ISSN 0378-6986

Official Journal

of the European Communities

C 44

Volume 45

16 February 2002

English edition

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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 December 2001

in Case C-317/99 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven): Kloosterboer Rotterdam BV v Minister van Landbouw, Natuurbeheer en Visserij [1]

(Reference for a preliminary ruling — Additional duties on importation — Validity of Article 3 of Regulation (EC) No 1484/95)

(2002/C 44/01)

(Language of the case: Dutch)

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

In Case C-317/99: reference to the Court under Article 234 EC from the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands) for a preliminary ruling in the proceedings pending before that court between Kloosterboer Rotterdam BV and Minister van Landbouw, Natuurbeheer en Visserij — on the validity of Article 3(1) and (3) of Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing additional import duties in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC (OJ 1995 L 145, p. 47) and on the interpretation of that provision and of Articles 65 and 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, R. Schintgen, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 13 December 2001, in which it has ruled:

Paragraphs (1) and (3) of Article 3 of Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing additional import duties in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EC, are invalid, inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price laid down in Article 2(1) of Regulation No 1484/95 and that the duty is established on the basis of the cif import price of the shipment concerned only if the importer so requests.

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[1] OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT

of 13 December 2001

in Case C-324/99 (Reference for a preliminary ruling from the Bundesverwaltungsgericht): DaimlerChrysler AG v Land Baden-Württemberg [1]

(Environment — Waste — Regulation (EEC) No 259/93 on shipments of waste — Conditions justifying prohibitions or restrictions on the export of waste — National legislation imposing the obligation to offer waste to an approved body)

(2002/C 44/02)

(Language of the case: German)

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

In Case C-324/99: reference to the Court under Article 234 EC by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between DaimlerChrysler AG and Land Baden-Württemberg, on the interpretation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments

of waste within, into and out of the European Community (OJ 1993 L 30, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, N. Colneric (President of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), L. Sevón, M. Wathelet, R. Schintgen, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges, Advocate General: P. Léger, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 13 December 2001, in which it has ruled:

1. *Where a national measure generally prohibiting exports of waste for disposal is justified by the principles of proximity, priority for recovery and self-sufficiency, in accordance with Article 4(3)(a)(i) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, it is not necessary for that national measure to be subject to a further and separate review of its compatibility with Articles 34 and 36 of the EC Treaty (now, after amendment, Articles 29 EC and 30 EC).*

2. *Article 4(3) of Regulation No 259/93 does not authorise a Member State which has adopted legislation introducing an obligation to offer waste for disposal to an approved body to provide that, where the waste is not allocated to a treatment centre for which that body is responsible, its shipment to treatment installations in other Member States is authorised only on condition that the intended disposal satisfy the requirements of the environmental protection legislation of that Member State.*

3. *Articles 3 to 5 of Regulation No 259/93 preclude a Member State from applying to shipments between Member States of waste for disposal, before the implementation of the notification procedure laid down in the regulation, its own procedure in relation to the offer and allocation of the waste.*

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(1) OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 December 2001

in Case C-481/99 (Reference for a preliminary ruling from the Bundesgerichtshof): Georg Heininger and Helga Heininger v Bayerische Hypo- und Vereinsbank AG (1)

(Consumer protection — Doorstep selling — Right of cancellation — Agreement to grant credit secured by charge on immovable property)

(2002/C 44/03)

(Language of the case: German)

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

In Case C-481/99: reference to the Court under Article 234 EC by the Bundesgerichtshof (Federal Republic of Germany) for a preliminary ruling in the proceedings pending before that court between Georg Heininger and Helga Heininger and Bayerische Hypo- und Vereinsbank AG on the interpretation of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31), and 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 1987 L 42, p. 48) as amended by Council Directive 90/88/EEC of 22 February 1990 (OJ 1990 L 61, p. 14), the Court (Sixth Chamber), composed of F. Macken, President of the Chamber, C. Gulmann (Rapporteur), J.P. Puissochet, V. Skouris and J.N. Cunha Rodrigues, Judges, Advocate General: P. Léger, Registrar: D. Louterman-Hubeau, Head of Division, has given a judgment on 13 December 2001, in which it has ruled:

1. *Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises is to be interpreted as applying to a secured-credit agreement such as that in point in the main proceedings, with the result that the right of cancellation provided for in Article 5 of that directive is available to a consumer who has entered into a contract of that type in one of the cases specified in Article 1.*

2. *Directive 85/577 precludes the national legislature from imposing a time-limit of one year from the conclusion of the contract within which the right of cancellation provided for in Article 5 of that directive may be exercised, where the consumer has not received the information specified in Article 4.*

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(1) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

of 13 December 2001

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

(Failure of a Member State to fulfil its obligations — Refusal to end the ban on British beef and veal)

(2002/C 44/04)

(Language of the case: French)

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

In Case C-1/00: Commission of the European Communities (Agents: D. Booss and G. Berscheid), supported by United Kingdom of Great Britain and Northern Ireland, (Agent: J.E. Collins, assisted by D. Anderson QC and M. Hoskins) v French Republic (Agents: initially K. Rispal-Bellanger and J.-F. Dobelle, subsequently R. Loosli-Surrans and J.-F. Dobelle,

and then R. Loosli-Surrans and G. de Bergues) — application for a declaration that, by refusing to adopt the measures necessary in order to comply with:

— Council Decision 98/256/EC of 16 March 1998 concerning emergency measures to protect against bovine spongiform encephalopathy, amending Decision 94/474/EC and repealing Decision 96/239/EC (OJ 1998 L 113, p. 32), in the version resulting from Commission Decision 98/692/EC of 25 November 1998 (OJ 1998 L 328, p. 28), in particular with Article 6 and Annex III, and

— Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Decision 98/256 (OJ 1999 L 195, p. 42), in particular with Article 1,

in particular, by refusing to permit the marketing in its territory of products eligible under that scheme, which are covered by Article 6 of, and Annex III to, Decision 98/256 as amended by Decision 98/692, after 1 August 1999, the French Republic has failed to fulfil its obligations under those two decisions, in particular their provisions referred to above, and the EC Treaty, in particular Articles 28 EC and 10 EC — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric, S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, L. Sevón (Rapporteur), M. Wathelet, R. Schintgen and V. Skouris, Judges; J. Mischo, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 13 December 2001, in which it:

1. *Declares that, by refusing to adopt the measures necessary in order to comply with:*

   — *Council Decision 98/256/EC of 16 March 1998 concerning emergency measures to protect against bovine spongiform encephalopathy, amending Decision 94/474/EC and repealing Decision 96/239/EC, in the version resulting from Commission Decision 98/692/EC of 25 November 1998, in particular with Article 6 and Annex III, and*

   — *Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Decision 98/256, in particular with Article 1,*

   in particular, by refusing to permit the marketing in its territory after 30 December 1999 of products subject to that scheme which are correctly marked or labelled, the French Republic has failed to fulfil its obligations under those two decisions, in particular their provisions referred to above;

2. *Dismisses the remainder of the application;*

3. *Orders the French Republic to bear two thirds of the costs and the Commission of the European Communities to bear the other third;*

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

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(1) OJ C 63 of 4.3.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 December 2001

in Case C-79/00 (Reference for a preliminary ruling from the Tribunal Supremo): Telefónica de España SA v Administración General del Estado (1)

(Directive 97/33/EC — Telecommunications — Interconnection of networks — Obligations imposed on network providers)

(2002/C 44/05)

(Language of the case: Spanish)

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

In Case C-79/00: reference to the Court under Article 234 EC by the Tribunal Supremo (Spain) for a preliminary ruling in the proceedings pending before that court between Telefónica de España SA and Administración General del Estado, third party: Retevisión SA, on the interpretation of Articles 4(2) and 9(2) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ 1997 L 199, p. 32), the Court (Sixth Chamber), composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges, Advocate General: F.G. Jacobs, Registrar: H.A. Rühl, Principal Administrator, has given a judgement on 13 December 2001, in which it has ruled:

Articles 4(2) and 9(2) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) must be interpreted as not precluding the Member States from authorising national regulatory authorities to impose on an operator having significant power on the market the ex ante obligation to provide access to the local subscriber loop and to offer interconnection at local and higher-level switching centres.

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(1) OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT

of 13 December 2001

in Case C-93/00: European Parliament v Council of the European Union (1)

(Regulation (EC) No 2772/1999 — Beef labelling system — Competence of the Council)

(2002/C 44/06)

(Language of the case: French)

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

In Case C-93/00: European Parliament (Agents: C. Pennera and E. Waldherr) v Council of the European Union (Agents: G. Maganza and J. Monteiro), supported by Kingdom of Spain (Agent: R. Silva de Lapuerta) and by Commission of the European Communities (Agent: G. Berscheid) — application for annulment of Council Regulation (EC) No 2772/1999 of 21 December 1999 providing for the general rules for a compulsory beef labelling system (OJ 1999 L 334, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), A. La Pergola, J.-P. Puissochet, L. Sevón (Rapporteur), M. Wathelet, V. Skouris and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgement on 13 December 2001, in which it:

1. *Annuls Council Regulation (EC) No 2772/1999 of 21 December 1999 providing for the general rules for a compulsory beef labelling system;*

2. *Orders that the effects of those provisions of the contested regulation pursuant to which the Member States may have adopted decisions which could be affected by the annulment are to be regarded as definitive;*

3. *Orders the Council of the European Union to pay the costs;*

4. *Orders the Kingdom of Spain and the Commission of the European Communities to bear their own costs.*

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(1) OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 December 2001

in Case C-131/00 (Reference for a preliminary ruling from the Länsrätten i Norrbottens län): Ingemar Nilsson v Länsstyrelsen i Norrbottens län (1)

(Common agricultural policy — Regulation (EEC) No 3508/92 — Regulation (EEC) No 3887/92 — Integrated administration and control system for certain Community aid schemes — Detailed rules for application — Register of animals not kept up to date by farmer — Penalties)

(2002/C 44/07)

(Language of the case: Swedish)

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

In Case C-131/00: Reference to the Court under Article 234 EC by the Länsrätten i Norrbottens län (Sweden) for a preliminary ruling in the proceedings pending before that court between Ingemar Nilsson and Länsstyrelsen i Norrbottens län on the interpretation of Article 5 of Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1), 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, L. Sevón (Rapporteur) and C.W.A. Timmermans, Judges, Advocate General: C. Stix-Hackl, Registrar: R. Grass, has given a judgment on 13 December 2001, in which it has ruled:

Article 5 of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes, read together with Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals and Articles 6(5) and 13 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes, as amended by Commission Regulation (EC) No 1648/95 of 6 July 1995, must be interpreted as meaning that entitlement to a compensatory allowance must be refused, except in cases of force majeure, solely because of the absence of any entries in the register of animals kept by the farmer.

