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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Sixth Chamber)

10 January 2002

in Case C-101/99 (Reference for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office): The Queen v Intervention Board for Agricultural Produce, ex parte: British Sugar plc [1]

(Agriculture — Common organisation of the markets — Sugar — Attribution as 'C sugar' of a quantity of sugar produced during a given marketing year — Charge payable in respect of sugar disposed of on the internal market — Levied in the case of export with an export licence — Export refunds)

(2002/C 84/01)

(Language of the case: English)

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

In Case C-101/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between The Queen and Intervention Board for Agricultural Produce, ex parte: British Sugar plc, on the interpretation of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EEC) No 305/91 of 4 February 1991 (OJ 1991 L 37, p. 1), on the validity of Commission Regulation (EEC) No 2630/81 of 10 September 1981 on special detailed rules for the application of the system of import and export licences in the sugar sector (OJ 1981 L 258, p. 16), on the interpretation and validity of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991 (OJ 1991 L 336, p. 26), and on the interpretation of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1),the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric (Rapporteur), C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Judges, Advocate General: J. Mischo, Registrar: H. von Holstein, Deputy Registrar, has given a judgment on 10 January 2002, in which it has ruled:

1. *Article 24(1)(c) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector, as amended by Council Regulation (EEC) No 305/91 of 4 February 1991, requires an undertaking to have in fact produced a volume of sugar equal to the sum of its A and B quotas before it may attribute sugar as C sugar.*

2. *As a matter of principle the competent national authority is not authorised to demand that an undertaking pay a charge pursuant to Article 3(1) of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota, as amended by Commission Regulation (EEC)*

No 3559/91 of 6 December 1991, where it has not informed the undertaking of that requirement within the period prescribed by Article 3(2) of that regulation. Exceeding the time-limit may be permissible where the competent national authority, without negligence on its part, did not know the details of the undertaking's sugar production and where that lack of knowledge may reasonably be attributed to the undertaking, because it has not acted in good faith and has not complied with all the relevant provisions.

3. *The competent national authority may, without infringing Articles 3 and 4 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products or the general principles of Community law, refuse to accept retrospectively an export declaration presented for the purpose of obtaining export refunds and of extending the period allowed for supplying proof of export where, because the undertaking has applied for and obtained from that authority a C sugar export licence for sugar which it was impossible to regard as C sugar, the undertaking has neither applied for nor obtained the export refunds to which it would have been entitled if the sugar had been exported as A or B sugar.*

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(1) OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

30 January 2002

in Case C-107/99: Italian Republic v Commission of the European Communities (1)

(Structural funds — Financing of Community initiatives — Alteration of indicative allocations)

(2002/C 84/02)

(Language of the case: Italian)

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

In Case C-107/99, Italian Republic (Agent: U. Leanza, assisted by I. M. Braguglia), v Commission of the European Communities (Agents: E. de March, K. Simonsson and H. Speyart) supported by Ireland (Agent: J. Payne, assisted by D. McGuinness, SC, and E. Kent, solicitor) and by United Kingdom of Great Britain and Northern Ireland (Agent: J. E. Collins, assisted by D. Wyatt, QC,): Application for the annulment of the Commission's decision of 16 December 1998 approving amendments to the indicative allocation of Community initiatives, communicated to the Italian Republic by letter of 19 January 1999 from the Secretary-General of the Commission, and of all measures underlying or linked to that decision, the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), R. Schintgen and V. Skouris, Judges, Advocate General: J. Mischo, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 30 January 2002, in which it:

1. *Annuls the Commission's decision of 16 December 1998 approving amendments to the indicative allocation of Community initiatives, communicated to the Italian Republic by letter of 19 January 1999 from the Secretary-General of the Commission;*

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

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

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(1) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

24 January 2002

in Case C-118/99: French Republic v Commission of the European Communities (1)

(Clearance of accounts — EAGGF — 1995 financial year — Arable crops)

(2002/C 84/03)

(Language of the case: French)

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

In Case C-118/99, French Republic (agents: J.-F. Dobelle, K. Rispal-Bellanger and C. Vasak), Republic of Finland (agent:T. Pynnä) v Commission of the European Communities (agent: P. Oliver): Application for partial annulment of Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in

respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1999 L 61, p. 37), in so far as it concerns the French Republic, the Court (Sixth Chamber), composed of: F. Macken (Rapporteur), President of the Chamber, N. Colneric, C. Gulmann, R. Schintgen and V. Skouris, Judges, Advocate General: S. Alber, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 24 January 2002, in which it has ruled:

1. *Dismisses the application;*

2. *Orders the French Republic to pay the costs;*

3 .*Orders the Republic of Finland to bear its own costs.*

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(1) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 2001

in Case C-146/99: Italian Republic v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — Tomatoes — Minimum price for producers)

(2002/C 84/04)

(Language of the case: Italian)

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

In Case C-146/99: Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo) v Commission of the European Communities (Agent: F.P. Ruggeri Laderchi, assisted by A. Dal Ferro) — application for annulment of Commission Decision 1999/186/EC of 3 February 1999 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 61, p. 34), in so far as it disallowed ITL 7 421 939 820 of expenditure incurred by the Italian Republic for aid for the processing of tomatoes — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), V. Skouris and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 27 November 2001, in which it:

1. *Dismisses the action;*

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

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(1) OJ C 174 of 19.6.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

24 January 2002

in Case C-164/99 (Reference for a preliminary ruling from the Amtsgericht Tauberbischofsheim): Portugaia Construções L[da] (1)

(Freedom to provide services — Construction undertakings — Directive 96/71/EC — Posting of workers — Minimum wage)

(2002/C 84/05)

(Language of the case: German)

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

In Case C-164/99: Reference to the Court under Article 234 EC by the Amtsgericht Tauberbischofsheim (Germany) for a preliminary ruling in the infringement proceedings brought before that court against Portugaia Construções L[da], on the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) and of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges, Advocate General: J. Mischo, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 24 January 2002, in which it has ruled:

1. *In assessing whether the application by the host Member State to service providers established in another Member State of domestic legislation laying down a minimum wage is compatible with Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC), it is for the national authorities or, as the case may be, the national courts to determine whether, considered objectively, that legislation provides for the protection of posted workers. In that regard, although the declared intention of the legislature cannot be conclusive, it may nevertheless constitute an indication as to the objective pursued by the legislation.*

2. *The fact that, in concluding a collective agreement specific to one undertaking, a domestic employer can pay wages lower than the minimum wage laid down in a collective agreement declared to be generally applicable, whilst an employer established in another Member State cannot do so, constitutes an unjustified restriction on the freedom to provide services.*

---

(1) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 November 2001

in Case C-202/99: Commission of the European Communities v Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Directive 78/687/EEC — Maintenance of a second system of training leading to entry to the profession of dentist — Maintenance of the possibility of dual registration in the register of doctors and in that of dentists for doctors mentioned in Article 19 of Directive 78/686/EEC)

(2002/C 84/06)

(Language of the case: Italian)

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

In Case C-202/99: Commission of the European Communities (Agents: E. Traversa and B. Mongin) v Italian Republic (Agent: U. Leanza, assisted by P. G. Ferri) — application for a declaration that, by maintaining a second system of training for entry into the dental profession, which is contrary to Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners (OJ 1978 L 233, p. 10), and by maintaining the possibility for doctors who practise as dentists to be doubly registered in the registers of medical and dental practitioners, the Italian Republic has failed to fulfil its obligations under that directive — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, L. Sevón and C.W.A. Timmermans, Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 29 November 2001, in which it:

1. *Declares that, by providing for a second system of training leading to entry to the profession of dentist, which does not comply with Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners, the Italian Republic has failed to fulfil its obligations under that directive.*

2. *Dismisses the remainder of the action.*

3. *Orders the Italian Republic and the Commission of the European Communities to pay their own costs.*

---

(1) OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 November 2001

in Case C-221/99 (reference for a preliminary ruling from the Giudice di Pace di Genova): Giuseppe Conte v Stefania Rossi (1)

(Architects' fees — Summary procedure for the recovery of debts — Opinion of the professional association — Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC))

(2002/C 84/07)

(Language of the case: Italian)

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

In Case C-221/99: reference to the Court under Article 234 EC from the Giudice di Pace di Genova (Magistrate's Court, Genoa) (Italy) for a preliminary ruling in the proceedings pending before that court between Giuseppe Conte and Stefania Rossi — on the interpretation of Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC) — 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, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 29 November 2001, in which it has ruled:

