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I

(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

of 22 November 2001

in Case C-110/97: Kingdom of the Netherlands v Council of the European Union [1]

(Arrangements for association of overseas countries and territories — Imports of rice originating in the overseas countries and territories — Safeguard measures — Regulation (EC) No 304/97 — Action for annulment)

(2002/C 17/01)

(Language of the case: Dutch)

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

In Case C-110/97: Kingdom of the Netherlands (Agent: M.A. Fierstra) v Council of the European Union (Agents: R. Torrent, J. Huber and G. Houttuin), supported by Kingdom of Spain (Agent: L. Pérez de Ayala Becerril), French Republic (Agents: K. Rispal-Bellanger and C. Chavance), Italian Republic (Agent: by U. Leanza and F. Quadri), and Commission of the European Communities (Agent: T. van Rijn) — application for annulment of Council Regulation (EC) No 304/97 of 17 February 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 51, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann and F. Macken (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.P. Puissochet, L. Sevón, M. Wathelet, R. Schintgen and V. Skouris, Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 22 November 2001, in which it:

1. *Dismisses the action as unfounded.*

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

3. *Orders the Kingdom of Spain, the French Republic, the Italian Republic, and the Commission of the European Communities to bear their own costs.*

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[1] OJ C 181 of 14.6.1997.

JUDGMENT OF THE COURT

of 22 November 2001

in Case C-301/97: Kingdom of the Netherlands v Council of the European Union [1]

(Arrangements for association of overseas countries and territories — Imports of rice originating in the overseas countries and territories — Safeguard measures — Regulation (EC) No 1036/97 — Action for annulment)

(2002/C 17/02)

(Language of the case: Dutch)

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

In Case C-301/97: Kingdom of the Netherlands (Agents: J.S. van den Oosterkamp and M.A. Fierstra) v Council of the European Union (Agents: R. Torrent, J. Huber and G. Houttuin),

supported by Kingdom of Spain (Agent: N. Díaz Abad), French Republic (Agents: K. Rispal-Bellanger and C. Chavance), Italian Republic (Agents: U. Leanza, assisted by F. Quadri) and the Commission of the European Communities (Agents P.J. Kuijper and T. van Rijn) — application for the annulment of Council Regulation (EC) No 1036/97 of 2 June 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 151, p. 8) — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.P. Puissochet, L. Sevón, M. Wathelet, R. Schintgen and V. Skouris, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 22 November 2001, in which it:

1. *Dismisses the action as unfounded.*

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

3. *Orders the Kingdom of Spain, the French Republic, the Italian Republic and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 318 of 18.10.1997.

JUDGMENT OF THE COURT

of 20 September 2001

in Case C-390/98 (reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division)): H.J. Banks & Co. Ltd v The Coal Authority, Secretary of State for Trade and Industry ([1])

(ECSC Treaty — Licences to extract raw coal — Discrimination between producers — Special charges — State aid — Article 4(b) and (c) of the Treaty — Decision No 3632/93/ECSC — Code on aid to the coal industry — Direct effect — Respective powers of the Commission and the national courts)

(2002/C 17/03)

(Language of the case: English)

In Case C-390/98: reference to the Court under Article 41 of the ECSC Treaty from the Court of Appeal (England & Wales) (Civil Division) (United Kingdom), for a preliminary ruling in the proceedings pending before that court between H.J. Banks & Co. Ltd v The Coal Authority, Secretary of State for Trade and Industry — on the interpretation of Article 4(b) and (c) of the ECSC Treaty and of Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry (OJ 1993 L 329, p. 12) — the Court, composed of: G.C. Rodriguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet (Rapporteur), P. Jann, L. Sevón, R. Schintgen and F. Macken, Judges; N. Fennelly, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 20 September 2001, in which it has ruled:

1. *A situation such as that at issue in the main proceedings from the restructuring date until the transfer to the successful private tendering undertakings of the shares of the Crown-owned companies which succeeded British Coal Corporation as operator implies the existence of aid, within the meaning of Article 4(c) of the ECSC Treaty, but not of special charges within the meaning of that provision. The same situation may constitute discrimination between producers, within the meaning of Article 4(b) of the same Treaty. That would be the case if significant objective differences in situation between, on the one hand, British Coal Corporation and the Crown companies which succeeded it as operator, and, on the other hand, the other operators, did not justify the differentiated treatment applied to the two categories of producers.*

   A situation such as that at issue in the main proceedings, as from the time of the transfer of the shares of the Crown-owned companies which succeeded British Coal Corporation as operator to the successful private tendering undertakings, does not reveal the existence of aid or special charges within the meaning of Article 4(c) of the Treaty, or discrimination between producers, within the meaning of Article 4(b) of the Treaty, since access to the various means of acquiring the lease and licence rights was not, and is not, discriminatory.

2. *Article 4(b) of the Treaty, in so far as it concerns discrimination between producers, and the first sentence of Article 9(4) of Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry directly confer rights upon individuals which the national courts must protect. On the other hand, Article 4(c) of the Treaty, in so far as it concerns the compatibility of aid with the common market, does not itself create such rights. However, the national courts have jurisdiction to interpret the concept of aid for the purposes of Article 4(c) of the Treaty and Article 1 of Decision No 3632/93, with a view to drawing the consequences from any infringement of the first sentence of Article 9(4) of that decision.*

In a situation such as that in the main proceedings, the finding of the existence of unlawful aid, on the ground that it was not authorised by the Commission at the time when it was granted, and, as the case may be, of discrimination between producers within the meaning of Article 4(b) of the Treaty, in that some producers were subject to the payment of royalties whereas others were exempt, cannot lead to producers who have been made subject to those royalties being retrospectively exonerated from them.