([1]) OJ C 163, 10.6.2000.

JUDGMENT OF THE COURT

(Second Chamber)

of 13 December 2001

in Case C-206/00 (Reference for a preliminary ruling from the Tribunal Administratif de Châlons-en-Champagne): Henri Mouflin v Recteur de l'académie de Reims ([1])

(Reference for a preliminary ruling — Social policy — Equal treatment for men and women — Applicability of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) or Directive 79/7/EEC — French civil and military retirement pension scheme — Entitlement to a retirement pension with immediate effect for women only)

(2002/C 44/08)

(Language of the case: French)

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

In Case C-206/00: Reference to the Court under Article 234 EC by the Tribunal Aministratif de Châlons-en-Champagne (France) for a preliminary ruling in the proceedings pending before that court between Henri Mouflin and Recteur de l'académie de Reims, intervener: Syndicat général de l'Éducation nationale et de la Recherche publique CFDT de la Marne (SGEN CFDT 51), on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), and Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24), the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges, Advocate General: S. Alber, Registrar: R. Grass, has given a judgment on 13 December 2001, in which it has ruled:

Pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC).

The principle of equal pay for men and women enshrined in Article 119 of the Treaty is infringed by a provision of national law such as Article L.24-I-3º(b) of the Civil and Military Retirement Pensions Code which, in providing that only female civil servants whose husbands suffer from a disability or incurable illness making it impossible for them to undertake any form of employment are entitled to a retirement pension with immediate effect, deprives male civil servants in the same situation of that right.

([1]) OJ C 211, 22.7.2000.

JUDGMENT OF THE COURT

of 13 December 2001

in Case C-340/00 P: Commission of the European Communities v Michael Cwik ([1])

(Appeal — Officials — Article 17, second paragraph, of the Staff Regulations — Freedom of expression — Limits — Statement of reasons)

(2002/C 44/09)

(Language of the case: French)

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

In Case C-340/00 P: Commission of the European Communities (Agent: J. Currall, assisted by D. Waelbroeck), appeal against the judgment of the Court of First Instance of the

European Communities (Fourth Chamber) of 14 July 2000 in Case T-82/99 Cwik v Commission [2000] ECR-SC I-A-155 and II-713, seeking to have that judgment set aside, the other party to the proceedings being: Michael Cwik, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by N. Lhoëst, avocat — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), A. La Pergola, J.-P. Puissochet, L. Sevón, M. Wathelet (Rapporteur), R. Schintgen and V. Skouris, Judges; Advocate General: D. Ruiz-Jarabo Colomer, L. Hewlett, Administrator, for the Registrar, has given a judgment on 13 December 2001, in which it:

1. *Dismisses the appeal;*

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

([1]) OJ C 335, 25.11.2000.

JUDGMENT OF THE COURT

(First Chamber)

of 13 December 2001

in Case C-372/00: Commission of the European Communities v Ireland ([1])

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

(2002/C 44/10)

(Language of the case: English)

In Case C-372/00: Commission of the European Communities (Agent: M. Wolfcarius) v Ireland (Agent: D.J. O'Hagan) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ 1996 L 235, p. 6), Ireland has failed to fulfil its obligations under that directive — the Court (First Chamber), composed of: P. Jann, President of the Chamber, L. Sevón (Rapporteur) and M. Wathelet, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 13 December 2001, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, Ireland has failed to fulfil its obligations under that directive.*

2. *Orders Ireland to pay the costs.*

([1]) OJ C 355, 9.12.2000.

JUDGMENT OF THE COURT

(Third Chamber)

of 13 December 2001

in Case C-446/00 P: Pascual Juan Cubero Vermurie v Commission of the European Communities ([1])

(Appeal — Officials — Promotions — Mobility)

(2002/C 44/11)

(Language of the case: French)

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

In Case C-446/00: Pascual Juan Cubero Vermurie, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by E. Boigelot, avocat — APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 3 October 2000 in Case T-187/98 Cubero Vermurie v Commission [2000] ECR I-A-195 and II-885, seeking to have that judgment set aside and the same form of order as that sought by the appellant at first instance, the other party to the proceedings being: Commission of the European Communities (Agent: C. Berardis-Kayser, assisted by B. Wägenbaur) — the Court (Third Chamber), composed of: C. Gulmann, acting for the President of the Third Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 13 December 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Mr Cubero Vermurie to pay the costs.*

([1]) OJ C 45, 10.2.2001.

Reference for a preliminary ruling by the Corte di Appello di Genova by order of that court of 15 November 2001 in the case of Ministero delle Finanze and Eurico Italia SpA

(Case C-467/01)

(2002/C 44/12)

Reference has been made to the Court of Justice of the European Communities by an order of the Corte di Appello di Genova (Genoa Court of Appeal) by order of 15 November 2001, which was received at the Court Registry on 6 December 2001, on the following questions:

1. On the basis of the combined provisions of Articles 47(4) and 48 of Regulation (EEC) No 3665/87 [1], must it be concluded that (a) the further time which may be granted to an exporter may not in any circumstances exceed the maximum duration of 18 months; or (b) that, conversely, the reduction of 15 % applies only where the ordinary time-limit and any extension thereof granted to the exporter is exceeded by more than six months?

2. If the interpretation given in question 1(b) above is correct, are there, on the basis of the two abovementioned articles, maximum time-limits — in the light of the various forms, including those indicated in the grounds of this order, which they may take from the Community law point of view — within which the extensions of time may be granted?

3. If the interpretation given in question 1(b) is correct, what are those maximum time-limits and what extensions of time are available under the two abovementioned articles?

4. If the interpretation given in question 1(b) is correct, may a private individual, on the basis of the two abovementioned articles, claim a legally protected right to the setting of a particular duration (regarded as commensurate with the difficulties of obtaining the prescribed documentation) for the extension of time?

5. If the interpretation given in question 1(b) is correct, may the national court, on the basis of the two abovementioned articles — if the administrative authority fails to grant further time — recognise the exporter's right (if he has acted diligently to obtain the documents and forward them within the period of 12 months laid down in Article 47(2) of that regulation) to be granted further time and may it fix that duration on the basis of the time actually taken to obtain and forward the prescribed documentation?

[1] OJ L 351, 14.12.1987, p. 1.

Reference for a preliminary ruling by the Tribunale Civile e Penale di Trento (Civil and Criminal Court, Trento) by order of 6 December 2001 in the case of Francesca Caprini v Conservatore C.C.I.A.A.

(Case C-485/01)

(2002/C 44/13)

Reference has been made to the Court of Justice of the European Communities by order of 6 December 2001 by the Tribunale Civile e Penale di Trento, which was received at the Court Registry on 14 December 2001, for a preliminary ruling in the case of Francesca Caprini v Conservatore C.C.I.A.A. on the following questions:

Does Council Directive 86/653/EEC [1] of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents preclude a rule of national law which makes the enrolment of a commercial agent in the register of undertakings conditional on that agent's name having been entered in an appropriate register?

[1] OJ L 382, 31.12.1986, p. 17.

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by decision of 14 December 2001 in the case of Gemeente Leusden and Staatssecretaris van Financiën

(Case C-487/01)

(2002/C 44/14)

Reference has been made to the Court of Justice of the European Communities by decision of 14 December 2001 by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which was received at the Court Registry on 17 December 2001, for a preliminary ruling in the case of Gemeente Leusden and Staatssecretaris van Financiën on the following questions:

1. Do Articles 20(2) and 17 of the Sixth Directive [1] or the principles, in European law, of the protection of legitimate expectations and legal certainty preclude adjustment — in a case involving no fraud or abuse or change of planned use as referred to in paragraphs 50 and 51 of the judgment of the Court of Justice in the Schloßstrasse case [2] — of the VAT deducted by a taxable person, which he has paid on an item of (immovable) property supplied to him with a view to the letting (subject to VAT) of that property, for the years of the period of adjustment under Article 20(2) which have not yet elapsed at the time of the cessation of that right of option (in this case, in fact, 1 January 1996) for the sole reason that, as a result of a legislative amendment, the taxable person is no longer entitled to waive exemption for that letting?

2. If the answer to the first question is in the affirmative, is the legislative amendment inapplicable only in respect of the deducted tax mentioned in Question 1, or is it also inapplicable — until the period of adjustment has expired — in respect of the taxed status (subject to the provisions of Article 13(C) of the Sixth Directive) of the letting referred to in Question 1?

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

(2) Judgment of 8.6.2000 in Case C-396/98.

Appeal brought on 19 December 2001 by Dieckmann & Hansen GmbH against the judgment delivered on 23 October 2001 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-155/99 between Dieckmann & Hansen GmbH and the Commission of the European Communities

(Case C-492/01 P)

(2002/C 44/15)

An appeal against the judgment delivered on 23 October 2001 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-155/99 between Dieckmann & Hansen GmbH and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 19 December 2001 by Dieckmann & Hansen GmbH, represented by H.-J. Rabe, Rechtsanwalt, of Messrs Latham & Watkins Schön Nolte, of Warburgstrasse 50, D-20354 Hamburg.