1. *Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC) do not preclude national legislation which, in the context of a summary procedure for the recovery of debts relating to the fees of an architect, a member of a professional association, requires the court seised of the dispute to follow the opinion of that association in relation to the settlement of those fees in so far as that opinion ceases to be binding where the debtor initiates proceedings inter partes.*

2. *Articles 5 and 85 of the Treaty do not preclude national legislation which provides that the members of a profession may set at their discretion the fees for certain services which they perform.*

---

(1) OJ C 246 of 28.8.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

8 January 2002

in Case C-248/99 P: French Republic v Monsanto Company (1)

(Appeal — Regulation (EEC) No 2377/90 — Application to include a recombinant bovine somatotrophin (BST) in the list of substances not subject to a maximum residue limit — Prohibition on placing that substance on the market — Rejection of the application for inclusion)

(2002/C 84/08)

(Language of the case: English)

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

In Case C-248/99 P, French Republic (agents: initially R. Abraham and J.-F. Dobelle and K. Rispal-Bellanger and C. Vasak, and, subsequently, G. de Bergues): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 22 April 1999 in Case T-112/97 Monsanto v Commission [1999] ECR II-1277, seeking to have that judgment set aside, the other parties to the proceedings being: Monsanto Company, registered in accordance with the laws of the State of Delaware (United States of America), (agents: C. Stanbrook, QC, and D. Holland, barrister), and Commission of the European Communities (agents: J.-L. Dewost, R. Wainwright and T. Christoforou) the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola, L. Sevón (Rapporteur), M. Wathelet and C.W.A. Timmermans, Judges, Advocate General: S. Alber, Registrar: L. Hewlett, Administrator, has given a judgment on 8 January 2002, in which it:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 22 April 1999 in Case T-112/97 Monsanto v Commission;*

2. *Dismisses the application for annulment of Decision C(97) 148 final of the Commission of 14 January 1997 concerning the definition of a position, in accordance with Article 175 of the EC Treaty, on the inclusion of bovine somatotrophin in Annex II to Regulation No 2377/90;*

3. *Orders Monsanto Company to bear its own costs and to pay the costs incurred by the Commission of the European Communities both before the Court of First Instance and the Court of Justice;*

4. *Orders the French Republic to bear its own costs incurred both before the Court of First Instance and the Court of Justice.*

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(1) OJ C 265 of 18.9.1999.

JUDGMENT OF THE COURT

5 February 2002

in Case C-255/99 (Reference for a preliminary ruling from the Oberster Gerichtshof): Anna Humer (1)

(Regulation (EEC) No 1408/71 — Definition of 'family benefits' — Payment of advances on maintenance payments — Condition that the minor child must be resident within the national territory — Entitlement to benefits abroad)

(2002/C 84/09)

(Language of the case: German)

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

In Case C-255/99: Reference to the Court under Article 234 EC by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court concerning the minor Anna Humer, on the interpretation of Articles 3, 4(1)(h), 73 and 74 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), and of Articles 3(1) and 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), the Court, composed of: P. Jann, President of the First and Fifth Chambers, acting for the President, F. Macken and N. Colneric (Presidents of Chambers), C. Gulmann, D.A.O. Edward (Rapporteur), A. La Pergola, M. Wathelet, R. Schintgen and V. Skouris, Judges, Advocate General: S. Alber, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 5 February 2002, in which it has ruled:

a) *A benefit such as the advance on maintenance payments provided for by the Österreichische Bundesgesetz über die Gewährung von Vorschüssen auf den Unterhalt von Kindern (Unterhaltsvorschussgesetz) (Austrian Federal Law on the Grant of Advances for the Maintenance of Children), adopted in 1985, is a family benefit within the meaning of Article 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996.*

b) *A person, one or other of whose parents is an employed person or is out of work, comes within the scope ratione personae of Regulation No 1408/71, as amended, as a member of the family of a worker within the meaning of Article 2(1) of Regulation No 1408/71, read in the light of Article 1(f)(i) thereof.*

c) *Articles 73 and 74 of Regulation No 1408/71 are to be construed as meaning that, where a minor child resides with the parent who has custody in a Member State other than the Member State providing the benefit, and where the other parent, who is under an obligation to pay maintenance, works or is unemployed in the Member State providing the benefit, that child is entitled to receive a family benefit such as the advance on maintenance payments provided for by the Unterhaltsvorschussgesetz.*

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(1) OJ C 265 of 18.9.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 December 2001

in Case C-269/99 (reference for a preliminary ruling from the Landgericht Hamburg): Carl Kühne GmbH & Co. KG, Rich. Hengstenberg GmbH & Co., Ernst Nowka GmbH & Co. KG v Jütro Konservenfabrik GmbH & Co. KG (1)

(Agricultural products and foodstuffs — Geographical indications and designations of origin — Simplified registration procedure — Protection of the designation 'Spreewälder Gurken')

(2002/C 84/10)

(Language of the case: German)

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

In Case C-269/99: reference to the Court under Article 234 EC from the Landgericht (Regional Court) Hamburg (Germany) for a preliminary ruling in the proceedings pending before that court between Carl Kühne GmbH & Co. KG, Rich. Hengstenberg GmbH & Co., Ernst Nowka GmbH & Co. KG and Jütro Konservenfabrik GmbH & Co. KG — on the validity of Commission Regulation (EC) No 590/1999 of 18 March 1999 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92 (OJ 1999 L 74, p. 8) — the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, R. Schintgen and V. Skouris, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 6 December 2001, in which it has ruled:

Consideration of the question referred has not revealed any matter of such a nature as to affect the validity of Commission Regulation (EC) No 590/1999 of 18 March 1999 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92, in so far as it registers the designation 'Spreewälder Gurken'.

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(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 2001

in Case C-270/99 P: Z v European Parliament (1)

(Appeal — Officials — Disciplinary proceedings — Failure to comply with the time-limits laid down in Article 7 of Annex IX to the Staff Regulations of Officials of the European Communities)

(2002/C 84/11)

(Language of the case: French)

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

In Case C-270/99 P: Z, an official of the European Parliament, residing in Brussels (Belgium), represented by J.-N. Louis, avocat, appeal against the judgment of the Court of First Instance of the European Communities (First Chamber) of 4 May 1999 in Case T-242/97 Z v Parliament [1999] ECR I-A-77 and II-401, seeking to have that judgment set aside in so far as the Court of First Instance dismissed Z's action against

the decision of the Secretary-General of the European Parliament of 28 October 1996 imposing on him the disciplinary measure of downgrading, the other party to the proceedings being: European Parliament (Agent: H. Krück) — the Court, composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann, J.-P. Puissochet and V. Skouris (Rapporteur), Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 November 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Z to pay the costs.*

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(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 2001

in Joined Cases C-285/99 and C-286/99 (reference for a preliminary ruling from the Consiglio di Stato): Impresa Lombardini SpA — Impresa Generale di Costruzioni v ANAS — Ente nazionale per le strade, Società Italiana per Condotte d'Acqua SpA (C-285/99), and between Impresa Ing. Mantovani SpA and ANAS — Ente nazionale per le strade, Ditta Paolo Bregoli (C-286/99), intervener: Coopsette Soc. coop. arl (C-286/99) (1)

(Directive 93/37/EEC — Public works contracts — Award of contracts — Abnormally low tenders — Detailed rules for explanation and rejection applied in a Member State — Obligations of the awarding authority under Community law)

(2002/C 84/12)

(Language of the case: Italian)

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

In Joined Cases C-285/99 and C-286/99: reference to the Court under Article 234 EC) from the Consiglio di Stato (Italy) for a preliminary ruling in the proceedings pending before that court between Impresa Lombardini SpA — Impresa Generale di Costruzioni v ANAS — Ente nazionale per le strade, Società Italiana per Condotte d'Acqua SpA (C-285/99), and between Impresa Ing. Mantovani SpA and ANAS — Ente nazionale per le strade, Ditta Paolo Bregoli (C-286/99), intervener: Coopsette Soc. coop. arl (C-286/99) — on the interpretation of Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) — the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting as President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 27 November 2001, in which it has ruled:

Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts must be interpreted as follows:

— *it precludes a Member State's legislation and administrative practice which allow the contracting authority to reject tenders offering a greater discount than the anomaly threshold as abnormally low, taking into account only those explanations of the prices proposed, covering at least 75 % of the basic contract value mentioned in the contract notice, which tenderers were required to attach to their tender, without giving the tenderers the opportunity to argue their point of view, after the opening of the envelopes, on those elements of the prices proposed which gave rise to suspicions;*

— *it also precludes a Member State's legislation and administrative practice which require the contracting authority to take into consideration, for the purposes of examining abnormally low tenders, only explanations based on the economy of the construction method, technical solutions chosen, or exceptionally favourable conditions available to the tenderer, but not explanations relating to all those elements for which minimum values are laid down by law, regulation or administrative provision or can be ascertained from official data;*

— *however, provided all the requirements it imposes are otherwise complied with and the aims pursued by Directive 93/37 are not defeated, it does not in principle preclude a Member State's legislation and administrative practice which, in the matter of identifying and examining abnormally low tenders, first, require all tenderers, under threat of exclusion from participation in the contract, to accompany their tender with explanations of the prices proposed, covering at least 75 % of the basic value of that contract, and, second, apply a method of calculating the anomaly threshold based on the average of all the tenders received for the tender procedure in question, so that tenderers are not in a position to know that threshold at the time they lodge their file; the result produced by applying that calculation method must, however, be capable of being reconsidered by the contracting authority.*

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(1) OJ C 314 of 30.10.1999.