3. *A national court is entitled to make a finding of the existence of discrimination between producers, within the meaning of Article 4(b) of the Treaty, or of aid, within the meaning of Article 4(c) of the Treaty and Article 1 of Decision No 3632/93, by reason of the royalty system at issue in the main proceedings, and it may do so despite the adoption by the Commission*

   — *of Decision 94/995/ECSC of 3 November 1994 ruling on financial measures by the United Kingdom in respect of the coal industry in the 1994/95 and 1995/96 financial years,*

   — *of the Decision of 21 December 1994 authorising the acquisition of Central and Northern Mining Ltd by RJB Mining (UK) plc, and*

   — *of the decisions contained in the letters of 4 May and 14 July 1995 sent to the National Association of Licensed Opencast Operators in reply to the complaint by that association of 19 August 1994.*

4. *The fact that H.J. Banks & Co. Ltd or the National Association of Licensed Opencast Operators*

   — *did not bring an action for annulment under Article 33 of the ECSC Treaty against Decision 94/995, the Decision of 21 December 1994 authorising the acquisition of Central and Northern Mining Ltd by RJB Mining (UK) plc or the decisions contained in the letters of 4 May and 14 July 1995 sent to the National Association of Licensed Opencast Operators,*

   — *did not bring an action under Article 35 of the ECSC Treaty to compel the Commission to adopt a position on alleged infringements of Article 4(b) of the Treaty, in so far as it concerns discrimination between producers, or of the first sentence of Article 9(4) of Decision No 3632/93,*

does not preclude H.J. Banks & Co. Ltd. from pleading those infringements before the national courts.

([1]) OJ C 20 of 23.1.1999.

JUDGMENT OF THE COURT

of 27 September 2001

in Case C-63/99 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office)): The Queen v Secretary of State for the Home Department, ex parte: Wieslaw Gloszczuk and Elzbieta Gloszczuk ([1])

(External relations — Association Agreement between the Communities and Poland — Freedom of establishment — Leave to enter obtained fraudulently)

(2002/C 17/04)

(Language of the case: English)

In Case C-63/99: reference to the Court under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office), for a preliminary ruling in the proceedings pending before that court between The Queen and Secretary of State for the Home Department, ex parte: Wieslaw Gloszczuk et Elzbieta Gloszczuk — 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 Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, 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 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 Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 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 Polish 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 58(1) of that Agreement.

2. *The right of establishment, as defined by Article 44(3) of the above Association Agreement, means that rights of entry and residence, as corollaries of the right of establishment, are conferred on Polish 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 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 Polish nationals.*

3. *Articles 44(3) and 58(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 58(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 44(3) of that Agreement on the sole ground that, when that application was submitted, the Polish national was residing illegally within the territory of that State because of false representations made to those authorities for the purpose of obtaining initial leave to enter that Member State on a different basis or of non-compliance with an express condition attached to that entry and relating to the authorised duration of his stay in that Member State. 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.*

([1]) OJ C 121 of 1.5.1999.

JUDGMENT OF THE COURT

(Second Chamber)

of 11 October 2001

in Case C-77/99: Commission of the European Communities v Oder-Plan Architektur GmbH, NCC Deutsche Ban GmbH, Esbensen Consulting Engineers ([1])

(Arbitration clause — Financial support for the energy sector — Thermie Programme — Non-performance of a contract — Termination — Right to repayment of an advance)

(2002/C 17/05)

(Language of the case: German)

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

In Case C-77/99: Commission of the European Communities (Agents: R.B. Wainwright and K. Schreyer, assisted by M. Núñez-Müller) v Oder-Plan Architektur GmbH, in liquidation, established in Berlin (Germany), represented by its liquidator, C. Schlote, NCC Deutsche Ban GmbH, formerly NCC Siab Bau GmbH, established in Fürstenwalde (Germany), represented by D. Stoecker, Rechtsanwalt, and Esbensen Consulting Engineers, established in Virum (Denmark), represented by D. Stoecker — application by the Commission of the European Communities under Article 181 of the EC Treaty (now Article 238 EC) for repayment of an advance paid by the Commission under the Thermie Programme referred to in Article 1 of Council Regulation (EEC) No 2008/90 of 29 June 1990 concerning the promotion of energy technology in Europe (Thermie programme) (OJ 1990 L 185, p. 1) — the Court (Second Chamber), composed of: N. Colneric (Rapporteur), President of the Chamber, R. Schintgen and V. Skouris, Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 11 October 2001, in which it:

1. *By way of judgment by default, orders Oder-Plan Architektur GmbH, jointly and severally with NCC Deutsche Bau GmbH and Esbensen Consulting Engineers, to pay to the Commission of the European Communities the sum of EUR 54 510, plus interest of EUR 12 077.09 for the period from 1 January 1995 to 15 January 1999;*

2. *Orders NCC Deutsche Ban GmbH and Esbensen Consulting Engineers, jointly and severally as between each other and with Oder-Plan Architektur GmbH, to pay to the Commission of the European Communities the sum of EUR 54 510, plus interest of EUR 12 077.09 for the period from 1 January 1995 to 15 January 1999;*

3. *Dismisses the remainder of the application;*

4. *Orders Oder-Plan Architektur GmbH, NCC Deutsche Bau GmbH and Esbensen Consulting Engineers, jointly and severally, to pay the costs.*

(1) OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 22 November 2001

in Case C-147/99: Italian Republic v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — Ineligible durum wheat — Quantities missing from the stockpile — Withdrawal of approval of undertakings packaging olive oil — Inadequate management and checks of premiums for sheep and goats)

(2002/C 17/06)

(Language of the case: Italian)

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

In Case C-147/99: Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo) v Commission of the European Communities (Agent: F.P. Ruggeri Laderchi, assisted by A. Dal Ferro) — application for annulment of the part concerning the Italian Republic of Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1999 L 61, p. 37) — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), V. Skouris and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 22 November 2001, in which it:

1. *Dismisses the action;*

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

(1) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Third Chamber)

of 22 November 2001

in Joined Cases C-541/99 and C-542/99 (references for preliminary rulings from the Giudice di Pace di Viadana): Cape Snc and Idealservice Srl (C-541/99) and between Idealservice MN RE Sas and OMAI Srl (C-542/99) (1)

(Article 2(b) of Directive 93/13/EEC — Meaning of 'consumer' — Undertaking concluding a standard contract with another undertaking to acquire merchandise or services solely for the benefit of its employees)

(2002/C 17/07)

(Language of the case: Italian)

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

In Joined Cases C-541/99 and C-542/99: references to the Court under Article 234 EC from the Giudice di Pace (Magistrate), Viadana, (Italy) for preliminary rulings in the proceedings pending before that court between Cape Snc and Idealservice Srl (C-541/99) and between Idealservice MN RE Sas and OMAI Srl (C-542/99) — on the interpretation of Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — the Court, composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges; J. Mischo, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 22 November 2001, in which it has ruled:

The term 'consumer', as defined in Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, must be interpreted as referring solely to natural persons.

