements for selection and for being considered a suitable candidate.

— the defendant, according to its own interpretation of the rules of the Court adopted by Decision No 18/97, refused him access to certain document regarding the appointment procedure.

Action brought on 11 October 2001 by Changzhou Hailong Electronics & Light Fixtures Co., Ltd. & Zhejiang Yankon Group Co., Ltd. against the Council of the European Union

(Case T-255/01)

(2002/C 3/65)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 11 October 2001 by Changzhou Hailong Electronics & Light Fixtures Co., Ltd. & Zhejiang Yankon Group Co., Ltd., represented by Mr Philip Bentley QC and Mr Filip Ragolle of Stanbrook Hooper, Brussels (Belgium).

The applicants claim that the Court should:

— annul Council Regulation (EC) No 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China in so far as it applies to the applicants;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicants are both Chinese producers of electronic compact fluorescent lamps (CFL-i) and export those lamps to the European Community.

On 17 May 2000, the Commission initiated an anti-dumping proceeding concerning imports of CFL-i originating in China, after the lodging by the European Lighting Companies Federation of a complaint. During the anti-dumping investigation. Mexico was used, pursuant to Article 2(7)(a) of the Basic Regulation, as the analogue market economy country for the purposes of determining the normal value of exports from China.

The applicants co-operated during the investigation and were granted individual treatment The dumping margins were therefore determined using the normal value of the export prices of Philips Mexicana , a subsidiary of one of the primary complainants, as well as the normal value of the applicants' export prices.

In support of their claims, the applicants submit that, by adopting the Commission's findings, the Council infringed the basic anti-dumping Regulation, in that the Commission should have used Article 2(7)(b) and not 2(7)(a) of that Regulation. Alternatively, the applicants argue that the normal value determined under Article 2(7)(a) was manifestly unreasonable and discriminatory.

Action brought on 8 October 2001 by Frosch Touristik GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-257/01)

(2002/C 3/66)

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

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 8 October 2001 by Frosch Touristik GmbH, Munich, represented by Hans Georg Zeiner and Brigitte Heamann-Dunn, lawyers, with an address for service in Luxembourg, the other party before the Board of Appeal being Air Marin Flugreisen GmbH, Bonn (Germany).

The applicant claims that the Court should:

— amend the decision of the second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 July 2001 concerning appeal No R 789/1999-2 so that it states that there are no grounds under Article 8(1)(b) of the Regulation on the Community trade mark for refusing to register the Community trade mark AIR MARITIME under application No 81.331;

— in the alternative, annul the decision of the second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 July 2001 concerning appeal No R 789/1999-2 and order the Office for Harmonisation in the Internal Market to continue the registration procedure relating to the Community trade mark AIR MARITIME under registration No 81.331 without regard to the opposing trade mark, i.e. the German Trade Mark Wz 1.186.278 'air marin', and

— order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark:	The applicant
Community trade mark applied for:	The word mark 'AIR MARITIME' for goods and services in Class 16, 39 and 42 — Application No 81.331
Proprietor of the opposing right to a trade mark or sign:	Air Marin Flugreisen GmbH
Opposing right to trade mark or sign:	The German word mark 'air marin' for services in Class 39
Decision of the Opposition Division:	Rejection of the application for the services 'travel agency; arrangement and organisation of travel; transport of persons' in Class 39

Decision of the Board of Appeal:	Dismissal of the appeal
Grounds for bringing the action:	No likelihood of confusion within the meaning of Article 8(1)(b) of Council Regulation (EC) 40/94 of 20 December 1993 on the Community trade mark [1]

[1] OJ 1994 L 11, p. 1.

Action brought on 15 October 2001 by R.J. Reynolds Tobacco Holdings, Inc, R.J. Reynolds Tobacco International, Inc, R.J. Reynolds Tobacco Company and RJR Acquisition Corp. against the Commission of the European Communities

(Case T-260/01)

(2002/C 3/67)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 October 2001 by R.J. Reynolds Tobacco Holdings, Inc, R.J. Reynolds Tobacco International, Inc, R.J. Reynolds Tobacco Company and RJR Acquisition Corp., represented by Mr Paul Lomas and Mr Onno Brouwer of Freshfields Bruckhaus Deringer, London (United Kingdom).