JUDGMENT OF THE COURT

of 6 December 2001

in Case C-353/99 P: Council of the European Union v Heidi Hautala and Others [1]

(Appeal — Public right of access to Council documents — Council Decision 93/731/EC — Exceptions to access to documents — Protection of the public interest concerning international relations — Partial access)

(2002/C 84/13)

(Language of the case: English)

In Case C-353/99 P: Council of the European Union (Agents: J. Aussant, G. Maganza and M. Bauer), supported by Kingdom of Spain (Agent: R. Silva de Lapuerta) — appeal against the judgment of the Court of First Instance of the European Communities (First Chamber) of 19 July 1999 in Case T-14/98 Hautala v Council [1999] ECR II-2489, seeking to have that judgment set aside, the other parties to the proceedings being: Heidi Hautala, Member of the European Parliament (Lawyers: O.W. Brouwer and T. Janssens), supported by Kingdom of Denmark (Agent: J. Molde), and by United Kingdom of Great Britain and Northern Ireland (Agent: J.E. Collins and H. Davies), Republic of Finland, (Agents: first H. Rotkirch and then T. Pynnä), Kingdom of Sweden (Agent: A. Kruse) and French Republic — the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet, V. Skouris, J.N. Cunha Rodrigues (Rapporteur) and C.W.A. Timmermans, Judges; P. Léger, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 6 December 2001, in which it:

1. *Dismisses the appeal;*

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

3. *Orders the Kingdom of Spain, the Kingdom of Denmark, the United Kingdom of Great Britain and Northern Ireland, the Republic of Finland and the Kingdom of Sweden to bear their own costs.*

[1] OJ C 333 of 20.11.1999.

JUDGMENT OF THE COURT

of 29 November 2001

in Case C-366/99 (reference for a preliminary ruling from the Conseil d'État): Joseph Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Ministre de la Fonction publique, de la Réforme de l'État et de la Décentralisation [1]

(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 — Service credit for children awarded to female civil servants — Whether permissible in the light of Article 6(3) of the Agreement on Social Policy or the provisions of Directive 79/7/EEC)

(2002/C 84/14)

(Language of the case: French)

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

In Case C-366/99: reference to the Court under Article 234 EC from the Conseil d'État (Council of State) (France) for a preliminary ruling in the proceedings pending before that court between Joseph Griesmar and Ministre de l'Économie, des Finances et de l'Industrie and Ministre de la Fonction publique, de la Réforme de l'État et de la Décentralisation — 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), Article 6(3) of the Agreement on Social Policy (OJ 1992 C 191, p. 91) 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, 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, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 29 November 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).

Notwithstanding what is provided in Article 6(3) of the Agreement on Social Policy, a provision such as Article L. 12(b) of the French Civil and Military Retirement Pensions Code infringes the principle of equal pay inasmuch as it excludes male civil servants who are able to prove that they assumed the task of bringing up their children from entitlement to the credit which it introduces for the calculation of retirement pensions.

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(1) OJ C 366 of 18.12.1999.

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1. *Declares that, by failing to adopt the measures necessary to transpose in full Article 7(3) of Council Directive 93/13/CEE of 5 December 1993 on unfair terms in consumer contracts, the Italian Republic has failed to fulfil its obligations under the Directive;*

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

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(1) OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 24 January 2002

in Case C-372/99: Commission of the European Communities v Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Directive 93/13/CEE — Unfair terms in contracts concluded with consumers — Means to prevent the use of those clauses)

(2002/C 84/15)

(Language of the case: Italian)

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

In Case C-372/99, Commission of the European Communities (agent: P. Stancanelli) v Italian Republic (agents: initially U. Leanza, assisted by P.G. Ferri and, subsequently, U. Leanza, assisted by G. de Bellis): Application for a declaration that, by failing to adopt the measures necessary to:

— apply the provisions of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) to all contracts concluded between consumers and sellers or suppliers;

— transpose the third sentence of Article 5 of that directive, and

— transpose in full Articles 6(2) and 7(3) of that directive, the Italian Republic has failed to fulfil its obligations under that directive,

the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, D.A.O. Edward and A. La Pergola, Judges, Advocate General: S. Alber, Registrar: R. Grass, has given a judgment on 24 January 2001, in which it has ruled:

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 December 2001

in Case C-373/99: Hellenic Republic v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — 1995 financial year — Fruit and vegetables — Arable crops)

(2002/C 84/16)

(Language of the case: Greek)

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

In Case C-373/99: Hellenic Republic (Agents: V. Kontolaimos and I.-K. Chalkias) v Commission of the European Communities (Agent: M. Condou-Durande) — application for partial annulment of Commission Decision 1999/596/EC of 28 July 1999 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 226, p. 26) — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola and L. Sevón (Rapporteur), Judges; A. Tizzano, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 6 December 2001, in which it:

1. *Dismisses the application;*

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

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(1) OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT

22 January 2002

in Case C-390/99 (Reference for a preliminary ruling from the Tribunal Supremo): Canal Satélite Digital SL and Administracíon General del Estado, intervener: Distribuidora de Televisión Digital SA (DTS), v Administración General del Estado [1]

(Articles 30 and 59 of the EC Treaty (now, after amendment, Articles 28 EC and 49 EC) — Directive 5/47/EC — National legislation requiring operators of conditional-access television services to register in a national register created for that purpose, indicating the characteristics of the technical equipment they use, and subsequently to obtain administrative certification thereof — Directive 83/189/EEC — Meaning of 'technical regulation')

(2002/C 84/17)

(Language of the case: Spanish)

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

In Case C-390/99: Reference to the Court under Article 234 of the EC Treaty by the Tribunal Supremo (Spain) for a preliminary ruling in the proceedings pending before that court between Canal Satélite Digital SL and Administracíon General del Estado, intervener: Distribuidora de Televisión Digital SA (DTS), and on the interpretation of Articles 30 and 59 of the EC Treaty (now, after amendment, Articles 28 EC and 49 EC), read in conjunction with Articles 1 to 5 of Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ 1995 L 281, p. 51) and of Article 1, point 9, of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended and updated by Directive 94/10/EC of the European Parliament and of the Council of 23 March 1994 (OJ 1994 L 100, p. 30),the Court, composed of: G.C. Rodríguez Iglesias, President, F. Macken, and N. Colneric (Presidents of Chambers), C. Gulmann, D.A.O. Edward (Rapporteur), A. La Pergola, J.-P. Puissochet, R. Schintgen and V. Skouris, Judges, Advocate General: C. Stix-Hackl, Registrar: H. von Holstein, Deputy Registrar, J. Svenningsen, acting as Agents, has given a judgment on 22 January 2002, in which it has ruled:

1. *National legislation which makes the marketing of apparatus, equipment, decoders or digital transmission and reception systems for television signals by satellite and the provision of related services by operators of conditional-access services subject to a prior authorisation procedure restricts both the free movement of goods and the freedom to provide services. Therefore, in order to be justified with regard to those fundamental freedoms, such legislation must pursue a public-interest objective recognised by Community law and comply with the principle of proportionality; that is to say, it must be appropriate to ensure achievement of the aim pursued and not go beyond what is necessary in order to achieve it.*

2. *In determining whether national legislation such as that at issue in the main proceedings complies with the principle of proportionality, the referring court must take into account the following considerations in particular:*

   — *for a prior administrative authorisation scheme to be justified even though it derogates from those fundamental freedoms, it must, in any event, be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily;*