(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 November 2001

in Case C-49/00: Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil its obligations — Incomplete transposition of Directive 89/391/EEC — Safety and health of workers)

(2002/C 17/08)

(Language of the case: Italian)

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

In Case C-49/00: Commission of the European Communities (Agents: E. Traversa and N. Yerrell) v Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo) — application for a declaration that:

— by failing to require employers to evaluate all health and safety risks in the work place,

— by allowing employers to decide whether or not to enlist external services for the adoption of protective and preventive measures when the skills available within the undertaking are insufficient, and

— by failing to define the capabilities and aptitudes which the persons responsible for protective and preventive measures against occupational risks to workers' health and safety must possess,

the Italian Republic has failed to fulfil its obligations under Articles 6(3)(a) and 7(3), (5) and (8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1) — the Court (Fifth Chamber), composed of: S. von Bahr (Rapporteur), President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, L. Sevón and M. Wathelet, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 15 November 2001, in which it:

1. *Declares that,*

   — *by failing to require employers to evaluate all health and safety risks in the work place;*

   — *by allowing employers to decide whether or not to enlist external services for the adoption of protective and preventive measures when the skills available within the undertaking are insufficient, and*

   — *by failing to define the capabilities and aptitudes which the persons responsible for protective and preventive measures against occupational risks to workers' health and safety must possess,*

   the Italian Republic has failed to fulfil its obligations under Articles 6(3) (a) and 7(3), (5) and (8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

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

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[1] OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 22 November 2001

in Case C-53/00 (reference for a preliminary ruling from the Tribunal des affaires de sécurité sociale de Créteil): Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS) [1]

(State aid — Tax benefit granted to certain undertakings — Wholesale distributors)

(2002/C 17/09)

(Language of the case: French)

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

In Case C-53/00: reference to the Court under Article 234 EC from the Tribunal des affaires de sécurité sociale de Créteil (France) for a preliminary ruling in the proceedings pending before that court between Ferring SA and Agence centrale des organismes de sécurité sociale (ACOSS) — on the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Article 90(2) of the EC Treaty (now Article 86(2) EC) and Article 92 of the EC Treaty (now, after amendment,

Article 87 EC) — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), J.-P. Puissochet and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 22 November 2001, in which it has ruled:

1. *Article 92 of the EC Treaty (now, after amendment, Article 87 EC) is to be interpreted as meaning that, because it is charged only on direct sales of medicines by pharmaceutical laboratories, a measure such as the tax introduced by Article 12 of Law No 97-1164 of 19 December 1997 on social security funding for 1998 amounts to State aid to wholesale distributors only to the extent that the advantage in not being assessed to the tax on direct sales of medicines exceeds the additional costs that they bear in discharging the public service obligations imposed on them by national law.*

2. *Article 90(2) of the EC Treaty (now Article 86(2) EC) is to be interpreted as meaning that it does not cover a tax advantage enjoyed by undertakings entrusted with the operation of a public service such as those concerned in the main proceedings in so far as that advantage exceeds the additional costs of performing the public service.*

3. *Article 59 of the EC Treaty (now, after amendment, Article 49 EC) must be interpreted as meaning that it does not apply to a situation such as that at issue in the main proceedings, where there is no connection with the provision of services.*

([1]) OJ C 122 of 29.4.2000.

JUDGMENT OF THE COURT

(Third Chamber)

of 22 November 2001

in Case C-184/00 (reference for a preliminary ruling from the Tribunal de premiere instance de Charleroi): Office des produits wallons ASBL v Belgian State ([1])

(Sixth VAT Directive — Article 11A(1)(a) — Taxable amount — Subsidies directly linked to the price)

(2002/C 17/10)

(Language of the case: French)

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

In Case C-184/00: reference to the Court under Article 234 EC from the Tribunal de première instance de Charleroi (Belgium), for a preliminary ruling in the proceedings pending before that court between Office des produits wallons ASBL and Belgian State — on the interpretation of Article 11A(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) — the Court (Third Chamber), composed of: C. Gulmann (Rapporteur), acting for the President of the Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 22 November 2001, in which it has ruled:

For the purposes of Article 11A(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 'subsidies directly linked to the price' must be interpreted as covering only subsidies which constitute the whole or part of the consideration for a supply of goods or services and which are paid by a third party to the seller or supplier. It is for the national court to determine, on the basis of the facts before it, whether or not the subsidy constitutes such consideration.

([1]) OJ C 192 of 8.7.2000.

ORDER OF THE COURT

(Third Chamber)

of 13 September 2001

in Case C-467/00 P: Staff Committee of the European Central Bank and Others v European Central Bank ([1])

(Appeal — Application for annulment of an administrative circular concerning Internet usage within the European Central Bank — Application for directions to be issued to the European Central Bank — Inadmissibility — Appeal in part clearly inadmissible and in part clearly unfounded)

(2002/C 17/11)

(Language of the case: English)

In Case C-467/00 P: Staff Committee of the European Central Bank, established in Frankfurt am Main, Germany, Johannes Priesemann, member of staff of the European Central Bank,

residing in Frankfurt am Main, Marc van de Velde, member of staff of the European Central Bank, residing in Usingen-Kransberg, Germany, and Maria Concetta Cerafogli, member of staff of the European Central Bank, residing in Frankfurt am Main, represented by N. Pflüger, R. Steiner and S. Mittländer — appeal against the order of the Court of First Instance of the European Communities (Fourth Chamber) of 24 October 2000 in Case T-27/00 Staff Committee of the ECB and Others v ECB [2000] ECR-SC I-A-217 and II-987, seeking to have that order set aside, the other party to the proceedings being European Central Bank (Agents: C. Zilioli, V. Saintot and M. López Torres) — the Court (Third Chamber), composed of: C. Gulmann, President of the Chamber, F. Macken (Rapporteur) and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; R. Grass, Registrar, has made an order on 13 September 2001, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The Staff Committee of the European Central Bank, Mr Priesemann, Mr Van de Velde and Ms Cerafogli shall pay the costs.*

([1]) OJ C 61 of 24.2.2001.