The applicants claim that the Court should:

— annul the Commission's decision, which became known to the applicant on 6 August 2001, to commence the second US proceedings;

— order that the Commission pay the costs of the present proceedings, including those of the applicants and intervening parties.

Pleas in law and main arguments

The applicants are the defendants in legal proceedings brought by the European Community before a United States Court, in which the Community is seeking damages in respect of allegedly unpaid customs duties and VAT, and relief in respect to other economic and non-economic injuries arising therefrom. The payment of these customs duties and VAT has allegedly been avoided by smuggling cigarettes into the European Union. This is the second time that the European Community has commenced such proceedings [1]. In the current proceedings, the Commission is also acting as agent for Member States for the recovery of these taxes allegedly owed to them.

The applicants submit that the Community has no competence to commence these proceedings. According to the applicants, neither the EC Treaty nor any other act confers on the European Commission the competence to act as a legal person, especially not outside the jurisdiction of the Member States, in order independently to protect its financial interests in this way outside the Community or to combat fraud in this way; nor is the action in question a joint action by the Commission and the Member States, since not all Member States are involved in the proceedings.

The current proceedings also constitute, according to the applicants, an attempt to recover the allegedly unpaid taxes. The applicants submit that the European Commission has no competence to collect taxes. This competence lies solely with the Member States within their respective territories. According to the applicants, the Commission should therefore commence actions against the Member States for failing properly to apply the Communities' rules on customs duties and VAT.

The applicants also submit that the Community is not competent to act as agent for the Member States in the proceedings.

According to the applicants, the Commission has also failed to follow the proper procedure leading up to the decision to commence these proceedings. The Commission should have followed the procedure set out in Article 280 (4) and 251 EC Treaty to adopt measures combatting fraud. Furthermore, the Commission has not respected the applicants right to be heard and their right to be provided with reasons. Moreover, the applicants contend that the Commission violated the principle of legal certainty, the rights of defence and due process, the principle of proportionality and the principle of sound administration. Finally, the Applicants contend that the Commission misused its powers.

[1] The decision to commence the first proceedings is being contested by the applicants in Case T-379/00 (JO C 79 of 10.3.2001, p. 24).

Action brought on 19 October 2001 by Jürgen Sachau against the Commission of the European Communities

(Case T-262/01)

(2002/C 3/68)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 October 2001 by Jürgen Sachau, resident in Kassel, Germany, represented by Dörte Fouquet, Lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that the decision dated 19 December 2000 sent by the defendant to the applicant is inoperative;

— declare that the defendant is to reimburse to the applicant all costs and expenditure which he has incurred as a result of the period allowed for replying to the application for continued employment, which expired on 19 December 2000, being clearly exceeded by the defendant in that it did not formulate the decision until 19 December 2000;

— declare that the applicant is to be engaged by the defendant with immediate effect on a contract of unlimited duration retroactively in Post COM/R/5698/00-A8/A5 ST or in a comparable post in accordance with the applicant's professional qualifications;

— order the defendant to pay the costs of the proceedings including the applicant's costs.

Pleas in law and main arguments

The applicant submitted his candidature for Post COM/R/5698/00-A8/A5 ST at the Joint Research Centre in Ispra. At that time he was engaged in that post on a fixed-term contract. His contract expired on 30 September 2000 and, since it had been indicated to him internally that he would be able to continue in the post, he decided to remain in Ispra in order to be available to be called by the Commission. He did not receive the Commission's rejection until the decision of 19 December 2000.

The applicant submits that the decision is defective in form and in content, *inter alia* because the Commission exceeded the period allowed for replying to the application and the decision contains no statement of reasons. Furthermore, the decision is contrary to the principles of proper administration and equal treatment, to the proper exercise of discretion and to the duty to have regard for the interests of officials.

Action brought on 17 October 2001 by Petros Mavromikhalis against the Commission of the European Communities

(Case T-263/01)

(2002/C 3/69)

(Language of the case: Greek)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 17 October 2001 by Petros Mavromikhalis, a Commission official, resident in Brussels, represented by Nikolaos Korogiannakis, Lawyer, with an address for service in Brussels.

The applicant claims that the Court should:

— grant the application as well founded in law and in substance;

— annul:

  — the implied decision of the European Commission by which it rejected the applicant's complaint seeking reconsideration of his placement in Grade A 5 instead of Grade A 4 on the basis of Article 31(2) of the Staff Regulations;

  — in the alternative, the implied decision of the European Commission by which it rejected the applicant's complaint seeking placement at Step 2 with additional seniority of 5,5 months instead of at Step 1 on the basis of Article 32 of the Staff Regulations retroactively from the date of his appointment;

— order the defendant to pay the costs irrespective of the outcome of the case.