   — *a measure introduced by a Member State cannot be regarded as necessary to achieve the aim pursued if it essentially duplicates controls which have already been carried out in the context of other procedures, either in the same State or in another Member State;*

   — *a prior authorisation procedure will be necessary only where subsequent control must be regarded as being too late to be genuinely effective and to enable it to achieve the aim pursued;*

   — *a prior authorisation procedure does not comply with the fundamental principles of the free movement of goods and the freedom to provide services if, on account of its duration and the disproportionate costs to which it gives rise, it is such as to deter the operators concerned from pursuing their business plan.*

3. *National legislation which requires operators of conditional-access services to enter the equipment, decoders or systems for the digital transmission and reception of television signals by satellite which they propose to market in a register and to obtain prior certification for those products before being able to market them constitutes a 'technical regulation' within the meaning of Article 1, point 9, of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended and updated by Directive 94/10/EC of the European Parliament and of the Council of 23 March 1994.*

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[1] OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

8 January 2002

in Case C-409/99 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Metropol Treuhand Wirtschaftstreuhandgmbh v Finanzlandesdirektion für Steiermark and between Michael Stadler and Finanzlandesdirektion für Vorarlberg [1]

(Sixth VAT Directive — Article 17(6) and (7) — Right to deduct input VAT — Exclusions provided for under national laws at the date of entry into force of the directive — Exclusions for cyclical economic reasons — Consultation of the Advisory Committee on value added tax)

(2002/C 84/18)

(Language of the case: German)

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

In Case C-409/99: reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Metropol Treuhand Wirtschaftstreuhandgmbh and Finanzlandesdirektion für Steiermark and between Michael Stadler and Finanzlandesdirektion für Vorarlberg, on the interpretation of Article 17(6) and (7) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1),the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola, L. Sevón (Rapporteur), M. Wathelet and C.W.A. Timmermans, Judges, Advocate General: L.A. Geelhoed, Registrar: D. Louterman-Hubeau, Head of Division, has given a judgment on 8 January 2002, in which it has ruled:

1. *The second subparagraph of Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — precludes a Member State from excluding, after the entry into force of the Sixth Directive, expenditure relating to certain motor vehicles from the right to deduct value added tax where, at the date of entry into force of that directive, that expenditure gave rise to the right to deduct value added tax in accordance with a consistent practice of the public authorities of that State on the basis of a ministerial circular.*

2. *The first sentence of Article 17(7) of the Sixth Directive must be interpreted as not authorising a Member State to exclude goods from the system of deducting value added tax without first consulting the committee provided for in Article 29 of the directive. That provision also does not authorise a Member State to adopt measures excluding goods from the system of deducting value added tax which contain no indication as to their limitation in time and/or which form part of a package of structural adjustment measures whose aim is to reduce the budget deficit and allow State debt to be repaid.*

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[1] OJ C 20 of 22.1.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 2001

in Case C-424/99: Commission of the European Communities v Republic of Austria [1]

(Failure by a Member State to fulfil obligations — Directive 89/105/EEC — 'Positive list' for the purposes of Article 6 of Directive 89/105/EEC — Time-limit for examination of an application for inclusion of a medicinal product on the list — Obligation to provide for a judicial remedy in the event of refusal)

(2002/C 84/19)

(Language of the case: German)

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

In Case C-424/99: Commission of the European Communities (Agent: J.C. Schieferer) v Republic of Austria (Agent: C. Pesendorfer) — application for a declaration that, by not adopting or by not communicating to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8), the Republic of Austria has failed to fulfil its obligations under the EC Treaty — 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; A. Tizzano, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 November 2001, in which it:

1. *Declares that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with the second sentence of Article 6(2) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems, the Republic of Austria has failed to fulfil its obligations under that article;*

2. *Dismisses the remainder of the application;*

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

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(1) OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

8 January 2002

in Case C-428/99 (Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven): H. van den Bor BV v Voedselvoorzieningsin- en verkoopbureau (1)

(Agriculture — Combating bovine spongiform encephalopathy — Powers of the Member States — Compensation for farmers following the slaughter of United Kingdom calves ordered during the bovine spongiform encephalopathy crisis in March 1996)

(2002/C 84/20)

(Language of the case: Dutch)

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

In Case C-428/99: reference to the Court under Article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands) for a preliminary ruling in the proceedings pending before that court between H. van den Bor BV and Voedselvoorzieningsin- en verkoopbureau on the power of the Member States to compensate cattle farmers and determine the amount of compensation due following the slaughter of United Kingdom calves ordered during the bovine spongiform encephalopathy crisis in March 1996 and on the interpretation of Commission Regulation (EC) No 717/96 of 19 April 1996 adopting exceptional support measures for the beef and veal market in Belgium, France and the Netherlands (OJ 1996 L 99, p. 16), as amended by Commission Regulation (EC) No 841/96 of 7 May 1996 (OJ 1996 L 114, p. 18),the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, L. Sevón (Rapporteur) and M. Wathelet, Judges, Advocate General: F.G. Jacobs, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 8 January 2002, in which it has ruled:

1. *The Community provisions applicable to the common agricultural policy in the beef and veal sector are to be interpreted as meaning that, in response to information concerning a possible link between bovine spongiform encephalopathy and Creutzfeldt-Jakob disease in humans and to the bovine spongiform encephalopathy crisis in the United Kingdom, the Member States were entitled, under Article 8(1)(a) of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market, as amended by Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425:*

   — *to order the slaughter of young bovine animals originating from the United Kingdom present in their territory and,*

   — *since there could be serious grounds for believing that, in the absence of fair compensation, farmers might conceal the origin of animals in their possession in order to avoid their slaughter and the resulting financial loss, to adopt a compensation measure ancillary to the measure requiring slaughter of the animals.*

2. *Even though the Member States had the power to adopt compensation measures under Article 8(1)(a) of Directive 90/425, as amended by Directive 92/118, Community law, in particular Commission Regulation (EC) No 717/96 of 19 April 1996 adopting exceptional support measures for the beef and veal market in Belgium, France and the Netherlands, as amended by Commission Regulation (EC) No 841/96 of 7 May 1996, precluded the amount of compensation to farmers from being determined by national provisions from the date upon which that regulation became applicable.*

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(1) OJ C 20 of 22.1.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

15 January 2002

in Case C-439/99: Commission of the European Communities v Italian Republic [1]

(Failure to fulfil obligations — Infringement of Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) — Retention of certain national and regional rules regarding trade fairs, markets and exhibitions)

(2002/C 84/21)

(Language of the case: Italian)

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

In Case C-439/99, Commission of the European Communities (Agents: E. Traversa and M. Patakia, assisted by A. Cevese) v Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo): application for a declaration that

— by retaining the following provisions:

  — Article 2, first paragraph, and Article 7 of Royal Decree-Law No 454 of 29 January 1934;

  — Article 2, first paragraph, of Presidential Decree No 7 of 15 January 1972;

  — Article 2, paragraphs 4, 6 and 7, of Presidential Decree No 390 of 18 April 1994;

  — Article 4 of Regional Law No 40 of Liguria of 14 July 1978;

  — Article 6, paragraph 1(e), (f), (g) and (h), Article 6, paragraph 4, and Article 7 of Regional Law No 35 of Veneto of 2 August 1988;

  — Article 2, sixth paragraph, Article 4, first indent, Article 6, third and fourth paragraphs and Article 10, third paragraph, (a), of Regional Law No 16 of the Marches of 12 March 1979;

  — Article 4, Article 5, sixth paragraph (a) and (c), Article 6, first paragraph, Article 8, first and second paragraphs, and Article 16, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;

  — Article 4, paragraph 1(c), Article 4, paragraph 2, and Article 15, paragraph 3, of Regional Law No 45 of Lombardy of 29 April 1980;

  — Article 3, Article 4 and Article 8, last paragraph, of Regional Law No 10 of Friuli Venezia Giulia of 23 February 1981;

  — Article 2, last paragraph, and Article 6 of Regional Law No 75 of Abruzzo of 13 November 1980, and

  — Article 3, Article 5, Article 6, third and fourth paragraphs, Article 12 and Article 19, first paragraph, of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,

the Italian Republic has failed to fulfil its obligations under Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Article 60 of the EC Treaty (now Article 50 EC), Articles 61, 63 and 64 of the EC Treaty (now, after amendment, Articles 51 EC, 52 EC and 53 EC) and Articles 65 and 66 of the EC Treaty (now Articles 54 EC and 55 EC), and that