Reference for a preliminary ruling by the Third Division of the Sala De Lo Contencioso-administrativo by order of that court of 4 October 2001 in the case of Colegio de Oficiales de la Marina Mercante Española, the State Administration and Asociación de Navieros Españoles (ANAVE)

(Case C-405/01)

(2002/C 17/12)

Reference has been made to the Court of Justice of the European Communities by an order of the Third Division of the Sala De Lo Contencioso-administrativo (Chamber for Contentious-Administrative Proceedings), which was received at the Court Registry on 15 October 2001, for a preliminary ruling in the case of Colegio de Oficiales de la Marina Mercante Española, the State Administration and Asociación de Navieros Españoles (ANAVE), on the following questions:

A) Do Article 39 EC (formerly Article 48 of the EC Treaty) and Articles 1 and 4 of Regulation (EEC) No 1612/68 ([1]) of the Council of 15 October 1968 on freedom of movement for workers within the Community permit a Member State to reserve the posts of captain and first officer of its merchant ships to its own nationals? If the reply is in the affirmative, may that reservation be formulated in absolute terms (for all types of merchant ships) or is it valid only in cases in which it is foreseeable and reasonable that it may be necessary for captains and first officers on board actually to carry out certain public duties?

B) If the national provisions of a Member State exclude from the reservation of those posts to its nationals certain commercial shipping situations (defined on the basis of factors such as the gross tonnage of the ship, the cargo or number of passengers and the characteristics of its voyages) and, in those situations, allow citizens of other Member States of the European Union to have access to the posts in question, may that access be made subject to the condition of reciprocity?

([1]) OJ English Special Edition 1968(II) P. 475.

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

(Case C-435/01)

(2002/C 17/13)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 12 November 2001 by the Commission of the European Communities, represented by H. van Lier, acting as Agent.

The applicant claims that the Court should:

1. declare that, by failing within the time-limits prescribed to adopt all the laws, regulations and administrative provisions necessary to comply fully and correctly with Council Directive 96/61/EC of 24 September 1996 ([1]) concerning integrated pollution prevention and control, or at any rate to notify the same to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The binding nature of the third paragraph of Article 249 EC is such as to require Member States to whom directives are addressed to adopt the measures needed to comply with them before the expiry of the time-limit prescribed in such directives. The time-limit prescribed in Article 21(1) of Directive 96/61 expired on 30 October 1999 but the Kingdom of Belgium has not adopted the requisite provisions.

([1]) OJ 1996 L 257, p. 26.

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

(Case C-436/01)

(2002/C 17/14)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 12 November 2001 by the Commission of the European Communities, represented by H. van Lier, acting as Agent.

The applicant claims that the Court should:

1. declare that, by failing within the time-limits prescribed to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 98/81/EC([1]) of 26 October 1998 amending Directive 90/219/EEC([2]) on the contained use of genetically modified micro-organisms, or at any rate to notify the same to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The pleas in law and main arguments are analogous to those in Case C-435/01([3]); the time-limit prescribed in Article 2 of Directive 98/81/EC expired on 5 June 2001.

([1]) OJ 1999 L 93, p. 27.
([2]) OJ 1990 L 117, p. 1.
([3]) See page 8 of this Official Journal.

Action brought on 20 November 2001 by the Commission of the European Communities against the Hellenic Republic

(Case C-450/01)

(2002/C 17/15)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 20 November 2001 by the Commission of the European Communities, represented by Maria Kondou-Durande, Legal Adviser.

The Commission claims that the Court should:

— declare that, by not adopting within the time-limit laid down the laws, regulations and administrative provisions necessary to comply with Commission Directive 1999/8/EC([1]) of 18 February 1999 amending Council Directive 66/402/EEC on the marketing of cereal seed, the Hellenic Republic has failed to fulfil its obligations under the Treaty and that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

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

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

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

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

(1) OJ L 50, 26.2.1999, p. 26.

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

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

(1) OJ L 209, 7.8.1999, p. 22.

Action brought on 21 November 2001 by the Commission of the European Communities against the Hellenic Republic

(Case C-451/01)

(2002/C 17/16)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 21 November 2001 by the Commission of the European Communities, represented by Maria Kondou-Durande, Legal Adviser.

The Commission claims that the Court should:

— declare that, by not adopting within the time-limit laid down the laws, regulations and administrative provisions necessary to comply with Commission Directive 1999/78/EC (1) of 27 July 1999 amending Directive 95/10/EC, the Hellenic Republic has failed to fulfil its obligations under the Treaty and that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

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

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

Action brought on 22 November 2001 by the Commission of the European Communities against the Hellenic Republic

(Case C-453/01)

(2002/C 17/17)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 22 November 2001 by the Commission of the European Communities, represented by Maria Kondou-Durande, Legal Adviser.

The Commission claims that the Court should:

— declare that, by not adopting within the time-limit laid down the laws, regulations and administrative provisions necessary to comply with Council Directive 98/58/EC (1) of 20 July 1998 concerning the protection of animals kept for farming purposes, the Hellenic Republic has failed to fulfil its obligations under the Treaty and that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

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

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

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

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

(1) OJ L 221, 8.8.1998, p. 23.

Action brought on 22 November 2001 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-454/01)

(2002/C 17/18)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 22 November 2001 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, a Member of the Commission's Legal Service, Wagner Centre, Kirchberg.

The Commission claims that the Court should:

1. Declare that, by failing to draw up within the prescribed period the plan required by the first indent of Article 11(1) of Council Directive 96/59/EC (1) of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), or in any event by failing to notify such plan to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty;

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

Pleas in law and main arguments

The pleas in law and main arguments are the same as in Case C-435/01 (2); the prescribed period for the drawing up and notification of the plan expired on 16 September 1999. Even if the Federal Republic of Germany has only a relatively small amount of equipment containing PCBs and small amounts of PCBs to be removed or decontaminated, the plan referred to in Article 11 must be drawn up and notified to the Commission.