Pleas in law and main arguments

The appointing authority applied Article 46 of the Staff Regulations and did not evaluate the applicant's professional experience in order to establish whether it would be possible for Article 31(2) of the Staff Regulations to be applied in order to appoint him in Grade A 4 instead of Grade A 5.

The appointing authority should have calculated, on the basis of the second paragraph of Article 32(2), his additional professional experience and placed him at Step 2, and should have granted him additional seniority of 5,5 months at Step 2.

Deficient statement of reasons.

Action brought on 22 October 2001 by Confederación Empresarial Vasca against Commission of the European Communities

(Case T-265/01)

(2002/C 3/70)

(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 22 October 2001 by Confederación Empresarial Vasca, whose registered office is at Bilbao (Spain, represented by Marcos Araujo Boyd, lawyer.

The applicant claims that the Court should:

— annul the decision of the defendant of 11 July 2001 on the system of State aid applied by Spain to undertakings in Alava in the shape of a tax credit of 45 % of the cost of the investment;

— in the alternative, annul Articles 3 and 4 of the decision of the defendant of 11 July 2001 on the system of State aid applied by Spain to undertakings in Alava in the shape of a tax credit of 45 % of the cost of the investment, inasmuch as the obligation to recover the amounts not levied by the Alava regional revenue authorities pursuant to the disputed fiscal legislation is unjustified;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2001)1759 final of 11 July 2001 in so far as it characterises as State aid incompatible with the common market the tax reductions under Articles 52 to 56 of the Ley Foral (Regional Law) 24/1996 del impuesto sobre sociedades (Regional Law on corporation tax) of 30 December 1996 (Boletín Oficial de Navarra No 159 of 31 December 1996) which provide for a reduction of 50 % on the aforementioned tax for undertakings which take up business in the Autonomous Community of Navarra after the entry into force of that Law, provided they invest a minimum of PTA 100 million (EUR 601 012) and create more than 10 new jobs.

The pleas in law and main arguments on which the applicant relies are similar to those put forward in Case T-225/01.

Action brought on 22 October 2001 by Confederación Empresarial Vasca against Commission of the European Communities

(Case T-266/01)

(2002/C 3/71)

(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 22 October 2001 by Confederación Empresarial Vasca, whose registered office is at Bilbao (Spain, represented by Marcos Araujo Boyd, lawyer.

The applicant claims that the Court should:

— annul the decision of the defendant of 11 July 2001 on the system of State aid applied by Spain to undertakings in Vizcaya in the shape of a tax credit of 45 % of the cost of the investment;

— in the alternative, annul Articles 3 and 4 of the decision of the defendant of 11 July 2001 on the system of State aid applied by Spain to undertakings in Vizcaya in the shape of a tax credit of 45 % of the cost of the investment, inasmuch as the obligation to recover the amounts not levied by the Vizcaya regional revenue authorities pursuant to the disputed fiscal legislation is unjustified;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2001)1765 final of 11 July 2001 in so far as it characterises as State aid incompatible with the common market the tax reductions under the fourth addendum to Norma Foral (Regional Law) No 7/1996 of 26 December 1996, and the tenth addendum to Norma Foral 4/1998 of 2 December 1998, which provide for a tax credit of 45 % of the investment in new fixed material assets in excess of PTA 2 500 million (EUR 15 025 303) made by undertakings in the Territorio Histórico de Vizcaya.

The pleas in law and main arguments on which the applicant relies are similar to those put forward in Case T-225/01.

Action brought on 22 October 2001 by Confederación Empresarial Vasca against Commission of the European Communities

(Case T-267/01)

(2002/C 3/72)

(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 22 October 2001 by Confederación Empresarial Vasca, whose registered office is at Bilbao (Spain), represented by Marcos Araujo Boyd, lawyer.