The appellant claims that the Court should:

(1) set aside the judgment of the Court of First Instance of the European Communities of 23 October 2001;

(2) order the respondent to pay to the appellant DEM 8 725 320,45 together with interest at 8 % per annum from the date on which the action was brought;

(3) declare that the respondent is liable to compensate the appellant for all further damage suffered by it as a result of its having had to dismiss its employees and close down its business with effect from 31 December 1999 on account of the ban on the importation of Kazakh caviar;

(4) order the Commission to pay the costs.

Pleas in law and main arguments

— The Court of First Instance wrongly assumed that, for the purposes of adopting Decision 1999/244/EC [1], which deleted Kazakhstan from the list of third countries, the Commission enjoyed a wide discretion, with the result that only a sufficiently serious breach of the principle of sound administration protecting the appellant could render the Commission liable to pay compensation. The decision in question is based on the authorisation conferred by Article 2(3) of Council Decision 95/408/EC, which lays down, according to the relevant conditions and content, and in conjunction with Article 2(2), specific, restricted criteria to be observed by the Commission. The Commission is required to ascertain whether the authorities of the third country concerned have given guarantees at least equivalent to those provided for by Council Directive 91/493/EEC or, as the case may be, whether those guarantees continue to exist.

  Findings made in respect of such guarantees must reflect concrete circumstances which are specified in Council Directive 91/943 and concern conditions for the production and placing on the market of the products to be imported from the third country in question, especially as regards the maintenance of hygiene standards for the protection of consumers. Those conditions are to be specifically determined. Agricultural or economic considerations cannot be taken into consideration in such determination.

— In any event, the Court of First Instance disregarded the fact that the Commission manifestly and significantly exceeded any discretion which it may have had: although the veterinary inspectors instructed by the Commission stated in their report that their assessment of the 'general situation in Kazakhstan so far as concerns the veterinary

legislation in force, current health policy and veterinary supervision' also applied to caviar, their findings in fact related exclusively to the production of horse meat and pike fillets. The Commission made a proposal to the Veterinary Committee without having itself carried out any examination or appraisal and without submitting the inspectors' report.

— The Court of First Instance further disregarded the fact that, in addition, the Commission clearly violated the principle of the protection of legitimate expectations, to the detriment of the appellant: according to Commission Decision 1999/136 of 28 January 1999, published in the Official Journal of 18 February 1999, the importation of caviar from Kazakhstan continued to be permitted (List II). Thereafter, at the beginning of March 1999, the appellant concluded contracts for the supply of caviar from Kazakhstan for the 1999 season. However, in January 1999, at all events before 18 February 1999, the Commission was already aware of the results of the inspection, as set out in the report, which prompted it to submit to the Veterinary Committee, for consideration at its meeting on 23 February 1999, a draft providing for deletion from List II. In view of the small number of importers affected, it would have been easy for the Commission to inform those undertakings of the results of the inspection visit, which were available to it in January, and of the consequences which those results might have for the importation of caviar.

(1) Decision 1999/244/EC amending Decision 97/296/EC drawing up the list of third countries from which the import of fishery products is authorised for human consumption (OJ 1999 L 91, p. 37).

Action brought on 21 December 2001 by the Commission of the European Communities against the French Republic

(Case C-496/01)

(2002/C 44/16)

An action against the French Republic was brought before the Court of Justice of the European Communities on 21 December 2001 by the Commission of the European Communities, represented by Maria Patakia, acting as Agent.

The applicant claims that the Court should:

1. Declare that by:

— requiring bio-medical analysis laboratories established in other Member States to have their place of business on French territory as a condition for obtaining the requisite operating authorisation; and

— precluding any reimbursement of the cost of bio-medical analyses carried out by bio-medical analysis laboratories established in another Member State,

the French Republic has failed to fulfil its obligations under Articles 43 and 49 of the EC Treaty; and

2. order the French Republic to pay the costs.

Pleas in law and main arguments

— Restriction of Article 43 EC by virtue of the fact that the requisite administrative authorisation for operating a bio-medical analysis laboratory (Article L 757 of the Public Health Code) can only be delivered by the Préfet for the *département* in which the laboratory operates (Article 15 of Decree No 76-1004). That provision precludes the setting up of an establishment having the status of an office or agency. The Commission does not dispute that a Member State may provide for rules governing the authorisation for operating laboratories. Such rules must however take account of the requirements and safeguards already complied with in another Member State of establishment without disregarding that a higher level of protection may exist in the first Member State. Otherwise, failure to take into account safeguards already complied with in another Member State would lead to a duplicate procedure for applying for authorisation over and above the authorisation which the foreign laboratory has already obtained in its Member State of establishment. Such a situation runs counter to the principle of proportionality which requires that the objectives pursued must be achieved by the least restrictive means.

— Restriction of Article 43 EC by virtue of the fact that the French legislation (Article R 332-3 of the Social Security Code) restricts financial assistance from sickness insurance schemes only to exceptional cases, that is to say where the insured person is able to show that he cannot obtain the appropriate treatment on French territory, which is moreover not the case so far as concerns bio-medical analysis laboratories. That constitutes a barrier both to the freedom to provide services (where a laboratory does not have an establishment in France) and to the right to set up secondary establishments (where a laboratory has a secondary establishment where analyses are not however carried out).

The Commission takes the view that such restrictions are not justified on public-health grounds in particular. The safeguards afforded by the Council directives in the field (93/16/EEC, 85/432/EEC, 85/433/EEC, 78/1026/EEC and 78/1027/EEC)

ensure to a great extent the quality of medical services, so that specific measures restricting the basic freedoms enshrined in the Treaty should be exceptional and fully justified by special circumstances. As for monitoring in particular, there is nothing to prevent laboratories established in other Member States agreeing, voluntarily, to comply with French standards when applying for authorisation nor is there anything to prevent French inspectors from travelling abroad so long as their inspection is freely consented to by the laboratories concerned.

Reference for a preliminary ruling by the Tribunal d'Arrondissement de Luxembourg by order of 19 December 2001 in the case of Zita Modes SARL v Administration de l'enregistrement et des domaines

(Case C-497/01)

(2002/C 44/17)

Reference has been made to the Court of Justice of the European Communities by order of 19 December 2001 by the Tribunal d'Arrondissement de Luxembourg which was received at the Court Registry on 24 December 2001, for a preliminary ruling in the case of Zita Modes SARL v Administration de l'enregistrement et des domaines on the following questions:

1. Is Article 5(8) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1] to be interpreted as meaning that the transfer of a totality of assets to a taxable person constitutes a sufficient condition for the transaction not to be made subject to value added tax, whatever the taxable person's activity may be or whatever use he makes of the property transferred?

2. If the answer to the first question is in the negative, is Article 5(8) of the Sixth Directive to be interpreted as meaning that the transfer of a totality of assets to a taxable person is to be understood as meaning a transfer of all or part of an undertaking to a taxable person who continues the whole activity of the transferor undertaking or continues the activity of the branch corresponding to the part of the totality of assets transferred, or merely as meaning a transfer of a totality of assets or part thereof to a taxable person who continues the transferor's line of activity in whole or in part, without there being any transfer of an undertaking or branch of an undertaking?

3. If the answer to any part of the second question is in the affirmative, does Article 5(8) of the Sixth Directive require or allow a State to require that the recipient's activity be pursued in accordance with the licence issued by the competent authority for the activity or branch of activity stipulated, assuming that the activity pursued falls within lawful economic channels in the sense contemplated in the case-law of the Court of Justice?

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[1] OJ L 145, 13.6.1977, p. 1.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 November 2001

in Case T-139/98: Amministrazione Autonoma dei Monopoli di Stato (AAMS) v Commission of the European Communities [1]

(Competition — Article 86 of the EC Treaty (now Article 82 EC) — Abuse of a dominant position — Italian cigarette sector — Distribution agreement — Abusive contract terms — Abusive conduct — Reduction of fine)

(2002/C 44/18)

(Language of the case: Italian)

In Case T-139/98: Amministrazione Autonoma dei Monopoli di Stato (AAMS), represented by P.G. Ferri and D. Del Gaizo, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: G. Marenco and L. Pignataro) supported by Rothmans International Europe BV, established in Amsterdam (Netherlands), represented by S. Crosby, solicitor, with an address for service in Luxembourg, and JT International BV, formerly R.J. Reynolds International BV, established in Hilversum (Netherlands), represented by O.W. Brouwer, J.-N. Louis and T. Janssens, lawyers, with an address for service in Luxembourg — application for annulment of Commission Decision 98/538/EC of 17 June 1998 relating to a proceeding pursuant to Article 86 of the EC Treaty (IV/36.010-F3 — Amministrazione Autonoma dei Monopoli di Stato) (OJ 1998 L 252, p. 47) and, in the alternative, for reduction of the fine imposed — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; E. Sheehan, Legal Secretary, for the Registrar, has given a judgment on 22 November 2001, in which it:

1. *Dismisses the action;*

2. *Orders AAMS to pay the costs of the Commission and of the interveners and to bear its own costs.*

[1] OJ C 358 of 21.11.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 18 September 2001

in Case T-112/99 Métropole télévision (M6) and Others v Commission of the European Communities [1]

(Actions for annulment — Competition — Pay television — Joint venture — Article 85 of the EC Treaty (now Article 81 EC) — Article 85(1) of the Treaty — Negative clearance — Ancillary restrictions — Rule of reason — Article 85(3) of the Treaty — Exemption decision — Duration)

(2002/C 44/19)

(Language of the case: French)

In Case T-112/99 Métropole télévision (M6), established in Neuilly sur Seine (France), Suez-Lyonnaise des eaux, established in Nanterre (France), France Télécom, established in Paris (France), represented by D. Théophile, lawyer, with an address for service in Luxembourg, and Télévision française 1 SA (TF1), established in Paris, represented by P. Dunaud and P. Elsen, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: E. Gippini Fournier and K. Wiedner), supported by CanalSatellite, established in Paris, represented by L. Cohen-Tanugi and F. Brunet, lawyers, with an address for service in Luxembourg — application for annulment of Articles 2 and 3 of Commission Decision 1999/242/EC of 3 March 1999 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/36.237 — TPS) (OJ 1999 L 90, p. 6) — the Court of First Instance (Third Chamber), composed of J. Azizi, President, K. Lenaerts and M. Jaeger, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 18 September 2001, in which it:

1. *Dismisses the application;*

2. *Orders the applicants to bear their own costs and to pay those incurred by the Commission and by the intervener.*

[1] OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 November 2001

in Case T-128/99: Signal Communications Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Word mark TELEYE — Application accompanied by a claim of priority on the basis of the earlier mark TELEEYE — Request for correction — Substantial alteration of the mark)

(2002/C 44/20)

(Language of the case: English)

In Case T-128/99: Signal Communications Ltd, established in Hong Kong (China), represented by J. Grayston and A. Bywater, Lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: F. López de Rego and G. Humphreys) — action brought against the decision of 24 March 1999 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Case R 219/1998-1), notified to the applicant on 25 March 1999 — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, R.M. Moura Ramos and V. Tiili, Judges; D. Christensen, Administrator, for the Registrar, gave a judgment on 15 November 2001, in which it:

1. *Annuls the decision of 24 March 1999 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Case R 219/1998-1);*

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

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[1] OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 November 2001

in Case T-194/99: Cristiano Sebastiani v Commission of the European Communities [1]

(Officials — Promotion — Staff report — Absence — Consideration of comparative merits)

(2002/C 44/21)

(Language of the case: French)

In Case T-194/99: Cristiano Sebastiani, residing in Brussels, represented by J.-N. Louis, G.-F. Parmentier and V. Peere, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and D. Waelbroeck) — application for annulment of the decision of the Commission not to promote the applicant to Grade A 6 in the 1998 promotions procedure — the Court of First Instance (Single Judge); J. Palacio González, Administrator, for the Registrar, gave a judgment on 15 November 2001, in which it:

1. *annuls the decision of the Commission not to promote the applicant to Grade A 6 in the 1998 promotions procedure;*

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

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[1] OJ C 314 of 30.10.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 November 2001

in Case T-142/00: Michel Van Huffel v Commission of the European Communities [1]

(Officials — Access to internal competitions — Contracts with undertakings — Competition notice — Condition for admission requiring membership of the staff covered by the Staff Regulations)

(2002/C 44/22)

(Language of the case: French)

In Case T-142/00: Michel Van Huffel, member of the temporary staff of the Commission of the European Communities, residing in Chaumont-Gistoux (Belgium), represented by

J.N. Louis and V. Peere, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall, F. Clotuche-Duvieusart and D. Waelbroeck) application for the annulment of the decision of the selection board for internal competition COM/TA/99 not to admit the applicant to the tests for that competition — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; S. Haukka, Legal Secretary, for the Registrar, gave a judgment on 15 November 2001, in which it:

1. *dismisses the application;*

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

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(1) OJ C 247 of 26.8.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Case T-64/99 DEP: UK Coal plc v Commission of the European Communities (1)

(Taxation of costs)

(2002/C 44/23)

(Language of the case: English)

In Case T-64/99 DEP: UK Coal plc, formerly RJB Mining plc, established in Harworth (United Kingdom), represented by J. Lawrence, Solicitor, with an address for service in Luxembourg, against Commission of the European Communities (Agents: K.-D. Borchardt and N. Khan) — application for taxation of the costs to be paid by the defendant to the applicant pursuant to the order of the Court of First Instance of 25 July 2000 in Case T-64/99 RJB Mining v Commission (not published in the ECR) — 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; H. Jung, Registrar, has made an order on 19 September 2001, the operative part of which is as follows:

The amount of costs recoverable by the applicant in Case T-64/99 shall be GBP 13 000.

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(1) OJ C 160 of 5.6.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 11 September 2001

in Case T-270/99, Polyxeni Tessa and Andreas Tessas v Council of the European Union (1)

(Application for annulment — Natural or legal persons — Measures of direct and individual concern — Council decision under the third paragraph of Article 93(2) of the EC Treaty (now the third paragraph of Article 88(2) EC — Inadmissibility)

(2002/C 44/24)

(Language of the case: Greek)

In Case T-270/99: Polyxeni Tessa and Andreas Tessas, residing in Larissa (Greece), represented by A. Tessas, lawyer, with an address for service in Luxembourg, against Council of the European Union (Agents: J. Carbery and D. Zachariou) supported by Hellenic Republic (Agents: I. Chalkias and P. Mylonopoulos) — application for the annulment of the Council decision of 15 December 1998 relating to the taking over by the Hellenic Republic of the debts of certain agricultural cooperatives and other agricultural businesses owed to the Agricultural Bank of Greece — the Court of First Instance (Extended Fourth Chamber), composed of P. Mengozzi, President, R. García-Valdecasas, V. Tiili, R. M. Moura Ramos and J. D. Cooke, Judges; H. Jung, Registrar, has made an order on 11 September 2001, the operative part of which is as follows:

1. *The action is dismissed as inadmissible;*

2. *The applicants shall pay their own costs and those of the defendant;*

3. *The Hellenic Republic shall pay its own costs.*

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(1) OJ C 63 of 4.3.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 19 September 2001

in Cases T-54/00 and T-73/00: Federación de Cofradías de Pescadores de Guipúzcoa and Others v Council of the European Union [1]

(Fisheries — Conservation of marine resources — Exchange of fishing quotas — Transfer of anchovy fishing quota allocated to Portugal — Application for annulment — Objection of illegality — Admissibility)

(2002/C 44/25)

(Language of the case: Spanish)

In Case T-54/00: Federación de Cofradías de Pescadores de Guipúzcoa, established in San Sebastián (Spain), Federación de Cofradías de Pescadores de Vizcaya, established in Bilbao (Spain), Federación de Cofradías de Pescadores de Cantabria, established in Santander (Spain), and 59 other applicants and Case T-73/00: Nicólas Martínez Rey y otro CB, established in Ares, La Coruña (Spain), Porvenir Número Cuatro, SL, established in Riviera, La Coruña (Spain), and Hermanos Deza, SL, established in Sanxenxo, Pontevedra (Spain), represented by J.R. García-Gallardo Gil-Fournier and D. Domínguez Pérez, lawyers, against Council of the European Union (Agents: J. Carbery, I. Diez Parra and M. Sims-Robertson), supported by Commission of the European Communities (Agents: T. van Rijn and J. Guerra Fernández) — application, in both cases, for the annulment of the ninth heading of Annex I D of Council Regulation (EC) No 2742/1999 of 17 December 1999, fixing for 2000 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required, and amending Regulation (EC) No 66/98 (OJ L 341, 1999, p. 1) and, second, annulment of point 1.1, (i) of Annex IV of Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources (OJ L 71, 1995, p. 5) — the Court of First Instance (Third Chamber), composed of J. Azizi, President, K. Lenaerts and M. Jaeger, Judges; H. Jung, Registrar, made an order on 19 September 2001, the operative part of which is as follows:

1. *The actions in Cases T-54/00 and Case T-73/00 are to be joined for the purposes of the order.*

2. *The actions are dismissed as manifestly inadmissible.*

3. *The applicants shall bear their own costs and pay those of the Council.*

4. *The Commission shall bear its own costs.*

([1]) OJ C 135 of 13.5.2000 and OJ C 163 of 10.6.2000.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 8 October 2001

in Case T-236/00 R II: Gabriele Stauner and Others v European Parliament and Commission of the European Communities

(Proceedings for interim relief — Framework agreement on relations between the European Parliament and the Commission of the European Communities — Article 197 EC — Articles 108 and 109 of the Rules of Procedure — Admissibility)

(2002/C 44/26)

(Language of the case: German)

In Case T-236/00 R II: Gabriele Stauner, residing in Wolfratshausen (Germany), Freddy Blak, residing in Næstved (Denmark), Heide Rühle, residing in Stuttgart (Germany), Esko Olavi Seppänen, residing in Helsinki (Finland), Bart Staes, residing in Antwerp (Belgium), Members of the European Parliament, represented by J. Sedemund and T. Lübbig, lawyers, with an address for service in Luxembourg, against European Parliament (Agents: C. Pennera and M. Berger) and the Commission of European Communities (Agents: U. Wölker and X. Lewis) — application brought under Articles 108 and 109 of the Rules of Procedure of the Court of First Instance for, first, the suspension of operation of points 3.2, first indent, and 3.3 of Annex III to the Framework Agreement on Relations between the European Parliament and the Commission concluded on 5 July 2000 between the European Parliament and the Commission of the European Communities (OJ C 121, 2001, p. 122) and, secondly, for the adoption of other interim measures — the President of the Court of First Instance made an order on 8 October 2001, the operative part of which is as follows:

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

2. *Costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 15 June 2001

in Case T-339/00 R Bactria Industriehygiene-Service GmbH v Commission of the European Communities

(Application for interim relief — Regulation (EC) No 1896/2000 — Directive 98/8/EC — Urgency not established)

(2002/C 44/27)

(Language of the case: English)

In Case T-339/00 R: Bactria Industriehygiene-Service GmbH, established at Kirchheimbolanden (Germany), represented by K. Van Maldegem and C. Mereu, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: R. Wainwright and L. Ström) — application for suspension of operation of Article 6(2) and (3) and Article 7(1) of Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products (OJ L 228, 2000, p. 6) — the President of the Court of First Instance has made an order on 15 June 2001, the operative part of which is as follows:

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

2. *Costs are reserved.*

ORDER OF THE COURT OF FIRST INSTANCE

of 25 October 2001

in Case T-354/00: Metropole télévision SA (M6) v Commission of the European Communities [1]

(Competition — Rejection of a complaint — Objection of inadmissibility — Decision confirming a contested decision within the prescribed period — Inadmissibility)

(2002/C 44/28)

(Language of the case: French)