— by retaining the following provisions:

  — Article 3 of Presidential Decree No 7 of 15 January 1972;

  — Article 2(c) and (d), Article 3, first paragraph, (b) and (c), and Article 5, first paragraph, (a), of Regional Law No 12 of Liguria of 3 November 1972;

  — Article 8, paragraph 1(d) of Regional Law No 35 of Veneto of 2 August 1988;

  — Article 6, third paragraph, points 3 and 4, Article 7, Article 8, second paragraph, and Article 11, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;

  — Article 5, paragraphs 2 and 5, Article 10, paragraph 4, Article 11, paragraphs 2 and 3, and Article 15, paragraph 1, of Regional Law No 45 of Lombardy of 29 April 1980;

  — Article 5, Article 13, Article 14 and Article 15, first paragraph, (a), of Regional Law No 10 of Friuli Venezia Giulia of 23 February 1981;

  — Article 7 of Regional Law No 75 of Abruzzo of 13 November 1980, and

— Articles 6, 7 and 23 of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,

the Italian Republic has failed to fulfil its obligations under Articles 59 to 61 and 63 to 66 of the Treaty and under Articles 52 and 54 of the EC Treaty (now, after amendment, Articles 43 EC and 44 EC), Article 55 of the EC Treaty (now Article 45 EC), Articles 56 and 57 of the EC Treaty (now, after amendment, Articles 46 EC and 47 EC) and Article 58 of the EC Treaty (now Article 48 EC),

THE COURT (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr (Rapporteur), A. La Pergola, L. Sevón and M. Wathelet, Judges, Advocate General: S. Alber, Registrar: R. Grass, has given a judgment on 15 January 2002, in which it:

1. *Declares that by retaining the following provisions:*

— *Article 2, first paragraph, and Article 7 of Royal Decree No 454 of 29 January 1934;*

— *Article 2, first paragraph, of Presidential Decree No 7 of 15 January 1972;*

— *Article 2, paragraphs 4, 6 and 7, of Presidential Decree No 390 of 18 April 1994;*

— *Article 4 of Regional Law No 40 of Liguria of 14 July 1978;*

— *Article 6, paragraph 1(e), (f) and (h), and Article 7 of Regional Law No 35 of Veneto of 2 August 1988;*

— *Article 4, Article 5, sixth paragraph, (a) and (c), Article 6, first paragraph, Article 8, first and second paragraphs, and Article 16, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;*

— *Article 4, paragraph 1(c) and paragraph 2, and Article 15, paragraph 3, of Regional Law No 45 of Lombardy of 29 April 1980;*

— *Articles 3, 4 and 8, last paragraph, of Regional Law No 10 of Friuli Veneto Giulia of 23 February 1981, and*

— *Articles 3, 5 and 12 of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,*

the Italian Republic has failed to fulfil its obligations under Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Article 60 of the EC Treaty (now Article 50 EC), Articles 61, 63 and 64 of the EC Treaty (now, after amendment, Articles 51 EC, 52 EC and 53 EC) and Articles 65 and 66 of the EC Treaty (now Articles 54 EC and 55 EC);

2. *Declares that by retaining the following provisions:*

— *Article 3 of Presidential Decree No 7 of 15 January 1972;*

— *Article 2(c) and (d), Article 3, first paragraph, (b) and (c), and Article 5, first paragraph, (a), of Regional Law No 12 of Liguria of 3 November 1972;*

— *Article 8, paragraph 1(d), of Regional Law No 35 of Veneto of 2 August 1988;*

— *Article 8, second paragraph, and Article 11, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980, and*

— *Articles 5, 13, 14 and 15, first paragraph, (a), of Regional Law No 10 of Friuli Veneto Giulia of 23 February 1981,*

the Italian Republic has failed to fulfil its obligations under Articles 59 to 61 and 63 to 66 of the Treaty and under Articles 52 and 54 of the EC Treaty (now, after amendment, Articles 43 EC and 44 EC), Article 55 of the EC Treaty (now Article 45 EC), Articles 56 and 57 of the EC Treaty (now, after amendment, Articles 46 EC and 47 EC) and Article 58 of the EC Treaty (now Article 48 EC);

3. *Dismisses the remainder of the action;*

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

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(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Second Chamber)

24 January 2002

in Case C-466/99: Commission of the European Communities v Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Environment — Waste — Directives 75/442/EEC, 91/689/EEC and 94/62/EC — Waste management plans)

(2002/C 84/22)

(Language of the case: Italian)

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

In Case C-466/99, Commission of the European Communities (agents: L. Ström and G. Bisogni) v Italian Republic (agent: U. Leanza, assisted by P. G. Ferri): Application for a declaration that, by not forwarding to the Commission information concerning plans for the management and disposal of waste, hazardous waste, packaging and packaging waste, the Italian Republic has failed to fulfil its obligations under Article 7 of

Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), Article 6 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), and Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10), the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges, Advocate General: J. Mischo, Registrar: H. von Holstein, Deputy Registrar, has given a judgment on 24 January 2002, in which it has ruled:

1. *Declares that, by not forwarding to the Commission information concerning plans for the management and disposal of waste and hazardous waste in respect of the regions of Sicily and Basilicata, or information concerning plans for the management of packaging and packaging waste in respect of all the Italian regions, the Italian Republic has failed to fulfil its obligations under Article 7 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, Article 6 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, and Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste;*

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

(1) OJ C 34 of 5.2.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 December 2001

in Case C-472/99 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien): Clean Car Autoservice GmbH v Stadt Wien, Republik Österreich (1)

(Article 234 EC — Costs of the parties to the main proceedings — Article 104(5) of the Rules of Procedure of the Court)

(2002/C 84/23)

(Language of the case: German)

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

In Case C-472/99: reference to the Court under Article 234 EC from the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) (Austria) for a preliminary ruling in the proceedings pending before that court between Clean Car Autoservice GmbH and Stadt Wien, Republik Österreich — on the interpretation of the first subparagraph of Article 104(5) of the Rules of Procedure of the Court of Justice, in codified version 1999/C 65/01 of 6 March 1999 (OJ 1999 C 65, p. 1) — the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting as President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges; L.A. Geelhoed, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 6 December 2001, in which it has ruled:

Article 104(5) of the Rules of Procedure of the Court of Justice, in codified version 1999/C 65/01 of 6 March 1999, is to be interpreted as meaning that payment of the costs incurred by the parties to the main proceedings for the purposes of the procedure under Article 234 EC for obtaining a preliminary ruling is governed by the domestic law rules applicable to the proceedings before the national court, provided that those rules are not less favourable than those applicable to similar procedural steps which may be taken in such proceedings in accordance with national law.

(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

10 January 2002

In Case C-480/99 P: Gerry Plant and Others v Commission of the European Communities (1)

(Appeal — Action for annulment under Article 33 of the ECSC Treaty — Admissibility — Audi alteram partem rule in judicial proceedings)

(2002/C 84/24)

(Language of the case: English)

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

In Case C-480/99 P, Gerry Plant and Others (agents: B. Hewson, barrister, instructed by T. Graham, solicitor): Appeal against

the order of the Court of First Instance of the European Communities (Second Chamber) of 29 September 1999 in Joined Cases T-148/98 and T-162/98 Evans and Others v Commission [1999] ECR II-2837, seeking to have that order set aside, the other parties to the proceedings being: Commission of the European Communities (agents: M. Erhart and B. Doherty) and South Wales Small Mines Association, established in Fochriw, Near Bargoed (United Kingdom), (agents: T. Sharpe, QC, and M. Brealey, barrister, instructed by S. Llewellyn Jones, solicitor) the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), R. Schintgen and J.N. Cunha Rodrigues, Judges, Advocate General: D. Ruiz-Jarabo Colomer, Registrar: R. Grass, has given a judgment on 10 January 2002, in which it:

1. *Sets aside the order of the Court of First Instance of 29 September 1999 in Joined Cases T-148/98 and T-162/98 Evans and Others v Commission in so far as:*

   — *it dismissed the action in Case T-148/98 as inadmissible;*

   — *it joined Cases T-148/98 and T-168/98;*

   — *it stated that it was unnecessary to rule on the application for legal aid made in Case T-148/98 or on the application for leave to intervene made by PowerGen UK plc, National Power plc and British Coal Corporation in the same case;*

   — *it ordered the applicants in Case T-148/98 to bear their own costs and, jointly and severally, to pay those incurred by the Commission of the European Communities in Case T-162/98;*