The applicant claims that the Court should:

— annul the defendant's decision of 11 July 2001 on the system of State aid applied by Spain to certain newly created undertakings in Alava (Spain);

— in the alternative, annul Articles 3 and 4 of the defendant's decision of 11 July 2001 on the system of State aid applied by Spain to certain newly created undertakings in Alava, inasmuch as the obligation to recover the amounts not levied by the regional revenue authorities of Alava pursuant to the disputed tax legislation is unjustified;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2001) 1760 final of 11 July 2001 declaring incompatible with the common market the tax reductions under 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 taxable basis for 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 PTA 20 million (EUR 120 202), invest more than PTA 80 million (EUR 430 810) and create more than 10 new jobs.

The pleas in law and main arguments put forward by the applicant are identical with those put forward in Case T-225/01.

Action brought on 22 October 2001 by Confederación Empresarial Vasca against Commission of the European Communities

(Case T-268/01)

(2002/C 3/73)

(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 22 October 2001 by Confederación Empresarial Vasca, whose registered office is at Bilbao (Spain), represented by Marcos Araujo Boyd, lawyer.

The applicant claims that the Court should:

— annul the defendant's decision of 11 July 2001 on the system of State aid applied by Spain to certain newly created undertakings in Vizcaya (Spain);

— in the alternative, annul Articles 3 and 4 of the defendant's decision of 11 July 2001 on the system of State aid applied by Spain to certain newly created undertakings in Vizcaya, inasmuch as the obligation to recover the amounts not levied by the regional revenue authorities of Vizcaya pursuant to the disputed tax legislation is unjustified;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2001) 1763 final of 11 July 2001 declaring incompatible with the common market the tax reductions under Article 26 of Norma Foral (Regional Law) No 3/1996 of 26 June 1996 on corporation tax, which provides for a reduction of 99 %, 75 %, 50 % and 25 % of the taxable basis for the aforementioned tax applicable during the first four tax years for undertakings which set up business in the Territorio Histórico de Vizcaya with effect from the entry into force of the Law, provided that they have disbursed capital amounting to more than PTA 20 million (EUR 120 202), invest more than PTA 80 million (EUR 430 810) and create more than 10 new jobs.

The pleas in law and main arguments put forward by the applicant are identical with those put forward in Case T-225/01.

Action brought on 22 October 2001 by Confederación Empresarial Vasca against Commission of the European Communities

(Case T-269/01)

(2002/C 3/74)

(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 22 October 2001 by Confederación Empresarial Vasca, whose registered office is at Bilbao (Spain), represented by Marcos Araujo Boyd, lawyer.

The applicant claims that the Court should:

— annul the defendant's decision of 11 July 2001 on the system of State aid applied by Spain to certain newly created undertakings in Guipúzcoa (Spain);

— in the alternative, annul Articles 3 and 4 of the defendant's decision of 11 July 2001 on the system of State aid applied by Spain to certain newly created undertakings in Guipúzcoa, inasmuch as the obligation to recover the amounts not levied by the regional revenue authorities of Guipúzcoa pursuant to the disputed tax legislation is unjustified;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2001) 1761 final of 11 July 2001 declaring incompatible with the common market the tax reductions under Article 26 of Norma Foral (Regional Law) No 7/1996 of 4 July 1996 on corporation tax (*Boletín Oficial del Territorio Histórico de Guipúzcoa* of 10 July 1996), which provides for a reduction of 99 %, 75 %, 50 % and 25 % of the taxable basis for the aforementioned tax applicable during the first four tax years for undertakings which set up business in the Territorio Histórico de Guipúzcoa with effect from the entry into force of the Law, provided that they have disbursed capital amounting to more than PTA 20 million (EUR 120 202), invest more than PTA 80 million (EUR 430 810) and create more than 10 new jobs.

The pleas in law and main arguments put forward by the applicant are identical with those put forward in Case T-225/01.

Action brought on 22 October 2001 by Confederación Empresarial Vasca against Commission of the European Communities

(Case T-270/01)

(2002/C 3/75)

(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 22 October 2001 by the Confederación Empresarial Vasca, whose registered office is in Bilbao (Spain), represented by Marcos Araujo Boyd, lawyer.