In Case T-354/00: Metropole télévision SA (M6), established in Paris (France), represented by D. Théophile, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: K. Wiedner and B. Mongin) — application for the annulment of the Commission's decision of 12 September 2000 rejecting the complaint lodged by the applicant on 6 March 2000 — the Court of First Instance (Second Chamber), composed of R. M. Moura Ramos, President, J. Pirrung and A. W. H. Meij, Judges; H. Jung, Registrar, made an order on 25 October 2001, the operative part of which is as follows:

1. *The action is dismissed as inadmissible;*

2. *The applicant shall bear the costs;*

3. *There is no need to adjudicate on the application to intervene made by the European Broadcasting Union.*

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[1] OJ C 79 of 10.3.2001.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 2 August 2001

in Case T-111/01 R Saxonia Edelmetalle GmbH v Commission of the European Communities

(Application for interim measures — Suspension of operation of a measure — State aid — Legal interest in bringing proceedings — Urgency)

(2002/C 44/29)

(Language of the case: German)

In Case T-111/01: Saxonia Edelmetalle GmbH, established in Halsbrücke (Germany), represented by P. von Woedtke, lawyer, against Commission of the European Communities (Agents: V. Kreuschitz and V. Di Bucci) — application for the suspension of operation of Commission Decision C (2001) 1028 of 28 March 2001 on State aid implemented by the Federal Republic of Germany for EFBE Verwaltungs GmbH & Co. Management KG (now Lintra Beteiligungsholding GmbH, a holding company which includes Zeitzer Maschinen, Anlagen Geräte GmbH; LandTechnik Schlüter GmbH; ILKA MAFA Kältetechnik GmbH; SKL Motoren- und Systembautechnik GmbH; SKL Spezialapparatebau GmbH; Magdeburger Eisengießerei GmbH; Saxonia Edelmetalle GmbH and Gothaer Fahrzeugwerk GmbH) — the President of the Court of First Instance has made an order on 2 August 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 12 September 2001

in Case T-139/01 R Comafrica SpA and Dole Fresh Fruit Europe Ltd. & Co. v Commission of the European Communities

(Interim proceedings — Common organisation of the banana market — Allocation of import licences — Admissibility — Conditions for the grant of interim relief — Provisional nature of the relief sought)

(2002/C 44/30)

(Language of the case: English)

In Case T-139/01 R: Comafrica SpA, having its registered office in Genoa (Italy) and Dole Fresh Fruit Europe Ltd. & Co, having its registered office in Hamburg (Germany), represented by Mr. B. O'Connor, Solicitor, and Mr. P.B.G. Martin, Barrister, against Commission of the European Communities (Agents: X. Lewis and C. Van der Hauwaert) — application for suspension of Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community and Commission Regulation (EC) No 1121/2001 of 7 June 2001 fixing the adjustment coefficient to be applied to each traditional operator's reference quantity under the tariff quotas for imports of bananas — the President of the Court of First Instance has made an order on 12 September 2001, the operative part of which is as follows:

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

2. *Costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 22 October 2001

in Case T-141/01 R: Entorn, Sociedat Limitada Enginyeria i Serveis v Commission of the European Communities

(Proceedings for interim relief — Fumus boni juris — Urgency — Withdrawal of Community financial assistance)

(2002/C 44/31)

(Language of the case: Spanish)

In Case T-141/01 R: Entorn, Sociedat Limitada Enginyeria i Serveis, established in Barcelona (Spain), represented by M.C. Belard-Kopke Marques-Pinto, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: L. Visaggio and S. Pardo Quintillán) — application for suspension of the operation of Commission Decision C(1999) 534 of 4 March 1999 withdrawing Community financial assistance — the President of the Court of First Instance made an order on 22 October 2001, the operative part of which is as follows:

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

2. *Costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 18 October 2001

in Case T-196/01 R: Aristoteleio Panepistimio Thessalonikis v Commission of the European Communities

(Interlocutory proceedings — EAGGF — Withdrawal of financial assistance — Urgency — None)

(2002/C 44/32)

(Language of the case: Greek)

In Case T-196/01 R: Aristoteleio Panepistimio Thessalonikis, represented by D. Nikopoulos, lawyer, v Commission of the European Communities (Agent: M. Condou-Durande) — application for suspension of operation of the Commission's decision C(2001) 1284 of 8 June 2001 withdrawing Community financial assistance — the President of the Court of First Instance made an order on 18 October 2001, the operative part of which is as follows:

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

2. *The costs are reserved.*

Action brought on 2 November 2001 by Aslantrans AG against the Commission of the European Communities

(Case T-282/01)

(2002/C 44/33)

(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 November 2001 by Aslantrans AG, established at Rickenbach bei Wil (Switzerland), represented by J. Weigell, lawyer.

The applicant claims that the Court should:

— annul the Commission's decision (REM 19/00) of 18 July 2001 finding the remission of import duty by the Federal Republic of Germany to the applicant to be unjustified, and authorise the Federal Republic of Germany, pursuant to Article 908(3) of Regulation (EEC) No 2454/93 [1], to remit to the applicant, in accordance with its application of 28 May 1998, duty already paid in the sum of DEM 395 392,01;

— order the defendant to pay the costs.

Pleas in law and main arguments

In May 1997 the applicant despatched, at a principal customs office in Belgium, 12 110 000 cigarettes under the external Community transit procedure for transportation from Antwerp to Montenegro, the customs office of destination being in Austria. During a stop at a motorway rest area, the lorry and the consignment which it was carrying were stolen; the lorry driver reported the theft immediately at the competent police headquarters.

The parties are in dispute concerning the question whether, on the facts, the defendant is obliged, pursuant to Article 239 of Regulation (EEC) No 2913/92 [2], to authorise the Federal Republic of Germany to remit the customs duties already paid.

The applicant argues that the remission application should be granted, not least because the Commission did not give a decision within the nine-month time-limit prescribed by Article 907 of the regulation implementing the Customs Code. The applicant further claims that it has been the victim of organised crime and that the theft of the lorry occurred in 'special circumstances' within the meaning of Article 239 of Regulation (EEC) No 2913/92.

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[1] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

[2] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Action brought on 13 November 2001 by Organización de Productores de Túnidos Congelados against Commission of the European Communities

(Case T-283/01)

(2002/C 44/34)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 November 2001 by Organización de Productores de Túnidos Congelados, whose registered office is at Bermeo (Vizcaya, Spain), represented by Ramón Garcia-Gallardo and Javier Guillén Carrau, lawyers.

The applicant claims that the Court should:

— declare the present application admissible;

— annul the act which is the subject of the present application, by which the European Commission has reduced the quantities eligible for compensatory allowance in respect of OPTUC, namely, Article 2(2) of and the annex to Commission Regulation (EC) No 1670/2001 of 20 August 2001 providing for compensation to producer organisations for tuna delivered to the processing industry between 1 October and 31 December 2000 [1];

— order any other measure which the Court may deem appropriate requiring the Commission to fulfil its obligations under Article 233 EC and, more specifically, requiring the Commission to reexamine the situation;

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

Pleas in law and main arguments

The applicant, a Spanish organisation of producers of frozen tunny which has previously challenged before the Court of First Instance a number of Commission regulations providing for compensatory allowances granted to producer organisations for the tuna supplied to the Community processing industry in the quarters between 1 July 1999 and 30 September 2000 ([2]), challenges in the present case the regulation relating to the period between 1 October and 31 December 2000.

The pleas in law and main arguments are similar to those advanced in Case T-142/01 ([3]).

([1]) OJ 2001 L 224, p. 4.
([2]) Case T-142/01.
([3]) OJ C 245, p. 28.

Action brought on 27 November 2001 by Der Grüne Punkt — Duales System Deutschland Aktiengesellschaft against the Commission of the European Communities

(Case T-289/01)

(2002/C 44/35)

(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 27 November 2001 by Der Grüne Punkt — Duales System Deutschland Aktiengesellschaft, Cologne (Germany), represented by W. Deselaers, B. Meyring and E. Wagner, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare Article 3(a) and (b) of the Decision of the defendant of 17 September 2001 (C(2001) 2672 final) relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement void;

— in the alternative, declare the decision in question void in its entirety;

— annul the applicant's commitment as set out in paragraph 72 of the decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

Since 1991 the applicant has operated what is currently the only system covering the whole of Germany for the collection and recovery of used sales packaging bearing its trade mark 'Der Grüne Punkt' ('Green Dot'). The applicant organises regular collections of packaging from nearly all private households in Germany. The applicant grants domestic and foreign manufacturers and/or distributors the right to mark sales packaging covered by the applicant's exemption system under the terms of a uniform agreement on use of the mark.

In September 1992 the applicant notified the Commission of its statutes and a sample of the agreements underlying the system. In January 1996, at the request of the defendant, the applicant gave the commitment on joint use set out in paragraph 71 of the contested decision and subject to various restrictions. In March 1997 the Commission announced its intention to take a favourable view of all the agreements notified pursuant to Article 19(3) of Regulation No 17 ([1]).

By decision of 20 April 2001 the Commission required the applicant also to allow the use of the 'Green Dot' mark for packaging which is not part of the applicant's system but part of that of a competitor and is intended for disposal by that competitor. The applicant brought an action against that decision before the Court of First Instance ([2]).

In June 2001 the defendant informed the applicant that it intended to attach conditions to the the decision on exemption. According to the applicant those conditions go far beyond the commitment given by the applicant. On 17 September 2001 the defendant finally issued the contested decision on exemption subject to two such conditions.

The applicant seeks the annulment of Article 3(a) and (b) of that decision and submits that the conditions imposed in it prejudice its legal position as it is forced to accept the use of its collection and sorting facilities by competitors.

The applicant argues that, by imposing the condition in Article 3(a) of the decision, the defendant has applied Article 81(3) EC incorrectly inter alia in that the condition is not objectively necessary as the use of the collection and sorting facilities is in no way indispensable for the activities of competitors. Moreover, the condition, which is disproportionate, entails an encroachment on the specific subject matter of the applicant's trade mark and distortion of competition to the detriment of the applicant.