   — *it ordered the applicant in Case T-162/98, jointly and severally with the applicants in Case T-148/98, to pay the costs incurred by the Commission of the European Communities in Case T-148/98;*

2. *Refers Case T-148/98 back to the Court of First Instance to enable it to give judgment on the substance of the case;*

3. *Reserves the costs in Case T-148/98.*

(1) OJ C 63 of 4.3.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

24 January 2002

in Case C-500/99 P: Conserve Italia Soc. Coop. arl v Commission of the European Communities (1)

(Appeal — Agriculture — EAGGF — Discontinuance of financial aid — Regulation (EEC) No 355/77 — Regulation (EEC) No 4253/88 — Principle of proportionality)

(2002/C 84/25)

(Language of the case: Italian)

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

In Case C-500/99 P: Conserve Italia Soc. Coop. arl, formerly Massalombarda Colombani SpA, established in San Lazzaro di Savena (Italy), (agents: M. Averani, A. Pisaneschi, P. de Caterini and S. Zunarelli): Appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 12 October 1999 in Case T-216/96 Conserve Italia v Commission [1999] ECR II-3139, seeking to have that judgment set aside the other party to the proceedings being: Commission of the European Communities (agent: F. Ruggeri Laderchi, assisted by M. Moretto), 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: S. Alber, Registrar: L. Hewlett, Administrator, has given a judgment on 24 January 2002, in which it:

1. *Dismisses the appeal;*

2. *Orders Conserve Italia Soc. Coop. arl to pay the costs.*

(1) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

8 January 2002

in Case C-507/99 (Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven): Denkavit Nederland BV v Minister van Landbouw, Natuurbeheer en Visserij, Voedselvoorzieningsin- en verkoopbureau [1]

(Agriculture — Combating bovine spongiform encephalopathy — Powers of the Member States — Decision to slaughter and determination of the timing of slaughter of United Kingdom calves during the bovine spongiform encephalopathy crisis in March 1996)

(2002/C 84/26)

(Language of the case: Dutch)

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

In Case C-507/99: reference to the Court under Article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands) for a preliminary ruling in the proceedings pending before that court between Denkavit Nederland BV and Minister van Landbouw, Natuurbeheer en Visserij, Voedselvoorzieningsin- en verkoopbureau, on the power of the Member States to order the slaughter of United Kingdom calves and determine its timing during the bovine spongiform encephalopathy crisis of March 1996 and on the interpretation of Article 8 of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29), as amended by Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425 (OJ 1993 L 62, p. 49), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, L. Sevón (Rapporteur) and M. Wathelet, Judges, Advocate General: F.G. Jacobs, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 8 January 2002, in which it has ruled:

The Community provisions applicable to the common agricultural policy in the beef and veal sector are to be interpreted as meaning that, in response to information concerning a possible link between bovine spongiform encephalopathy and Creutzfeldt-Jakob disease in humans and to the bovine spongiform encephalopathy crisis in the United Kingdom, the Member States were entitled, under Article 8(1)(a) of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market, as amended by Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425:

— *to order the slaughter of young bovine animals originating from the United Kingdom present in their territory and*

— *consequently, to determine when their slaughter took place.*

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[1] OJ C 79 of 18.3.2000

JUDGMENT OF THE COURT

(Fifth Chamber)

7 February 2002

in Case C-5/00: Commission of the European Communities v Federal Republic of Germany [1]

(Failure by a Member State to fulfil its obligations — Directive 89/391/EEC — Measures to encourage improvements in the safety and health of workers at work — Articles 9(1)(a) and 10(3)(a) — Employer's duty to keep documents containing an assessment of the risks to safety and health at work)

(2002/C 84/27)

(Language of the case: German)

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

In Case C-5/00, Commission of the European Communities (Agent: M. Bogensberger) v Federal Republic of Germany (Agents: W.-D. Plessing and B. Muttelsee-Schön): Application for a declaration that, by exempting, under Paragraph 6(1) of the Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit (Arbeitsschutzgesetz) [Law on the implementation of protective measures to improve the safety and health of employees at work (Law on safety and health at work)] of 7 August 1996

(BGBl. 1996 I, p. 1246), employers of 10 or fewer workers from the duty to keep documents containing the results of a risk assessment, the Federal Republic of Germany has failed to fulfil its obligations under Articles 5 and 189 of the EC Treaty (now Articles 10 EC and 249 EC) and Articles 9(1)(a) and 10(3)(a) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183 p. 1). the Court (Fifth Chamber), composed of: S. von Bahr (Rapporteur), President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet and C.W.A. Timmermans, Judges, Advocate General: L.A. Geelhoed, Registrar: R. Grass, has given a judgment on 7 February 2002, in which it:

1. *Declares that, by failing to ensure that the obligation to be in possession of an assessment in documentary form of the risks to safety and health at work, as laid down by Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, applies to employers of 10 or fewer workers in all circumstances, the Federal Republic of Germany has failed to fulfil its obligations under Articles 9(1)(a) and 10(3)(a) of that directive;*

2. *Orders the Federal Republic of Germany to pay the costs.*

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(1) OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 November 2001

in Case C-17/00 (reference for a preliminary ruling from the Collège juridictionnel de la Région de Bruxelles-Capitale): François De Coster v Collège des bourgmestre et échevins de Watermael-Boitsfort (1)

(Reference for a preliminary ruling — Defination of a national court or tribunal — Freedom to provide services — Municipal tax on satellite dishes — Restriction on the freedom to receive television programmes by satellite)

(2002/C 84/28)

(Language of the case: French)

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

In Case C-17/00: reference to the Court under Article 234 EC from the Collège juridictionnel de la Région de Bruxelles-Capitale (Judicial Board of the Brussels-Capital region) (Belgium) for a preliminary ruling in the proceedings pending before that court between François De Coster and Collège des bourgmestre et échevins de Watermael-Boitsfort — on the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Articles 60 and 66 of the EC Treaty (now Articles 50 and 55 EC) — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola (Rapporteur) and M. Wathelet, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 29 November 2001, in which it has ruled:

Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Articles 60 and 66 of the EC Treaty (now Articles 50 and 55 EC) must be interpreted as preventing the application of a tax on satellite dishes such as that introduced by Articles 1 to 3 of the tax regulation adopted on 24 June 1997 by the municipal council of Watermael-Boitsfort.

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(1) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

7 February 2002

in Case C-28/00 (Reference for a preliminary ruling from the Oberster Gerichtshof): Liselotte Kauer v Pensionsversicherungsanstalt der Angestellten, (1)

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Articles 94(1), (2) and (3) — Old-age insurance — Periods of child-rearing completed in another Member State before the entry into force of Regulation No 1408/71)

(2002/C 84/29)

(Language of the case: German)

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

In Case C-28/00: Reference to the Court under Article 234 EC by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Liselotte

Kauer and Pensionsversicherungsanstalt der Angestellten, on the interpretation of Article 94(1), (2) and (3) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), the Court (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 and M. Wathelet (Rapporteur), Judges, Advocate General: F.G. Jacobs, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 7 February 2002, in which it has ruled:

Article 94(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, read in conjunction, depending on the case, with Articles 8a, 48 and 52 of the EC Treaty (now, after amendment, Articles 18 EC, 39 EC and 43 EC), is to be interpreted as precluding application of a Member State's legislation under which child-raising periods completed in another State party to the Agreement on the European Economic Area of 2 May 1992 or in another Member State of the European Union are not treated as substitute periods for the purposes of old-age insurance unless

— *they were completed after the entry into force of that regulation in the first State, and*

— *the applicant receives, or received, for the children concerned, cash maternity allowances or equivalent allowances under the legislation of that same State,*

when such periods completed in national territory are treated as substitute periods for the purposes of old-age insurance without any limitation in time or any other condition.