The applicant claims that the Court should:

— annul the defendant's decision of 11 July 2001 regarding State aid granted by Spain to undertakings in Guipúzcoa in the shape of a tax credit of 45 % of the amount invested;

— in the alternative, annul Articles 3 and 4 of the defendant's decision of 11 July 2001 regarding State aid granted by Spain to undertakings in Guipúzcoa in the shape of a tax credit of 45 % of the amount invested inasmuch as the obligation to recover the amounts not levied by the regional revenue authorities of Guipúzcoa is unjustified;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2001) 1764 final of 11 July 2001 declaring incompatible with the common market the tax reductions arising from the tenth addendum to Norma Foral (Regional Law) No 7/1997 of 22 December 1997, which provides for a tax credit of 45 % of the investment in new fixed material assets in excess of PTA 2 500 million (EUR 15 025 303) made by undertakings in the Territorio Histórico de Guipúzcoa.

The pleas in law and main arguments put forward by the applicant are identical with those put forward in Case T-225/01.

Action brought on 23 October 2001 by José Manuel López Cejudo against Commission of the European Communities

(Case T-271/01)

(2002/C 3/76)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 October 2001 by José Manuel López Cejudo, residing in Brussels, represented by Georges Vandersanden and Laure Levi, lawyers.

The applicant claims that the Court should:

— annul the decision contained in the applicant's salary statement for October 2000, refusing him entitlement to dependent child and education allowances in respect of his four children and, consequently, to take into account such family allowances for purposes of tax abatement and expatriation allowance since July 1999, including in respect of the period October 2000 to September 2001, and, in so far as necessary, annul the decision of 16 July 2001 taken as a result of the complaint;

— order the defendant to pay damages in the form of default interest on the amounts improperly withheld by the defendant pursuant to the salary statement for October 2000, at the rate of 6,75 % per annum from November 2000 until such time as full payment is effected;

— order the defendant to pay damages in the form of default interest on the percentage of tax abatement and the percentage of the expatriation allowance, at the rate of 6,75 % per annum from November 2000 until such time as the amounts due are fully paid;

— order the defendant to pay all the costs.

Pleas in law and main arguments

Until the adoption of the contested decision, the applicant was in receipt of dependent child and education allowances in respect of his four children. Those allowances were paid in his name and on his behalf to his wife, an official of the European Parliament whom he is in the process of divorcing. Custody of the children has been awarded to his wife, who receives alimony payments from him.

In October 2000, the applicant learned from his monthly salary statement that the Commission refused to grant him dependent child and education allowances in respect of his four children and, consequently, to take into account such family allowances for purposes of tax abatement and expatriation allowance as from July 1999.

As a result of the complaint lodged in July 2001 by the applicant against that decision, the Commission acknowledged that he shared in the actual maintenance of the children and, accordingly, decided to grant him, as from August 2001, dependent child and education allowances, with full effects with regard to tax abatement and expatriation allowances, to be shared with his wife, in accordance with an allocation formula which the defendant has to agree with the European Parliament. Accordingly, entitlement to the allowances in issue was not granted to the applicant for the period from October 2000 to July 2001.

The applicant takes the view that the contested decision:

— infringes the principle of legality, inasmuch as the Commission itself acknowledged that the arguments put forward by the applicant challenging his salary statement for October 2000 were well founded, but only made a decision regarding the future;

— infringes the principle that reasons for decisions must be stated, inasmuch as the Commission does not explain the reason why it limited the effects of its positive decision;

— infringes Articles 2, 3 and 4 of Annex VII to the Staff Regulations, Opinion No 178/87 of the board of the heads of administration of 3 December 1987 and Articles 3(4) and 4 of Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities, as interpreted by the Court of Justice, inasmuch as the applicant actually maintains his children and is entitled to have benefits, which are paid to his wife in the name and on behalf of both parents, taken into account when calculating tax and calculating the expatriation allowance.

Action brought on 15 October 2001 by Philip Morris International Inc. against the Commission of the European Communities

(Case T-272/01)

(2002/C 3/77)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 October 2001 by Philip Morris International Inc., represented by Mr Jacques Derenne and Mr Eric Morgan de Rivery of Liederkerke Siméon Wessing Houthoff, Brussels (Belgium).

The applicant claims that the Court should:

— annul the Contested Act resulting in the filing of the Complaint on 6 August 2001 before the New York District Court against the applicant, as publicly announced by the Commission in Press Release IP/01/1193 of 6 August 2001;

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

Pleas in law and main arguments

The applicant in the present case is the same undertaking as in case T-377/00 [1]. The facts, grounds and main arguments are similar to those arising in this case.

(1) Philip Morris International/Commission (OJ C 79 of 10.3.2001, p. 23).