(1) OJ L 243, 24.9.1996, p. 31.
(2) See page 8 of this Official Journal.

Appeal brought on 28 November 2001 by Andreas Tessas and Polixeni Tessa against the order made on 11 September 2001 by the Court of First Instance of the European Communities (Fourth Chamber) in Case T-270/99 Andreas Tessas and Polixeni Tessa against Council of the European Union, supported by the Hellenic Republic

(Case C-461/01 P)

(2002/C 17/19)

An appeal against the order made on 11 September 2001 by the Court of First Instance of the European Communities (Fourth Chamber) in Case T-270/99 Andreas Tessas and Polixeni Tessa against Council of the European Union, supported by the Hellenic Republic, was brought before the Court of Justice of the European Communities on 28 November 2001 by Andreas Tessas and Polixeni Tessa, represented by Andreas Tessas, of the Larissa Bar.

The appellants claim that the Court should:

— set aside in its entirety the order of the Court of First Instance of 11 September 2001 in Case T-270/99 and grant the form of order sought at first instance;

— order the defendant to pay the costs.

Grounds of appeal and main arguments

— Incorrect definition of the recipients of the Council decision contested at first instance: the Court of First Instance wrongly held that the decision at issue was not of direct and individual concern to the appellants.

— Infringement of the right to a fair hearing.

— Infringement of the provisions of the Rules of Procedure concerning costs.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 2 October 2001

in Joined Cases T-222/99, T-327/99 and T-329/99: Jean-Claude Martinez and Others v European Parliament [1]

(Actions for annulment — Act of the European Parliament concerning a provision of its Rules of Procedure — Statement of formation of a group under Rule 29 of the Rules of Procedure of the European Parliament — Admissibility — Objection of illegality — Equal treatment — Observance of fundamental rights — Principles of democracy and proportionality — Freedom of association — Protection of legitimate expectations — Parliamentary traditions of the Member States — Breach of essential procedural requirements — Misuse of procedure)

(2002/C 17/20)

(Language of the case: French and Italian)

In Joined Cases T-222/99: Jean-Claude Martinez, Member of the European Parliament, residing in Montpellier (France), Charles de Gaulle, Member of the European Parliament, residing in Paris (France), represented by F. Wagner, lawyer, applicants in Case T-327/99, Front national, established in Saint-Cloud (France), represented by A. Nivière, lawyer, and T-329/99, Emma Bonino, Member of the European Parliament, residing in Rome (Italy), Marco Pannella, Member of the European Parliament, residing in Rome, Marco Cappato, Member of the European Parliament, residing in Vedano al Lambro (Italy), Gianfranco Dell'Alba, Member of the European Parliament, residing in Leghorn (Italy), Benedetto Della Vedova, Member of the European Parliament, residing in Tirano (Italy), Olivier Dupuis, Member of the European Parliament, residing in Rome, Maurizio Turco, Member of the European Parliament, residing in Pulsano (Italy), Lista Emma Bonino, established in Rome, represented initially by A. Tizzano and G. M. Roberti, lawyers, and subsequently by G. M. Roberti, against European Parliament (Agents: G. Garzón Clariana, J. Schoo, H. Krück and A. Caiola) — application for the annulment in Case T-222/99 of the European Parliament's decision of 14 September 1999 on the interpretation of Rule 29(1) of the Rules of Procedure of the European Parliament; in Case T-327/99 of the European Parliament's decision of 14 September 1999 dissolving with retroactive effect the 'Groupe technique des députés indépendants (TDI) — Groupe mixte'; and in Case T-329/99 of the European Parliament's decision of 14 September 1999 in which it adopted the view taken by the Committee on Constitutional Affairs on the conformity with Rule 29 of the Rules of Procedure of the European Parliament of the statement of formation of the 'Groupe technique des députés indépendants (TDI) — Groupe mixte', — the Court of First Instance (Third Chamber, Extended Composition), composed of J. Azizi, President, K. Lenaerts, R.M. Moura Ramos, M. Jaeger and M. Vilaras, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 2 October 2001, in which it:

1. *Ordered the joinder of Cases T-222/99, T-327/99 and T-329/99 for the purposes of the judgment;*

2. *Dismissed the actions;*

3. *Ordered the applicants in each case to bear their own costs and those incurred by the Parliament including, as regards Case T-222/99, the costs relating to the application for interim measures.*

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[1] OJ C 366 of 18.12.1999, C 47 of 19.2.2000 and C 63 of 4.3.2000.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 5 September 2001

in Case T-74/00 R: Artegodan GmbH v Commission of the European Communities

(Proceedings for interim relief — Article 108 of the Rules of Procedure — Change in circumstances — No change)

(2002/C 17/21)

(Language of the case: German)

In Case T-74/00 R: Artegodan GmbH, established in Lüchow (Germany), represented by U. Doepner, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: H. Støvlbæk and B. Wägenbaur) — application by the defendant under Article 108 of the Rules of Procedure of the Court of First Instance for cancellation of the order of the President of Court of First Instance of 28 June 2000 in Case T-74/00 R Artegodan v Commission [2000] ECR II-2583 — the President of the Court of First Instance made an order on 5 September 2001, the operative part of which is as follows:

1. *The Commission's application is dismissed.*

2. *Costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 29 March 2001

in Case T-302/00 R: Anthony Goldstein v Commission of the European Communities

(Action for interim measures — Admissibility — Urgency)

(2002/C 17/22)

(Language of the case: English)

In Case T-302/00 R: Anthony Goldstein, residing at Harrow, Middlesex (United Kingdom), represented by R. St. John Murphy, Solicitor, against the Commission of the European Communities (Agents: P. Oliver and R. Lyal) — application for interim measures in connection with an action under Article 230 EC for annulment of the Commission's decision of 7 July 2000 rejecting the applicant's complaint concerning the alleged infringement of Articles 81 and 82 EC by the General Medical Council — the President of the Court of First Instance made an order on 29 March 2001, the operative part of which is as follows:

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

2. *The costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 29 March 2001

in Case T-18/01 R: Anthony Goldstein v Commission of the European Communities

(Application for interim measures — Admissibility — Urgency)

(2002/C 17/23)

(Language of the case: English)

In Case T-18/01 R: Anthony Goldstein, residing at Harrow, Middlesex (United Kingdom), represented by R. St. John Murphy, Solicitor, against the Commission of the European Communities (Agents: P. Oliver) — application for interim measures in connection with an action under Article 230 EC for annulment of the Commission's decision of 12 January 2001 rejecting the applicant's complaint concerning the alleged infringement of Articles 81 and 82 EC by the General Council of the Bar of England and Wales, the President of the Court of First Instance made an order on 29 March 2001, the operative part of which is as follows:

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

2. *The costs are reserved.*

ORDER OF THE COURT OF FIRST INSTANCE

of 3 October 2001

in Case T-60/01: Marie-Josée Bollendorff v European Parliament [1]

(Action for annulment — Withdrawal of the contested measure — No need to adjudicate)

(2002/C 17/24)

(Language of the case: French)

In Case T-60/01: Marie-Josée Bollendorff, residing in Luxembourg, represented by L. Mosar, lawyer, with an address for service in Luxembourg, against European Parliament (Agents: Y. Pantalis and D. Moore) — application for annulment of the decision of the Parliament to regard as irregular the absence of the applicant from 21 March 2000 to 30 April 2000 and to deduct that absence from her annual leave entitlement — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; H. Jung, Registrar, made an order on 3 October 2001, the operative part of which is as follows:

1. *There is no need to adjudicate in the present case.*

2. *The Parliament shall bear the entire costs.*

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[1] OJ 2001 C 173.

Action brought on 1 October 2001 by Tokai Carbon Co., Ltd. against the Commission of the European Communities

(Case T-236/01)

(2002/C 17/25)

(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 1 October 2001 by Tokai Carbon Co., Ltd, represented by Mr Gerwin Van Gerven, Mr Thomas Franchoo and Mr Martijn De Grave of Linklaters & Alliance, Brussels (Belgium).

The applicant claims that the Court should:

— annul Article 3 (and in so far as necessary Article 4) of the Commission decision of 18 July 2001 in Case COMP/E-1/36.490 — Graphite electrodes, in so far as it imposes a fine of EUR 24.5 million on Tokai, or, at least, substantially reduce that fine; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is a Japanese company, active in the carbon industry. In its reply to the Commission's statement of objections concerning a cartel in the graphic electrode sector, which has also been the subject of parallel investigations in other states, e.g. in the United States, the applicant acknowledged that its participation in the collusive arrangements concerned constituted a violation of the EC competition rules.

In the contested decision, the Commission found that eight undertakings, including the applicant, had participated in a global cartel, the object of which was inter alia to allocate markets on a worldwide level, and thus to withhold competitive reserves from the EEA market. The decision imposed fines on the companies involved.

By its action, the applicant does not seek the annulment of the decision, but the annulment, or at least the substantial reduction, of the fine imposed. The applicant submits that the Commission should not have relied on worldwide turnover or worldwide market share in order to determine the starting level of the fine to be imposed on each of the firms participating in the collusion, but should instead have considered their sales/market share in the EEA for this purpose.

The applicant alleges that, in an attempt to punish the applicant for its participation in the global cartel, but without any focus on the limited role it played in Europe, the Commission exceeded its jurisdiction. By relying exclusively on worldwide sales as a measure of each defendant's capacity to cause harm to competition, the Commission has infringed the EC Treaty by violating the principle 'ne bis in idem'. Furthermore, by dividing the undertakings concerned into three categories on the basis of arbitrarily chosen criteria and by punishing the applicant much more harshly than several of the other undertakings, the Commission has infringed Article 253 EC and the principles of equal treatment and proportionality.

Finally, the applicant states that the Commission has committed a manifest error of assessment e.g. by attributing an incorrect market share to the applicant and by denying the applicant the benefit of attenuating circumstances, while at the same time permitting another firm to benefit from them.

Action brought on 3 October 2001 by Nippon Carbon Co., Ltd. against the Commission of the European Communities

(Case T-244/01)

(2002/C 17/26)

(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 Nippon Carbon Co., Ltd., represented by Mr H. Gilliams of Eubelius Advocaten, Brussels (Belgium).

The applicant claims that the Court should:

— annul Article 1 of the Commission Decision of 18 July 2001 in Case COMP/E-1/36.490 — Graphite electrodes, in so far as it declares that the Applicant has participated in an infringement of Article 81 EC and Article 53(1) EEA for the period May 1992-March 1993;

— annul Article 3 of the Commission Decision of 18 July 2001 in Case COMP/E-1/36.490 — Graphite electrodes, in so far as it imposes on the Applicant a fine of EUR 12.2 million;

— in the alternative, substantially reduce the above-mentioned fine;

— in any event, order that the costs of the proceedings be borne by the Commission.

Pleas in law and main arguments

The Applicant is a small Japanese producer of graphite electrodes. According to the contested decision, the Applicant and seven other undertakings had infringed Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement by participating in a complex of agreements and concerted practices in the graphite sector. In the decision, the Commission labelled the Japanese producers 'active members' participating in the illicit arrangement and inflicted a fine on the Applicant of EUR 12.2 million. The infringement also resulted in parallel proceedings in other states, e.g. in the United States.

The Applicant denies neither the existence of an infringement nor its participation in that infringement. It submits, however, that the Commission has infringed essential procedural requirements and rights, including the right to a defence, the duty to state reasons, and the principle of equal treatment, by declaring, despite the absence of sufficient and/or admissible evidence, that the Applicant participated in the infringement between May 1992 and March 1993.

Furthermore, by its unlawful determination of the base amount of the Applicant's fine and by its imposition of a fine out of proportion to the volume and the value of the products concerned realised by the Applicant, the Commission has violated the principles of proportionality and equal treatment as well as the duty to state reasons.