The applicant argues, further, that, by imposing the condition in Article 3(a), the defendant has applied Article 86(2) EC incorrectly, since the applicant, which is entrusted with a service of general interest, can no longer operate its country-wide system under economically viable conditions and make the necessary adjustments between profitable and less profitable sectors.

Moreover, by imposing the condition in Article 3(b) the defendant has applied Article 86(2) EC incorrectly. Finally, the defendant, by seeking the commitment of 25 September 1998 (recital 72), has breached the fundamental right to freedom of access to justice.

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(1) OJ C 100, p. 4.

(2) Case T-151/01 Der Grüne Punkt — Duales System Deutschland AG v Commission OJ 2001 C 289, p. 6.

Action brought on 28 November 2001 by the Land Brandenburg against the Commission of the European Communities

(Case T-290/01)

(2002/C 44/36)

(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 28 November 2001 by the Land Brandenburg (Germany), represented by G. Schohe and T. Masing, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision contained in the Commission's debit note No 3240305411 of 13.9.2001 addressed to the applicant, relating to project No LIFE94/D/A211/00029/BND re Contract No B4-3200/94/730;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is challenging a demand for repayment of Community grants totalling EUR 464 329,22 made by the Commission in the contested debit note.

The applicant and the Community concluded, within the framework of the LIFE project (1), a contract relating to the planned 'Ecological revitalisation of the Brandenburgische Elbtalaue': preparatory planning and Gnevsdorfer Werder sub-project'. The Commission undertook to participate by making a contribution of 50 % of the actual cost, but not exceeding ECU 1,5 million. The project thus promoted, which was designed to prepare the reinstatement of the embankment between the municipalities of Lenzen and Wustrow, was finished in 1998. Shortly before the end of the project, it became apparent that it would not be possible to reinstate the embankment as extensively as had been planned.

In February 2001 the Commission gave notice that, in its view, the applicant, in carrying out the project, had partly deviated from the contract and that, since the applicant had reduced the surface area of the project, the Commission was only able to co-finance the work done in the reduced area. By the contested decision, the Commission called upon the applicant to repay to it EUR 464 329,33.

The applicant asserts that the Community is not entitled to demand the repayment at issue by means of a Commission decision; instead, it is obliged to have recourse to law before the national courts. In addition, it maintains that the Commission has failed to comply with its obligation to provide a statement of reasons and has violated the applicant's rights of defence. Finally, the Commission has infringed the principle of proportionality.

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(1) Council Regulation (EEC) No 1973/92 of 21 May 1992 establishing a financial instrument for the environment (LIFE) (OJ 1992 L 206, p. 1), as amended by Regulation (EC) No 1404/96 of 15.7.1996 (OJ 1996 L 181, p. 1).

Action brought on 30 November 2001 by Dessauer Versorgungs- und Verkehrsgesellschaft mbH — DVV — Stadtwerke and four other undertakings against the Commission of the European Communities

(Case T-291/01)

(2002/C 44/37)

(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 30 November 2001 by Dessauer

Versorgungs- und Verkehrsgesellschaft mbH — DVV — Stadtwerke, of Dessau (Germany), Neubrandenburger Stadtwerke GmbH, of Neubrandenburg (Germany), Stadtwerke Schwäbisch Hall GmbH, of Schwäbisch Hall (Germany), Stadtwerke Tübingen GmbH, of Tübingen (Germany) and Stadtwerke Uelzen GmbH, of Uelzen (Germany), represented by D. Fouquet, lawyer.

The applicants claim that the Court should:

— declare that, by failing, within two months after being formally called upon by letter of 29 August 2001 to act pursuant to the second paragraph of Article 232 EC, to examine the complaint made on the basis of Articles 87 and 88 EC and to reach a decision in the light of that examination, the Commission has infringed Article 232 EC;

— order the Commission to pay the costs of the proceedings, including the costs incurred by the applicants, even in the event that, following the bringing of the action, the Commission takes action in such a way that, in the opinion of the Court, the proceedings have become nugatory.

Pleas in law and main arguments

The applicants are German public utilities producing their own electricity. Since the introduction of competition in the electricity market, the applicants, as energy suppliers, have been in competition with, in particular, the 19 existing nuclear power stations as regards the production of electricity in the Federal Republic of Germany.

According to the applicants, the nuclear power station operators set aside reserves in their commercial and tax balance sheets in respect of the cost of having to close down at some future date and the disposal of irradiated fuel elements and radioactive waste. The disposal and shutting-down costs are allocated to the sales proceeds from continuous electricity production. However, according to the applicants, the obligation under commercial law to set aside reserves affects, at the same time, the way in which the nuclear power station operators are treated for tax purposes. As a result of the German tax rules, a significant part of the tax additionally demanded is in fact made freely available to the nuclear power station operators by virtue of the legislation on tax relief.

The applicants assert that the exemption of reserves under fiscal law in favour of nuclear power stations constitutes a grant by the Federal Republic of Germany of unlawful, non-notified aid which is incompatible with the common market. They maintain that the Commission was obliged to open a formal procedure against the Federal Republic of Germany pursuant to Articles 10(1), 13(1) and 4(4) of Council Regulation (EC) No 659/1999 [1]. Had it done so, the Commission would then have been constrained, under the law applicable to grants of aid, to adopt a negative decision against the Federal Republic of Germany on the facts as stated.

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[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 88 EC) (OJ 1999 L 83, p. 1).

Action brought on 28 November 2001 by Phillips-Van Heusen Corporation against Office for the Harmonization of the Internal Market (trade marks and designs) (OHIM)

(Case T-292/01)

(2002/C 44/38)

(Language of the case: Italian)

An action against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM) was brought before the Court of First Instance of the European Communities on 28 November 2001 by Phillips-Van Heusen Corporation of New York (United States of America), represented by Fabrizio Jacobacci. The other party in proceedings before the Commission was: Pash Textilvertrieb und Einzelhandel GmbH of Munich (Germany)

The applicant claims that the Court should:

— annul Decision R 0740/2000-3 of the Third Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 12 September 2001 notified on 28 September 2001 to the applicant;

— definitively reject the opposition brought by the defendant against registration of Community trade mark No 161331 BASS, on behalf of Phillips-Van Heusen Corporation, in respect of the whole of Class 25;

— order the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) to register Community trade mark No 161331 BASS;

— order the defendant and the OHIM to pay, jointly or severally, to the applicant the costs, expenses and fees incurred in both the present proceedings and the opposition and appeal proceedings before the Office for Harmonization in the Internal Market.

Pleas in law and main arguments

Applicant for the Community trade mark:	The applicant
The Community trade mark concerned:	Word mark 'BASS' — application No 161331, registration sought in respect of goods in Class 25 (footwear and clothing)
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Pash Textilvertrieb und Einzelhandel GmbH
Trade mark or sign asserted by way of opposition in the opposition proceedings:	German mark registered under the name 'PASH', registered in order to distinguish various articles in international classes 18 and 25
Decision of the Opposition Division:	Opposition dismissed
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division
Grounds of claim:	— Inconsistency between the form of order sought and the order made, since the opposition was not brought against the 'shoes' mentioned in Class 25 — Coexistence of the marks 'BASS' and 'PASH' on the German market — Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

Action brought on 3 December 2001 by Donatella Ineichen against Commission of the European Communities

(Case T-293/01)

(2002/C 44/39)

(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 3 December 2001 by Donatella Ineichen, residing in Brussels, represented by Marc-Albert Lucas, lawyer.

The applicant claims that the Court should:

— annul the decision of 29 January 2001 of the Head of Unit ADMIN B 3 fixing her place of recruitment at Brussels and refusing to grant her the daily subsistence allowance;

— annul the implied rejection of the applicant's complaint of 27 April 2001 against the original contested decision;

— order the Commission to pay to the applicant the amounts to which she is entitled as a result of having Rome as her place of recruitment, as set out in the grounds, and in particular the daily subsistence allowance, with default interest at 7 % per annum, as from the date on which those amounts fell due until payment is made in full;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant was seconded to the Commission in Brussels for three years before being engaged as a member of the auxiliary staff. For that purpose, the applicant's place of recruitment was set as Rome. The applicant was subsequently engaged as a member of the temporary staff for an indeterminate period, with Brussels as the place of recruitment. That decision is contested by the applicant.

In support of her application, the applicant pleads an error in law as regards the concept of 'residence' and a manifest error of assessment. According to the applicant, her residence in Brussels was provisional during the entire period of her engagement with the Commission in Brussels. In her submission, the facts demonstrate that her habitual residence remained Rome. Moreover, the applicant claims that the Commission illegally withdrew a decision giving rise to entitlement. Initially, the place of recruitment of the applicant was Rome when she took up her duties as a member of the temporary staff. That decision was withdrawn by the subsequent contested decision not to grant the applicant entitlement to the daily subsistence allowance.

Action brought on 3 December 2001 by Lucía Aparicio Chofré against Commission of the European Communities

(Case T-294/01)

(2002/C 44/40)

(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 3 December 2001 by Lucía Aparicio Chofré, residing in Valencia (Spain), represented by Gloria Ballester Cañada, lawyer.

The applicant claims that the Court should:

— annul the decision of the selection board in general competition COM/B/01 in the event that it does not mark the tests sat by the applicant on 6 July 2001.

Pleas in law and main arguments

The applicant claims that the contested decision, which excludes her from the competition on the ground that she does not meet the conditions relating to professional experience required under Point III.B of the competition notice, not only adversely affects her but, moreover, is unlawful and contrary to the wording of the competition notice [1], according to which candidates must have acquired, by the deadline for the submission of applications, at least 4 years' professional experience. The applicant argues that, in accordance with the criteria laid down in the notice for the calculation of the period of professional experience, she has shown that she has acquired 7 years and 8 months of experience, so that the board should have allowed her to take part in the competition.

[1] Published in OJ 2001 C 24A.

Action brought on 3 December 2001 by Nordmilch eG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-295/01)

(2002/C 44/41)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 3 December 2001 by Nordmilch eG, of Zeven (Germany), represented by C. Spintig, lawyer.