Action brought on 22 October 2001 by Innova Privat-Akademie GmbH against the Commission of the European Communities

(Case T-273/01)

(2002/C 3/78)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 October 2001 by Innova Privat-Akademie GmbH, Berlin, represented by Thomas Kreutzfield, lawyer.

The applicant claims that the Court should:

— order the defendant to pay to the applicant Euro 104 790 together with interest of 5 % above the basic rate under paragraph 1 of the Diskontsatz-Überleitungs-Gesetz of 9.6.1998 of the Federal Republic of Germany from the date on which the proceedings became pending;

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

Pleas in law and main arguments

The applicant applied via a German bank for promotional funds from the European Commission in order to finance a project within the framework of the EU ECIP promotional programme. The subject matter of the applicant's project was a feasibility study on a joint venture in the area of professional training in India.

In March 1999 the bank informed the applicant that the application had been approved with a subsidy of Euro 115 328. The Commission had given that information to the bank infomally by telephone. However, the applicant subsequently received no further information from the Commission.

In 2000 the ECIP project was halted on account of the irregularities within the Commission which had come to light in 1999. Despite the above-mentioned agreement, the applicant received no funds from the ECIP project.

The applicant, which, in reliance on the promotion of the project, had concluded a contract with a consultancy firm with respect to the feasibility study, claims damages for the loss which it has allegedly incurred and claims that the failure to pay the promotional funds is unlawful and caused the loss suffered by it.

Action brought on 22 October 2001 by Valmont Nederland B.V. against the Commission of the European Communities

(Case T-274/01)

(2002/C 3/79)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 October 2001 by Valmont Nederland B.V., established at Maarheeze (Netherlands), represented by André Van Landuyt, with an address for service in Luxembourg.

The applicant claims that the Court should:

(1) annul Decision No C 2001 2231 of the Commission of 18 July 2001;

(2) order the Commission, pursuant to Article 87 of the Rules of Procedure, to pay all the costs of these proceedings.

Pleas in law and main arguments

According to the contested decision of the Commission, the applicant has received State aid in the form of a reduced purchase price for the building land on which the applicant now maintains its establishment in the Netherlands and a subsidy for the installation of a car park on it. The Commission is demanding that the aid received be repaid.

The applicant maintains that, in adopting its decision, the Commission has infringed Article 87(1) of the EC Treaty. According to the applicant, the Commission has not shown that the applicant benefited from an aid measure in the purchase of the building land. It claims that that purchase took place on market terms and conditions. Moreover, any aid which may have been received had no effect on competition within the common market or on trade between Member States.

The applicant also pleads infringement of essential procedural requirements, more specifically of the right to a fair hearing. According to the applicant, the Commission relies on a report on the value of the land which was drawn up previously without any involvedment on the part of the applicant. Likewise, after the procedure was opened pursuant to Article 88(2) of the EC Treaty, its observations were not taken into account.

Lastly, the applicant asserts that the Commission misused its powers when assessing the value of the land at the time of the purchase and when assessing the element of State aid relating to what the applicant maintains is a car park used by the public, and concerning the sums charged by way of interest on the alleged State aid.

Action brought on 26 October 2001 by Mercedes Alvarez Moreno against European Parliament

(Case T-275/01)

(2002/C 3/80)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 26 October 2001 by Mercedes Alvarez Moreno, residing in Berlin, represented by Georges Vandersanden, lawyer.

The applicant claims that the Court should:

— annul the decision of the President of the European Parliament, contained in a letter of 19 July 2001, rejecting the applicant's request and thus confirming the decision of the European Parliament no longer to call upon the services of freelance interpreters who have reached the age of 65 years, as in the case of the applicant;

— annul the inter-institutional decision referred to by the Secretary General of the European Parliament in the letter of 5 March 2001;

— consequently, acknowledge the applicant's right to continue to provide her services as a freelance interpreter, either in the service of the European Parliament or any other Community institution, beyond the age of 65;

— order compensation for the material and non-material damage suffered by the applicant, provisionally assessed at one euro;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant is a freelance interpreter who has worked regularly for the European Parliament since 1986. She has also worked regularly in the same capacity for the Commission. In the course of the month in which she reached the age of 65, the applicant was informed orally that the Commission had purportedly adopted a decision providing that, under a full application of Article 78 of the Conditions of Employment of Other Servants of the European Communities (CEOS), freelance interpreters could no longer be engaged beyond the age of 65. In December 2000 the applicant learned informally that the European Parliament was obliged to apply that decision with effect from 1 April 2001.