(1) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

22 January 2002

in Case C-31/00 (Reference for a preliminary ruling from the Cour de Cassation): Conseil National de l'Ordre des Architectes v Nicolas Dreessen (1)

(Reference for a preliminary ruling — Articles 10 EC and 43 EC — National legislation restricting access to the profession of architect to the possession of a diploma or professional qualification — Community national holding a diploma not listed in Directive 85/384/EEC — Obligation on the host Member State when presented with an application to practise the profession of architect on its territory to make a comparison between the specialised knowledge and abilities certified by the diploma and the experience acquired, and the qualifications required by its national legislation)

(2002/C 84/30)

(Language of the case: French)

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

In Case C-31/00: Reference to the Court under Article 234 EC by the Cour de Cassation (Belgium) for a preliminary ruling in the proceedings pending before that court between Conseil National de l'Ordre des Architectes and Nicolas Dreessen on the interpretation of Articles 10 EC and 43 EC, the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr, D.A.O. Edward (Rapporteur), A. La Pergola and C.W.A. Timmermans, Judges, Advocate General: P. Léger, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 22 January 2002, in which it has ruled:

Article 43 EC is to be interpreted as meaning that where a Community national applies to the competent authorities of a Member State for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, those authorities are required to take into consideration all of the diplomas, certificates and other evidence of formal qualifications of the person concerned, and his relevant experience, by comparing the specialised knowledge and abilities so certified, and that experience, with the knowledge and qualifications required by

the national legislation, even where a directive on the mutual recognition of diplomas has been adopted for the profession concerned, but where application of that directive does not result in automatic recognition of the applicant's qualification or qualifications.

(1) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

(Second Chamber)

24 January 2002

in Case C-35/00: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (1)

(Failure by a Member State to fulfil its obligations — Environment — Waste — Directives 75/442/EEC, 91/689/EEC and 94/62/EC — Waste management plans)

(2002/C 84/31)

(Language of the case: English)

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

In Case C-35/00, Commission of the European Communities (agents: R. B. Wainwright and L. Ström) v United Kingdom of Great Britain and Northern Ireland (agent: R. Magrill, assisted by D. Wyatt, QC): Application for a declaration that, by not drawing up waste management plans complying with all the provisions concerning waste of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), and of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10), and/or by not informing the Commission thereof, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 7 of Directive 75/442, as amended by Directive 91/156, Article 6 of Directive 91/689 and Article 14 of Directive 94/62, the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges, Advocate General: A. Tizzano, Registrar: R. Grass, has given a judgment on 24 January 2002, in which it:

1. *Declares that, by not drawing up waste management plans covering the whole of its territory and complying with all the provisions of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, and of Directive 94/62/EC of the European Parliament and Council of 20 December 1994 on packaging and packaging waste, and/or by not informing the Commission thereof, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 7 of Directive 75/442, as amended by Directive 91/156, Article 6 of Directive 91/689 and, leaving aside Gibraltar, under Article 14 of Directive 94/62.*

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

(1) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

15 January 2002

in Case C-43/00 (Reference for a preliminary ruling from the Vestre Landsret): Andersen og Jensen ApS v Skatteministeriet (1)

(Approximation of laws — Directive 90/434/EEC — Common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares — Transfer of assets or of a branch of activity — Meaning)

(2002/C 84/32)

(Language of the case: Danish)

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

In Case C-43/00: reference to the Court under Article 234 EC by the Vestre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between Andersen og Jensen ApS and Skatteministeriet on the interpretation of Article 2(c) and (i) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990

L 225, p. 1),the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, S. von Bahr, A. La Pergola, L. Sevón and C.W.A. Timmermans, Judges, Advocate General: A. Tizzano, Registrar: H. von Holstein, Deputy Registrar, has given a judgment on 15 January 2002, in which it has ruled:

1. *Article 2(c) and (i) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States must be interpreted as meaning that there is no transfer of assets within the meaning of that directive where the terms of a transaction are such that the proceeds of a significant loan contracted by the transferring company remain with that company and the obligations arising from the loan are transferred to the company receiving the transfer. It is immaterial in this regard that the transferring company retains a small number of shares in a third company.*

2. *It is for the national court to determine whether a transfer of assets involves an independent business within the meaning of Article 2(i) of Directive 90/434, that is to say, an entity capable of functioning by its own means, where the future cash-flow requirements of the company receiving the transfer must be satisfied by a credit facility from a financial institution which insists, in particular, that the shareholders of the company receiving the transfer provide security in the form of shares representing the capital of that company.*

([1]) OJ C 122 of 29.4.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

24 January 2002

in Case C-51/00 (Reference for a preliminary ruling from the Cour du Travail de Bruxelles): Temco Service Industries SA v Samir Imzilyen, Mimoune Belfarh, Abdesselam Afia-Aroussi, Khalil Lakhdar ([1])

(Directive 77/187/EEC — Safeguarding of employees' rights in the event of transfers of undertakings)

(2002/C 84/33)

(Language of the case: French)

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

In Case C-51/00: Reference to the Court under Article 234 EC by the Cour du Travail de Bruxelles (Belgium) for a preliminary ruling in the proceedings pending before that court between Temco Service Industries SA and Samir Imzilyen, Mimoune Belfarh, Abdesselam Afia-Aroussi, Khalil Lakhdar, intervener: General Maintenance Contractors SPRL (GMC), Buyle-Medros-Vaes Associates SA (BMV), formerly Weisspunkt SA, on the interpretation of Articles 1(1) and 3(1) of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), R. Schintgen and J.N. Cunha Rodrigues, Judges, Advocate General: L.A. Geelhoed, Registrar: D. Louterman-Hubeau, Head of Division, has given a judgment on 24 January 2002, in which it has ruled:

1. *Article 1(1) of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses must be interpreted as applying to a situation in which a contractor which has entrusted the contract for cleaning its premises to a first undertaking, which has that contract performed by a subcontractor, terminates that contract and enters into a new contract for the performance of the same work with a second undertaking, where the transaction does not involve any transfer of tangible or intangible assets between the first undertaking or the subcontractor and the second undertaking, but the second undertaking has taken on, under a collective labour agreement, part of the staff of the subcontractor, provided that the staff thus taken on are an essential part, in terms of their number and their skills, of the staff assigned by the subcontractor to the performance of the subcontract.*

2. *Article 3(1) of Directive 77/187 must be interpreted as meaning that it does not preclude the contract or employment relationship of a worker employed by the transferor on the date of the transfer of the undertaking within the meaning of Article 1(1) of that directive from continuing with the transferor where that worker objects to the transfer of his employment contract or employment relationship to the transferee.*

([1]) OJ C 122 of 29.4.2000.

JUDGMENT OF THE COURT

15 January 2002

in Case C-55/00 (Reference for a preliminary ruling from the Tribunale ordinario di Roma): Elide Gottardo v Istituto nazionale della previdenza sociale (INPS) [1]

(Reference for a preliminary ruling — Articles 12 EC and 39(2) EC — Old-age benefits — Social security convention concluded between the Italian Republic and the Swiss Confederation — Refusal to take account of periods of insurance completed by a French national in Switzerland)

(2002/C 84/34)

(Language of the case: Italian)

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

In Case C-55/00: reference to the Court under Article 234 EC by the Tribunale ordinario di Roma (Italy) for a preliminary ruling in the proceedings pending before that court between Elide Gottardo and Istituto nazionale della previdenza sociale (INPS) on the interpretation of Articles 12 EC and 39(2) EC, the Court, composed of: G.C. Rodríguez Iglesias, President, F. Macken and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward (Rapporteur), A. La Pergola, L. Sevón, M. Wathelet, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges, Advocate General: D. Ruiz-Jarabo Colomer, Registrar: L. Hewlett, Administrator, has given a judgment on 15 January 2002, in which it has ruled:

The competent social security authorities of one Member State are required, pursuant to their Community obligations under Article 39 EC, to take account, for purposes of acquiring the right to old-age benefits, of periods of insurance completed in a non-member country by a national of a second Member State in circumstances where, under identical conditions of contribution, those competent authorities will take into account such periods where they have been completed by nationals of the first Member State pursuant to a bilateral international convention concluded between that Member State and the non-member country.