The Applicant alleges that the Commission has inappropriately refused to take account of attenuating circumstances as set out in the Commission's Guidelines on the method of setting fines and thereby violated the principle 'patere legem quam ipse fecisti' and the protection of legitimate interests. It also acted ultra vires and in violation of Articles 3(g), 5 and 81 EC by imposing a fine calculated on the basis of the Applicant's worldwide turnover, even though the fine relates to an infringement that was implemented by the Applicant almost exclusively outside the European Union.

Finally, the Applicant submits that the Commission has violated the principle of fairness and the principle 'non bis in idem', by failing to take into consideration the fine already imposed by a third State when determining the level of the fine to be imposed on the Applicant.

Action brought on 4 October 2001 by Showa Denko K.K. against the Commission of the European Communities

(Case T-245/01)

(2002/C 17/27)

(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 4 October 2001 by Showa Denko K.K., represented by Mr Maurits Dolmans and Mr Peter Werdmuller of Cleary Gottlieb Steen & Hamilton, Brussels (Belgium).

The applicant claims that the Court should:

— annul Article 3(d) of the Commission's Decision in Case No. COMP/E-1/36.490 — Graphite electrodes, or

— alternatively, reduce the fine imposed on Showa Denko K.K. to EUR 2.95 million or such other amount as the Court deems proportional, reasonable and non-discriminatory;

— order the Commission to pay the applicant's legal fees and expenses.

Pleas in law and main arguments

The action concerns Commission Decision C(2001)1986 of 18 July 2001 in which the Commission found that the applicant, a Japanese firm, together with seven other undertakings, had infringed Article 81(1) EC and Article 53(1) of the EEA Agreement by participating in a complex system of agreements and concerted practices in the graphite electrodes sector. It imposed a fine of EUR 17.4 million on the applicant. In parallel proceedings in the United States, a fine was imposed upon a subsidiary company of the applicant.

The applicant contests the calculation of the fine and submits that the fine is unwarranted, discriminatory and disproportionate. It submits that the Commission violated the principles of non-discrimination and proportionality in using a 250 % 'deterrence factor' only for the applicant, the resulting mark-up effectively eliminating the leniency reduction. Such a 'deterrence factor' is not objectively justified, and the Commission erred in law by referring to total group-wide turnover as a justification, even though the 'deterrence factor' is not rationally related to, or necessary for, effective deterrence.

Furthermore, the applicant alleges that the Commission erred in law in basing the basic fine on the worldwide market share instead of EEA-wide turnover, and at the same time ignoring fines imposed in other jurisdictions. Finally, the Commission violated the principles of non-discrimination and proportionality in reducing the fine imposed on UCAR International Inc. by 15.2 % without proportionally reducing the applicant's fine.

Action brought on 6 October 2001 by UCAR International Inc. against the Commission of the European Communities

(Case T-246/01)

(2002/C 17/28)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 October 2001 by UCAR International Inc., represented by Mr K.P.E. Lasok QC of Monckton Chambers, London (United Kingdom) and Mr B. Hartnett of Squire Saunders Dempsey LLP, Brussels (Belgium).

The applicant claims that the Court should:

— annul Article 3 of the Commission Decision made on 18 July 2001 in Case No. COMP/E-1/36.490 — Graphite Electrodes, in so far as it imposes a fine on UCAR; alternatively, reduce the level of that fine;

— annul Article 4 of the Commission Decision made on 18 July 2001 in Case No. COMP/E-1/36.490 — Graphite Electrodes, in so far as it applies to UCAR; alternatively, modify the terms of payment applicable to the fine payable by UCAR in accordance with the terms and conditions set forth in Annex 50;

— annul the decision contained in the Commission's letter dated 23 July 2001, in so far as it provides that the Commission will undertake collection of the fine on expiry of the period for its payment unless UCAR has not only instituted proceedings for the annulment of the Decision made on 18 July 2001 but also satisfies the two conditions referred to in the letter; alternatively, modify those terms in accordance with the terms and conditions set forth in Annex 50;

— annul the decision contained in the Commission's letter dated 9 August 2001, in so far as the Commission has rejected any and all proposals that do not involve payment of the fine in full, payment of interest, and/or provision of a bank guarantee ensuring payment of the fine plus accrued interest, and has in particular rejected a lien on the assets of UCAR; alternatively, modify those terms in accordance with the terms and conditions set forth in Annex 50;

— order the Commission to pay its own costs and those incurred by UCAR International Inc.

Pleas in law and main arguments

By a decision of 18 July 2001, the European Commission found that eight undertakings had infringed Article 81(1) of the EC Treaty and Article 53(11) of the EEA Agreement by participating in a complex of agreements and concerted practices in the graphite electrodes sector. A fine of EUR 50.4 million was imposed on the applicant and the terms

of payment of this fine were specified in Article 4 of the Decision. Fines and sanctions subsequent to these infringements have been imposed upon the applicant in other states.

The Decision was sent to the applicant by letter dated 23 July 2001 from the Commissioner responsible for competition matters, in which further matters regarding payment, including statements about a possible collection of the fine in case of non-payment, were mentioned. The applicant submits that this letter constitutes a separate decision which it contests.

The applicant made representations to the Commission on the subject of payment terms. The Commission replied by letter of 9 August 2001 which, according to the applicant, constitutes a third distinct decision, of which it seeks the annulment.

The applicant does not contest the findings in the first Decision that it committed an infringement of the EC competition rules, nor does it contest that a fine should be imposed for this infringement. It does, however, contest the imposition of a fine on it in the above-mentioned amount. It alleges that it should have been accorded a greater reduction of the fine for its cooperation with the Commission under the Leniency Notice [1], and that the level of the fine is unlawfully high, having regard to the gravity and duration of the infringement, and to aggravating and attenuating circumstances and other general factors. The Commission has also breached certain essential procedural requirements in failing properly to investigate and assess the role of the former owners of the applicant in the cartel.