The applicant, among others, lodged a complaint against the memorandum informing her of the inter-institutional decision no longer to recruit freelance interpreters over the age of 65 years. The President of the European Parliament rejected that complaint.

In support of her application, the applicant claims that Article 78 CEOS cannot be relied upon as a basis for a rule setting the age of 65 years as a limit for freelance interpreters. That provision is a derogation from the Staff Regulations and refers to an agreement between the European Parliament, the Council of Europe and the Assembly of the Western European Union. Article 78 makes no mention, either express or implied, of Article 74 CEOS which provides for the termination of auxiliary staff contracts; moreover, freelance interpreters do not have a contract within the meaning of Article 74 CEOS.

The applicant pleads, furthermore, breach of the principle of non-retroactivity and of the principle of non-discrimination and of acquired rights, legitimate expectations, sound administration and legal certainty. In addition to her claims for annulment, the applicant also seeks compensation for the material and non-material damage allegedly suffered.

Action brought on 26 October 2001 by Mély Garroni against European Parliament

(Case T-276/01)

(2002/C 3/81)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 26 October 2001 by Mély Garroni, residing in Rome, represented by Georges Vandersanden, lawyer.

The applicant claims that the Court should:

— annul the inter-institutional decision of the European Union, as referred to in the letter from G. Macario of 24 January 2001, rendering henceforth impossible for the European Parliament, as a result of the application of Article 78 CEOS, as amended, to retain or recruit freelance interpreters — such as the applicant — beyond the age of 65 years;

— in so far as necessary, annul the decision of the President of the European Parliament, contained in a letter of 20 July 2001, rejecting the applicant's complaint;

— consequently uphold the applicant's right to continue to provide services to the European Parliament — or any other institution — beyond the age-limit of 65 years;

— order provisional payment of one euro to the applicant by way of compensation for the material and non-material damage suffered;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied upon in Case T-275/01 Alvarez Moreno v Parliament.

Action brought on 26 October 2001 by Romuald Stevens against Commission of the European Communities

(Case T-277/01)

(2002/C 3/82)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 October 2001 by Romuald Stevens, residing in Bertem (Belgium), represented by Jean-Noël Louis and Véronique Peere, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission of 14 December 2001 imposing on the applicant the disciplinary sanction referred to in Article 86(2)(f) of the Staff Regulations, namely removal from post without reduction or withdrawal of entitlement to retirement pension;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant relies on Article 87 of the Staff Regulations and Article 7 of the Annex thereto. According to the applicant, he was not given a proper hearing during the disciplinary proceedings leading to the sanction in question. Moreover, the applicant pleads breach of the obligation to state reasons, manifest error of assessment and breach of the principle of proportionality.

Action brought on 26 October 2001 by Eric den Hamer against Commission of the European Communities

(Case T-278/01)

(2002/C 3/83)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 October 2001 by Eric den Hamer, residing in Malines (Belgium), represented by Nicolas Lhoëst, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the Commission of 6 December 2000 definitively adopting the applicant's staff report for 1995/1997;

— annul the implied decision of the Commission not to add to the applicant's personal file his two staff reports for 1995/1997;

— order the defendant to pay compensation amounting to EUR 25 000 for non-material damage;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of his application, the applicant pleads infringement of Article 43 of the Staff Regulations and of the general provisions for the implementation of that article. The applicant pleads, moreover, numerous errors and contradictions contained in the staff report, lack of statement of reasons and breach of the rights of defence.

Action brought on 5 November 2001 by Giorgio Lebedef against Commission of the European Communities

(Case T-279/01)

(2002/C 3/84)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 5 November 2001 by Giorgio Lebedef, residing in Senningerberg (Luxembourg), represented by Gilles Bounéou, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul in part Decision No 3019 of 13 November 2000 of the appointing authority, received on 17 November 2000. More precisely, in so far as it awards BEF 25 000 to the applicant as compensation for the non-material damage arising from the delay in drawing up his staff reports for the periods 1 July 1995 to 30 June 1997 and 1 July 1997 to 30 June 1999;

— award the applicant BEF 300 000 by way of damages to compensate for the non-material damage arising from the delay in definitively drawing up his staff reports for the periods 1 July 1995 to 30 June 1997;

— award the applicant BEF 100 000 by way of damages to compensate for the non-material damage arising from the delay in definitively drawing up his staff reports for the periods 1 July 1997 to 30 June 1999;

— make an order as to costs, requiring the defendant to pay all costs, charges and fees.