The applicant claims that the Court should:

— annul the decision adopted on 19 September 2001 by the Third Board of Appeal in Case No R 826/2000-3;

— order the defendant to proceed with the registration proceedings in respect of Community trade mark application No 607895, in particular to re-open the opposition proceedings pending under opposition No B 190746 and, following the conclusion of those opposition proceedings, in so far as Community trade mark application No 607895 is not found to be excluded from registration in accordance with the first sentence of Article 43(5) of the Community trade mark regulation [1], order the defendant to register the trade mark applied for pursuant to Article 45 of that regulation;

— order the defendant to pay the costs.

Pleas in law and main arguments

The trade mark applied for:	the verbal mark 'OLDENBURGER' — Application No 607895
Goods or services:	goods in Classes 29, 30 and 32 (including milk and dairy products)
Decision contested before the Board of Appeal:	refusal of registration by the examiner
Decision of the Board of Appeal:	rejection of the appeal
Grounds of claim:	— error of law in the application of Article 7(1)(c) and Article 7(2) of Regulation (EC) No 40/94; — misinterpretation of Article 12(b) of Regulation (EC) No 40/94; — error of law by the defendant in failing to call upon the applicant to give a disclaimer.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 27 November 2001 by Furness Intercontinental Services B.V. against the Commission of the European Communities

(Case T-299/01)

(2002/C 44/42)

(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 27 November 2001 by Furness Intercontinental Services B.V., established in Rotterdam, represented by Johannes Wilhelmus Lambertus Maria ten Braak, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul decision REM 12/00 of the Commission on the grounds stated, pursuant to Article 230 EC;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant operates as a customs agent, storing goods under customs control on behalf of third parties and dealing with customs declarations. In that connection, it drew up declarations in respect of the external Community transit of ethyl alcohol from the Netherlands to Morocco. On behalf of the same client, the applicant also drew up declarations in respect of other shipments under the external Community transit procedure. It subsequently became apparent, however, that there had been irregularities in relation to those shipments. The goods were not in fact delivered to their declared destination, and the Spanish customs authorities' documents relating to the clearance of the goods appeared to be forgeries. The applicant states that it was not aware of this.

The applicant was required to pay the import duties still due in that regard. The applicant subsequently applied to the Netherlands authorities for a refund of those import duties pursuant to Article 239(2) of Regulation (EEC) No 2913/92 [1]. The Netherlands authorities in turn submitted an application in this regard to the European Commission pursuant to Article 13 of Regulation (EEC) No 1430/79 [2] and Article 905 of Regulation No 2454/93 [3]. That application was rejected by the Commission in the contested decision.

In support of its claim, the applicant pleads, first of all, violation of the right to a fair hearing, as well as infringement of Articles 906a and 907 of Regulation No 2454/93 and misunderstanding of the principle of legal certainty. In particular, the applicant was not given access to all the documents on the file. As a result, it was unable to express its comments on the matter in a similar way, and could not validly put forward its point of view in accordance with Article 906a of Regulation No 2454/93. In addition, the Commission's decision was given out of time, inasmuch as the time-limit for adoption of the decision could not be extended pursuant to Article 907 of that regulation.

The applicant further pleads infringement of Article 905 et seq. of Regulation No 2454/93 and the absence of a statement of reasons for the contested decision. According to the applicant, the Commission should have carried out an independent investigation into the question whether or not the Spanish customs authorities were involved in the fraud. The applicant maintains that the possible involvement of customs officials in the fraud constitutes a special circumstance justifying the repayment of the customs duties.

The applicant also pleads a misunderstanding of the facts on the part of the Commission. Thus, the Commission failed to take any or any sufficient account of the fact that the competent authorities were already aware of the fraud even before the transportation in question took place. Moreover, those authorities thereafter requested the applicant's assistance in their investigation of that fraud. The applicant further states that the simple declaration by the Spanish authorities that false stamps were used in that fraud is not supported by sufficient evidence. In addition, according to the applicant, the decision does not contain an adequate statement of reasons on those points.

Lastly, the applicant claims that the Commission, in adopting the contested decision, misconstrued its own responsibility in the matter. According to the applicant, the Commission is responsible for the proper functioning of the customs system. At the time of the shipments in question, it was not possible for the applicant to avoid or trace the fraud, which was perpetrated by third parties, even by taking all possible precautionary measures.

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(1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.

(2) Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties.

(3) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

Action brought on 7 December 2001 by Carlo De Nicola against European Investment Bank

(Case T-300/01)

(2002/C 44/43)

(Language of the case: Italian)

An action against the European Investment Bank was brought before the Court of First Instance of the European Communities on 7 December 2001 by Carlo De Nicola, represented by Luigi Isola, lawyer.

The applicant claims that the Court should:

— annul the verbal dismissal of 6 September 2001 notified to the applicant by Thomas Beckett, the director of the Rome office, the subsequent dismissal served on the applicant by letter received on 12 September 2001, signed by the President of the European Investment Bank (EIB), Philippe Maystadt, together with all other consequent and related acts, including necessarily certain articles of the Staff Regulations and the Code of Conduct, in so far as the latter applies to the applicant;

— order the EIB to reinstate the applicant, restore his career as from February 1999 and pay the remuneration due to him in the meantime (together with interest) and pay the costs of the proceedings and damages in the terms set out below and to be further expounded in the course of proceedings.

Pleas in law and main arguments

The applicant in the present action, who is challenging his dismissal by the defendant and the facts surrounding it, is the same one as in T-7/98, T-208/98 and T-109/99 De Nicola v EIB [1] and T-120/01 De Nicola v EIB [2].

In support of his arguments, the applicant claims:

— that the Code of Conduct does not apply to him, inasmuch as it is a unilateral act drawn up and issued solely by the employer, not being required by the individual contract of employment or by the Staff Regulations;

— implied refusal to initiate disciplinary proceedings, in that it was only by letter of 13 June 2001 that the President of the EIB informed the applicant of the misconduct and infringements alleged against him, dating back to 1998. Such delay moreover is in breach of the employee's rights of defence;

— that the Disciplinary Board was irregularly constituted. The applicant claims in that respect that Article 40 of the Staff Regulations is unlawful inasmuch as it does not provide in any event for the substitution of the Head of Personnel, despite the existence of a dispute between him and the applicant, and inasmuch as there is no provision requiring a quorum of 4 voting members;

— infringement of the procedure provided for in Article 40 of the Staff Regulations;

— irregularity of the verbal dismissal of 6 September 2001, inasmuch as such dismissal is not provided for by any Community or other provision, and it was moreover intimated by the Director of the Rome office, whereas the Staff Regulations accords this power only to the President of the EIB;

— irregularity of the dismissal of 12 September 2001. The applicant points out in that respect that the misconduct leading to the disciplinary measure is certainly not held to be serious since the President, by virtue of Article 39 of the Staff Regulations, could have immediately suspended the official. Furthermore, the defendant made hardly any mention of specific times and places nor adduced evidence of the misconduct but instead sought to dismiss him for failure to cooperate during the disciplinary proceedings despite his never having been accused of such failure.

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(1) Judgment of 23 February 2001 ECR-SC 2001 I-A-49, II-185.
(2) OJ 2001 C 227, p. 30.

Action brought on 30 November 2001 by Alitalia — Linee aeree italiane S.p.A. against the Commission of the European Communities

(Case T-301/01)

(2002/C 44/44)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the

European Communities on 30 November 2001 by Alitalia — Linee aeree italiane S.p.A., represented by Mario Siragusa, Gian Michele Roberti, Giuseppe Scassellati, Francesca Maria Moretti and Francesco Sciaudone, lawyers.

The applicant claims that the Court should:

— annul the second decision in its entirety;

— in the alternative, annul Article 1 of the second decision in so far as it subjects compatibility of the injection of capital to compliance with the conditions laid down in the first decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought against Commission Decision 2001/723/EC of 18 July 2001 concerning the recapitalisation of the applicant company [1]. The applicant claims that that decision reproduces the wording of Articles 1, 2 and 3 of Decision 97/789/EC, whereby the defendant authorised the aid granted by Italy to Alitalia, in the shape of a contribution of capital totalling ITL 2 750 billion intended to cover the restructuring of the company. The action against the latter decision was upheld by the Court [2] on the grounds of failure to state reasons and manifest error of assessment.

In the decision under challenge in the present action, the Commission notes that Article 233 EC does not require it to reopen the procedure and once again follow all the stages of that procedure. In regard to the lack of reasoning, the Commission states specifically that the procedure in question may be taken up again from the stage at which the flaw in question occurred. So far as manifest errors of assessment are concerned, the second decision must be based on the factual evidence gathered when the first decision was adopted and the errors identified by the Court relate to assessments of fact the truth of which was not in dispute.

In support of its arguments, the applicant claims:

— infringement of Article 233 EC;

— infringement of Article 88(2) EC inasmuch as the Commission could not, in the present case, adopt a new decision of content identical to the preceding annulled decision without initiating once again the procedure provided for therein.

— breach of the principle of sound administration, legal certainty and legitimate expectations, as well as of the obligation imposed by Article 4(5) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 EC [3], inasmuch as the aforementioned general principles and provision required the Commission to act within two months;

— breach of the rights of defence of the applicant, given that it was impossible for the applicant to defend itself by participating in the administrative procedure leading to the adoption of the contested act;

— breach of the obligation to provide a statement of reasons.

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(1) OJ 2001 L 271, p. 28.
(2) Case T-296/97 Alitalia v Commission [2000] ECR II-3871.
(3) OJ 1999 L 83, p. 1.

Action brought on 10 December 2001 by Gerhard Birkhoff against Commission of the European Communities

(Case T-302/01)

(2002/C 44/45)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 December 2001 by Gerhard Birkhoff, represented by Vincenzo Salvatore, lawyer

The applicant claims that the Court should:

— annul the decision of the Commission of the European Communities, Directorate General — Admin B, of 26 September 2001, as manifestly unfounded in fact and in law, together with any preceding, related or subsequent acts, in particular 'Notification of amendment No 10 to the demand for payment of 21 February 1992', issued on 4 July 2001.