Furthermore, the applicant contests the associated payment terms and grounds and submits that Article 4 of the Decision of 18 July 2001 and the alleged third decision of 9 August 2001 are void for the lack of reasoning. The applicant disputes the Commission's position that it will seek to enforce the fine, even if proceedings for its annulment are pending before the Court, unless a bank guarantee covering the amount of the fine and interest is provided. It is submitted that the Commission erred when it refused to accept a lien on company assets as security for the fine and when it refused to accept or even consider a payment schedule which did not include a bank guarantee. Finally, the Commission erroneously refused to take account of the restrictions imposed on the applicant under its principal credit facilities, its ability to pay and the effect on competition in the graphite electrodes market if the applicant were forced into bankruptcy.

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[1] Commission Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases (OJ [1996] C 207, p. 4).

Action brought on 26 September 2001 by eCopy, Inc. against the Office for Harmonisation in the Internal Market

(Case T-247/01)

(2002/C 17/29)

(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 26 September 2001 by eCopy, Inc., represented by Mr Brian C. Read, Barrister, of 19 Old Buildings, London (United Kingdom)

The applicant claims that the Court should:

— annul the Board Decision of 13 July 2001;

— order the Office for Harmonisation in the Internal Market to grant Community trade application no. 1718667, alternatively to continue prosecution of the application according to the judgment of the Court;

— order the Office for Harmonisation in the Internal Market to pay the costs of eCopy, Inc.

Pleas in law and main arguments

Applicant for the Community trade mark:	eCopy, Inc.
The Community trade mark concerned:	The verbal mark ECOPY in respect of certain goods in class 9.
Decision of the Examiner:	Refusal of the application
Decision of the Board of Appeal:	Rejection of the Appeal

Grounds of claim: Incorrect interpretation of Article 7 of Regulation 40/94 [1] and unjust refusal of evidence filed by the Applicant after the filing of the Application.

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

Action brought on 10 October 2001 by Norman Pyres against Commission of the European Communities

(Case T-256/01)

(2002/C 17/30)

(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 10 October 2001 by Noramn Pyres, residing in Brussels, represented by Georges Vandersanden and Laure Levi, lawyers.

The applicant claims that the Court should:

— annul the decision of 1 December 2000 of the Selection Board in competition COM/R/A/14/2000, the decision of 4 December 2000 of the Selection Board in competition COM/R/A/10/2000 and the decision of 7 December 2000 of the Selection Board in competition COM/R/A/07/2000 refusing to allow the applicant to take part in the selection procedure;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant opposes the decision of the appointing authority to exclude him from the selection procedure for COM/R/A/07/2000, COM/R/A/10/2000 and COM/R/A/14/2000, organised by the Research Directorate General, on the ground that he did not meet the condition as to age-limit prescribed therein.

In support of his claims, the applicant relies on the following pleas:

— infringement of Article 1(1) of Annex III to the Staff Regulations and of Article 12 of the Conditions of Employment of Other Servants of the European Communities.

— disregard for the interests of the service.

— the existence, in the present case, of a manifest error of assessment.

— breach of the principle of non-discrimination.

The applicant states in that regard that it is for the institution to justify on objective grounds the condition relating to age which it sets in its recruitment notices, such justification to be objective and reasonable, to be in pursuit of a legitimate interest and to observe the requirements of proportionality.

Action brought on 16 October 2001 by Nutrinveste — Comércio Internacional, S.A. against Commission of the European Communities

(Case T-259/01)

(2002/C 17/31)

(Language of the case: Portuguese)

An action against the Commission of the European Communities was brought before the Court of First Instance on 16 October 2001 by Nutrinveste — Comércio Internacional, S.A., established in Algés, Portugal, represented by the lawyers Jorge Monteiro dos Santos, Ana Cristina Vasconcelos, Jorge de Mendia, Sandra Sousa de Almeida and António Texeira de Almeida, of Lisbon.

The applicant claims that the Court of First Instance should:

— Order the European Commission to pay to the applicant the sum of EUR 61 222 for goods duly delivered but not yet paid for.

Pleas in law and main arguments

On 8 January 1998 Nutrinveste concluded with the Commission a contract for the supply of 1 800 tonnes of sunflower oil.

The goods were to be supplied as part of an aid programme carried out under the undermentioned regulations:

— Commission Regulation (EEC) No 2200/87 [1] of 8 July 1987;

— Commission Regulation (EEC) No 2608/97 [2] of 22 December 1997.

The goods were intended for a number of operations forming part of the 1995 and 1996 aid programmes. They were intended for Angola and the shipment was on a 'free-at-destination' basis, under Articles 1 and 15 of Regulation No 2200/87.

Being required to make arrangements for transport and insurance of the goods as far as their destination, Nutrinveste concluded a contract of carriage with Orey — Comércio e Navegação, Lda.

Before being shipped, the goods were inspected by Socotec International Inspection, to which the European Commission entrusted that task, on the basis of Articles 10 and 16 of Regulation No 2200/87, a provisional certificate of conformity having been issued to the effect that no irregularity had been found regarding quantities.

The vessels arrived on the scheduled dates but clearance through customs took a long time for various reasons.

Socotec International Inspection examined the goods at the warehouses in the country of destination in accordance with Article 16(1) of Regulation No 2200/87, and discovered a number of irregularities.

On the basis of the report drawn up by the above firm, the European Commission took the view that Nutrinveste had not fully complied with the supply contract, not having supplied the quantity that it had undertaken to supply, and the Commission therefore reduced the sum payable by EUR 83 320. It also applied a penalty for late delivery and associated irregularities in the sum of EUR 7 916.

Also, the insurance company paid by way of compensation the sum of PTE 6 116 746 (EUR 30 510.5).

As a result, Nutrinveste incurred a loss of EUR 61 226 (53 310 in respect of the unpaid part of the price and 7 916 for the penalty imposed on it).

Nutrinveste contends that it performed the contract in its entirety and that the Commission has refused to pay part of the price of the goods at issue without having shown that the applicant was responsible for the irregularities and without having giving reasons for its position.

Finally, in the event of its being considered that, having regard to the place of performance and the rules governing risks, the European Commission does not have to prove the applicant's liability for the irregularities in order to justify its refusal to pay, the applicant contends that, in the circumstances of this case, the apportionment of the risk under the contract placed an excessive burden upon it.

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[1] OJ 1987 L 204, p. 1.
[2] OJ 1997 L 351, p. 44.