Pleas in law and main arguments

The applicant in the present case objects to the delay with which the appointing authority drew up his staff report for the periods 1995 to 1997 and 1997 to 1999. That delay, in his view, played a decisive role in his failure to be promoted to Grade B 1.

In support of his application, the applicant pleads infringement of the first paragraph of Article 43 of the Staff Regulations, the general provisions implementing it and breach of the principle of sound administration. The applicant also pleads failure to fulfil the duty to have regard for the welfare of officials.

Action brought on 8 November 2001 by Hubert Huygens against Commission of the European Communities

(Case T-281/01)

(2002/C 3/85)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 November 2001 by Hubert Huygens, residing in Olm (Luxembourg), represented by Sylvie Nyssens, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— order the Commission to pay him EUR 27 700 as compensation for material damage, in the event that the applicant should not obtain his promotion to Grade B 1 in the 2000 promotions procedure on account of the absence of a staff report;

— order the Commission to pay to the applicant EUR 3 000 in compensation for non-material damage;

— annul the decision of the Commission to promote the 54 officials deemed most worthy of promotion to Grade B 1 in the 2000 promotions procedure and, in any event,

— annul the decision of the Director of the OPOCE, in his capacity as appointing authority, concerning the promotion of the four officials of the Publications Office in the 2000 promotions procedure, published in the Administrative Notices of 6 April 2000;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant seeks, first, compensation for the damage suffered as a result of substantial delay, attributable to the administration, in the reporting procedure for the period 1997/1999. He points out in that respect that the reporting procedure should normally have started on 1 April 1999 and ended before 31 December 1999, whereas in fact it did not commence until December 1999 and was not completed until April 2000. Meanwhile, the promotions committee had finished its work, without being in possession of a complete and definitive staff report on the applicant and, at the conclusion of the procedure, the applicant was not promoted to Grade B 1. The applicant is of the view that the fact that the administration did not draw up his staff report in time constitutes an administrative fault which caused him material damage, inasmuch as the progress of his career may be affected by it, and non-material damage relating to the state of uncertainty and unease in which he finds himself with regard to his professional future.

Secondly, the applicant contests the Commission's decision not to promote him and the decisions to promote 54 other officials, claiming:

— infringement of Articles 26, 43 and 45 of the Staff Regulations and breach of the principles of equal treatment and of sound administration;

— error of assessment of his merits; and

— infringement of the guide to staff reporting, inasmuch as the system for quantifying marks was applied, contrary to Annex I to the guide.

Removal from the Register of Case T-247/99 [1]

(2002/C 3/86)

(Language of the case: Italian)

By order of 20 September 2001, the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-247/99, Flavia Angeletti and André Van Meuter v Commission of the European Communities.

[1] OJ C 34 of 5.2.2000.

Removal from the Register of Case T-167/00 [1]

(2002/C 3/87)

(Language of the case: French)

By order of 14 September 2001, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-167/00: Jaume Costa v Commission of the European Communities.

[1] OJ C 247 of 26.8.2000.

Removal from the Register of Case T-192/00 [1]

(2002/C 3/88)

(Language of the case: French)

By order of 10 September 2001, the President of the Fifth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-192/00: Sabrina Tesoka v Commission of the European Communities.

[1] OJ C 273 of 23.9.2000.

Removal from the Register of Case T-225/00 [1]

(2002/C 3/89)

(Language of the case: German)

By order of 13 September 2001, the President of the Fifth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-225/00: Andrea Gaul v Commission of the European Communities.

[1] OJ C 302 of 21.10.2000.

Removal from the Register of Case T-55/01 [1]

(2002/C 3/90)

(Language of the case: German)

By order of 12 September 2001, the President of the Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-55/01, Asahi Vet SA v Commission of the European Communities.

[1] OJ C 161 of 2.6.2001.

Removal from the Register of Case T-112/01 [1]

(2002/C 3/91)

(Language of the case: French)

By order of 10 September 2001, the President of the Fifth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-112/01: Ursula Klug v Council of the European Union.

[1] OJ C 275 of 29.9.2001.