— order the Commission to compensate the applicant for the ensuing damage, in particular those arising from the loss of Sickness Insurance cover and other non-material damage;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, a former official of the defendant institution, at present retired, contests the withdrawal, with retrospective effect, of family allowance in respect of a dependent daughter. The contested measure is based on 'evidence that the income from gainful employment of [his] daughter exceeds 40 % of the basic salary of an official in Grade D 4/1'.

In support of his arguments, the applicant claims:

— unlawfulness of the act on the ground of misuse of powers (lack and inadequacy of reasons, erroneous assumptions and distortion of the facts)

— infringement of Article 2(5) of Annex VII to the Staff Regulations

— breach of the principle of non-discrimination

— breach of the principle of legitimate expectations and failure to protect acquired rights.

Action brought on 30 November 2001 by Ayuntamiento de Osera de Ebro against Commission of the European Communities

(Case T-303/01)

(2002/C 44/46)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 November 2001 by Ayuntamiento de Osera de Ebro (Zaragoza), Osera de Ebro (Zaragoza, Spain), represented by Javier Ariño Barcelona, lawyer.

The applicant claims that the Court should:

— annul the decision of the Commission not to take action on complaint No 1999/5330;

— order the European Commission to take the following measures:

1. require the Government of the Kingdom of Spain not to implement the decision to alter the route followed by Subsection II (Ebro river crossing) of the Zaragoza-Lleida section of the Madrid-Barcelona-French border high speed line, known as Solución Sur Alternativa B (Southern Solution, Option B), declared environmentally viable by the Spanish Council of Ministers on 25 February 1999 and approved by way of resolution by the Secretary of State for Infrastructure and Transport of 17 March 1999;

2. further require the Kingdom of Spain to ensure that those works be carried out using the only properly approved route adopted by resolution of the Secretary of State for Town and Country Planning of 24 February 1995 as Alternativa Norte (Northern Option); and

3. any other measure which in consequence of the preceding orders may be deemed appropriate, including a warning from the Commission to the Spanish authorities that enforcement measures could be adopted in the absence of adequate compliance, including infringement proceedings and/or the withdrawal of European funding for the project.

Pleas in law and main arguments

The applicant states that it is one of the municipal authorities affected by the route of the *High Speed Madrid-Zaragoza-French Border* railway line, for which the Spanish Government obtained funding from the Community cohesion fund (Project No 95/11/65/007) [1]. Initially, the Spanish administrative authorities approved the route for Subsection II of the Zaragoza-Lleida section, which opted, from the two possible choices at the Source of the Ebro, for the 'Northern Option', which did not affect the protected area of the Soto de Aguilar, a riverside wilderness of great ecological and wildlife value within the municipality limits of the applicant. Subsequently, despite the report to the contrary drawn up by the competent environmental authorities, the Spanish Government decided to alter the route initially planned, opting for Solución Sur Alternativa B (Southern Solution, Option B), which not only is the less environmentally friendly but is also the more expensive.

On 1 December 1999, the applicant informed the Commission of those facts, requesting it to order the Spanish Government not to implement the decision relating to the Solución Sur Alternativa B (Southern Solution, Option B) route and to opt for the 'Northern Alternative', and to warn it that, if it failed to comply, the Community assistance received was to be returned (Complaint No 1999/5330). As a result of that complaint, the Commission invited the Spanish Government to make its views known and, after examining the reply — to which the applicant has not had access, despite repeatedly requesting it — the Commission decided to take no action on the case.

The applicant claims that, contrary to the view taken by the Commission, the Spanish Government's measures amount to an infringement of Community law, namely of:

— Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [2];

— Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [3]; and

— legislation on the use of Community funding, in particular Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund [4].

The applicant is of the view that, in the face of such flagrant infringement of Community law by the Spanish authorities as pointed out in its complaint, the Commission should have taken steps to defend Community law and that its decision not to take action must accordingly be annulled.

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[1] OJ 1998 C 153, p. 172.
[2] OJ 1979 L 103, p. 1.
[3] OJ 1992 L 206, p. 7.
[4] OJ 1994 L 130, p. 1.

Action brought on 10 December 2001 by Abdirisak Aden and Others against the Council of the European Union and the Commission of the European Communities

(Case T-306/01)

(2002/C 44/47)

(Language of the case: Swedish)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 10 December 2001 by Abdirisak Aden and Others represented by Leif Silbersky and Thomas Olsson.

The applicant claims that the Court of First Instance should:

— annul Commission Regulation (EC) No 2199/2001 of 12 November 2001 [1];

— annul Council Regulation (EC) No 467/2001 of 6 March 2001 [2], or in the alternative declare that Council Regulation (EC) No 467/2001 of 6 March 2001 is not applicable;

— order the defendant to pay the costs of the proceedings in an amount to be specified later.

Pleas in law and main arguments

Three of the applicants are Swedish citizens of Somali origin and the fourth is a non-profitmaking association registered under Swedish law, which *inter alia* provides support for refugees and has assisted with financial transactions between residents of Sweden and residents of Somalia.

On 15 October 1999 the United Nations Security Council adopted UNSCR Resolution 1267 (1999), calling for *inter alia* sanctions against the Taliban, which were extended by UNSCR Resolution 1333 (2000) to cover Osama Bin Laden and persons and bodies associated with him. On 6 March 2001 the Council adopted Regulation (EC) No 467/2001. Under Article 2 of that regulation all funds and other financial resources belonging to any natural or legal person, entity or body listed in Annex I are to be frozen. On the basis of Article 10 of Regulation (EC) No 467/2001 the Commission adopted Regulation (EC) No 2199/2001. As a result of the amendment of its list by the Taliban Sanctions Committee of the Security Council, the Commission decided to add a number of other persons and bodies to Annex I to Regulation (EC) No 467/2001, including the applicants.

The applicants submit that Council Regulation (EC) No 467/2001 — which provides that the applicants' funds are to be frozen and that resources are not to be made available to them — exceeds the powers which the Council has under Article 60 and 301 EC and is in breach of Article 249 EC. The Council does not have the power to adopt sanctions against individuals and organisations and has misused its powers. Moreover, in practice, the Council and Commission have delegated decisions as to which persons or organisations should be included in Annex I to the Taliban Sanctions Committee.

The applicants submit further that the Council and Commission have not examined the reasons why the Taliban Sanctions Committee included the applicants in its list. Nor were the applicants given any opportunity to apprise themselves of and refute the allegations on which the decision to include them in Annex I was based. The applicants have thus had onerous sanctions imposed on them without any opportunity to defend themselves. The fundamental legal principle of the right to a fair and equitable hearing has thus been disregarded.

Moreover, Regulation (EC) No 2199/2001 is marred by significant flaws, which points clearly to the need to consider each individual case separately. At the same time, there are good reasons to doubt whether it is appropriate to impose sanctions on the applicants.

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(1) Commission Regulation (EC) No 2199/2001 of 12 November 2001 amending, for the fourth time, Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) No 337/2000 (OJ 2001 L 295, p. 16).

(2) Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000 (OJ 2001 L 67, p. 1).

Action brought on 17 December 2001 by R against the Commission of the European Communities

(Case T-313/01)

(2002/C 44/48)

(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 December 2001 by R, a Commission official, represented by K. Tagaras, Lawyer, with an address for service in Athens.

The applicant claims that the Court should:

— grant the application in its entirety and in respect of all its claims;

— annul the measure of 22 May 2001 adversely affecting the applicant and the implied rejection of her administrative complaint;

— require the defendant to pay to the applicant 85 % of the cost of surgery on her of BEF 200 234;

— order the defendant to pay the costs.

Pleas in law and main arguments

1. The applicant challenges the adverse decision of the Claims Office of the Joint Sickness Insurance Scheme of 22 May 2001 relating to meeting the costs of operating on the applicant.

2. (a) Infringement of Articles 24 and 72 of the Staff Regulations, and of the Rules on sickness insurance for officials of the European Communities (in particular of Article 1 and Annexes I and II).

   (b) Infringment of the principles of good adminstration and of transparency.

   (c) Manifest error as to the facts and clear error of assessment.

   (d) Inadequate statement of grounds.

Action brought on 27 December 2001 by José María Pujals Gomis against Commission of the European Communities

(Case T-332/01)

(2002/C 44/49)

(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 27 December 2001 by José María Pujals Gomis, residing in Cerdanyola del Vallés (Spain), represented by Javier Pujals Gomis, lawyer.

The applicant claims that the Court should:

— Annul the decision of the selection board for Competition COM/B/1/0 of 28 September 2001;

— In the alternative, annul the present procedure and order a fresh procedure;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests the decision of the selection board for General Competition COM/B/1/0, organised by the Commission with a view to constituting a reserve list of assistants at Grade B 5/B 4 in the field of customs [1], not to mark the tests sat by the applicant on 6 July 2001 on the ground that he did not have sufficient professional experience as required by Point III.B.2 of the competition notice.

The applicant claims that he has the professional experience required by the competition notice, as attested when he submitted his application, and that the contested decision does not comply with the requirement to give reasons and is contrary to the principle of equality of treatment. The applicant further argues that inviting the candidates to tests and to then check whether the conditions laid down for the competition have been met amounts to an inadequate procedure which runs counter to the principles of sound administration and of legal certainty and deprives those candidates who have been excluded of their rights of defence.

[1] OJ C 24A, p. 22.

Removal from the Register of Case T-102/99 [1]

(2002/C 44/50)

(Language of the case: French)

By order of 9 November 2001, the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-102/99: L v Commission of the European Communities.

[1] OJ C 188, 3.7.99.

Removal from the Register of Case T-68/01 [1]

(2002/C 44/51)

(Language of the case: German)

By order of 5 November 2001, the President of the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-68/01: Huber + Suhner MRS GmbH v Commission of the European Communities.

[1] OJ C 212, 28.7.01.