[1] OJ C 122 of 29.4.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

30 January 2002

in Case C-103/00: Commission of the European Communities v Hellenic Republic [1]

(Failure by a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of species)

(2002/C 84/35)

(Language of the case: Greek)

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

In Case C-103/00, Commission of the European Communities (Agents: R. Wainwright and P. Panayotopoulos) v Hellenic Republic (Agents: A. Samoni-Rantou and P. Skandalou): Application for a declaration that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle Caretta caretta on Zakinthos (Greece) so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, R. Schintgen and J.N. Cunha Rodrigues, Judges, Advocate General: P. Léger, Registrar: L. Hewlett, Administrator, has given a judgment on 30 January 2002, in which it:

1. *Declares that by failing to take, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle Caretta caretta on Zakinthos so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

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

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(1) OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 December 2001

in Case C-146/00: Commission of the European Communities v French Republic (1)

(Telecommunications — Financing of a 'universal service' — contribution from new market entrants)

(2002/C 84/36)

(Language of the case: French)

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

In Case C-146/00: Commission of the European Communities (Agents: initially by B. Doherty and F. Siredey-Garnier, and, subsequently, by E. Gippini Fournier and F. Siredey-Garnier) v French Republic (Agents: initially by K. Rispal-Bellanger, F. Million and S. Pailler, and, subsequently, by G. de Bergues, F. Million and S. Pailler) — application for a declaration that, by failing to comply with Article 4c of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10), as amended by Commission Directive 96/19/EC of 13 March 1996 (OJ 1996 L 74, p. 13), and by failing to comply with Article 5(1), (3), (4) and (5) 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 French Republic has failed to fulfil its obligations under the EC Treaty and under those directives — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), J.-P. Puissochet and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 6 December 2001, in which it:

1. *Declares that, by failing to comply with Article 4c of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, as amended by Commission Directive 96/19/EC of 13 March 1996, and by failing to comply with Article 5(1), (3), (4) and (5) 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), the French Republic has failed to fulfil its obligations under those directives;*

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

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(1) OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 6 December 2001

in Case C-148/00: Commission of the European Communities v Italian Republic (1)

(Failure of a Member State to fulfil its obligations — Failure to transpose Directive 98/51/EC)

(2002/C 84/37)

(Language of the case: Italian)

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

In Case C-148/00: Commission of the European Communities (Agents: initially S. Dragone and F. P. Ruggeri Laderchi, and subsequently S. Dragone and L. Visaggio) v Italian Republic (Agent: U. Leanza, assisted by G. De Bellis) — application for a declaration that, by not adopting and, in any event, by not notifying the Commission of the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 97/41/EC of 25 June 1997 amending Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC relating to the fixing of maximum levels for pesticide residues in and on, respectively, fruit and vegetables, cereals, foodstuffs of animal origin, and certain products of plant origin, including fruit and vegetables (OJ 1997 L 184, p. 33),

— Council Directive 97/76/EC of 16 December 1997 amending Directive 77/99/EEC and Directive 72/462/EEC with regard to the rules applicable to minced meat, meat preparations and certain other products of animal origin (OJ 1998 L 10, p. 25), and

— Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector (OJ 1998 L 208, p. 43),

the Italian Republic has failed to fulfil its obligations under the Treaty and those directives — the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, A. La Pergola and C.W.A. Timmermans (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 6 December 2001, in which it:

1. *Declares that, by not bringing into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector, the Italian Republic has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 6 December 2001

in Case C-166/00: Commission of the European Communities v Hellenic Republic ([1])

(Failure by a Member State to fulfil its obligations — Failure to transpose Directives 97/41/EC, 98/51/EC and 98/67/EC)

(2002/C 84/38)

(Language of the case: Greek)

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

In Case C-166/00: Commission of the European Communities (Agent: M. Condou-Durande) v Hellenic Republic (Agents: G. Kanellopoulos, C. Tsiavou and D. Tsagkaraki) — application for a declaration that, by not bringing into force the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 97/41/EC of 25 June 1997 amending Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC relating to the fixing of maximum levels for pesticide residues in and on, respectively, fruit and vegetables, cereals, foodstuffs of animal origin, and certain products of plant origin, including fruit and vegetables (OJ 1997 L 184, p. 33),

— Council Directive 97/76/EC of 16 December 1997 amending Directive 77/99/EEC and Directive 72/462/EEC with regard to the rules applicable to minced meat, meat preparations and certain other products of animal origin (OJ 1998 L 10, p. 25),

— Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector (OJ 1998 L 208, p. 43), and

— Commission Directive 98/67/EC of 7 September 1998 amending Directives 80/511/EEC, 82/475/EEC, 91/357/EEC and Council Directive 96/25/EC and repealing Directive 92/87/EEC (OJ 1998 L 261, p. 10),

within the periods laid down by those directives, the Hellenic Republic has failed to fulfil its obligations under the said directives — the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, A. La Pergola and C.W.A. Timmermans (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 6 December 2001, in which it:

1. *Declares that, by not bringing into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with:*

   — *Council Directive 97/41/EC of 25 June 1997 amending Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC relating to the fixing of maximum levels for pesticide residues in and on, respectively, fruit and vegetables, cereals, foodstuffs of animal origin, and certain products of plant origin, including fruit and vegetables,*

— *Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector, and*

— *Commission Directive 98/67/EC of 7 September 1998 amending Directives 80/511/EEC, 82/475/EEC, 91/357/EEC and Council Directive 96/25/EC and repealing Directive 92/87/EEC,*

the Hellenic Republic has failed to fulfil its obligations under those Directives.

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

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(1) OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

24 January 2002

in Case C-170/00: Republic of Finland v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — Expenditure for 1996 and 1997 — Special premiums for bulls — Procedure to be followed by the Commission)

(2002/C 84/39)

(Language of the case: Finnish)

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

In Case C-170/00, Republic of Finland (Agents: T. Pynnä and E. Bygglin) v Commission of the European Communities (Agents: M. Niejahr and I. Koskinen): Application for partial annulment of Commission Decision 2000/216/EC of 1 March 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 67, p. 37), in so far as it excludes from Community financing the sum of FIM 7 270 885,76 incurred in the applicant Member State on advance payment of special premiums for bulls, for the 1996 and 1997 marketing years, the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola and M. Wathelet, Judges, Advocate General: L.A. Geelhoed, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 24 January 2002, in which it:

1. *Dismisses the action;*

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

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(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

(First Chamber)

15 January 2002

in Case C-179/00 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Gerald Weidacher (as administrator of the insolvent company Thakis Vertriebs- und Handels GmbH) v Bundesminister für Land- und Forstwirtschaft (1)

(Article 149 of the Act of Accession of Austria, Finland and Sweden — Transitional measures — Surplus stocks — Article 4 of Commission Regulation (EC) No 3108/94 — Competence — Holder of the goods — Import charge applicable — Legitimate expectations — Proportionality — Equal treatment)

(2002/C 84/40)

(Language of the case: German)

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

In Case C-179/00: reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Gerald Weidacher (as administrator of the insolvent company Thakis Vertriebs- und Handels GmbH) and Bundesminister für Land- und Forstwirtschaft on the interpretation of Article 149(1) of the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1) and on the validity and interpretation of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products (OJ 1994 L 328, p. 42),the Court (First Chamber), composed of: P. Jann, President of the Chamber, L. Sevón and M. Wathelet (Rapporteur), Judges, Advocate General: J. Mischo, Registrar: R. Grass, has given a judgment on 15 January 2002, in which it has ruled:

1. *The Commission of the European Communities was competent, under Article 149(1) of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, to adopt the measures provided for in Article 4 of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products.*

2. *Examination of the second question has disclosed no factor of such a kind as to affect the validity of Article 4 of Regulation No 3108/94 in the light of the principle of proportionality and the principle of the protection of legitimate expectations.*

3. *The term 'holder' of surplus stock, within the meaning of Article 4 of Regulation No 3108/94, refers to a person who has authority to place the stored products on the market and thereby realise a profit.*

4. *Article 4(3) of Regulation No 3108/94 must be interpreted as meaning that, in the case of imports of Tunisian olive oil, the 'import charge' applicable in the Community of Twelve on 31 December 1994 is the one provided for in Annex I to Commission Regulation (EC) No 3307/94 of 29 December 1994 fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products.*

5. *Examination of the fifth question has disclosed no factor of such a kind as to affect the validity of Article 4(3) of Regulation No 3108/94 in the light of the principle of equal treatment.*

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(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT

(First Chamber)

15 January 2002

in Case C-182/00 (Reference for a preliminary ruling from the Landesgericht Wels): Lutz GmbH and Others (1)

(Reference for a preliminary ruling — Disclosure of annual accounts and annual report — Maintenance of a register of companies — Lack of jurisdiction of the Court)

(2002/C 84/41)

(Language of the case: German)

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

In Case C-182/00: reference to the Court under Article 234 EC by the Landesgericht Wels (Austria) for a preliminary ruling in the application brought before that court by Lutz GmbH and others on the validity of Article 2(1)(f) of First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968 (I), p. 41) and Article 47 of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11),the Court (First Chamber), composed of: P. Jann, President of the Chamber, L. Sevón and M. Wathelet (Rapporteur), Judges, Advocate General: L.A. Geelhoed, Registrar: H.A. Rühl, Principal Administrator, has given a judgment on 15 January 2002, in which it has ruled:

The Court of Justice of the European Communities has no jurisdiction to answer the questions submitted by the Landesgericht Wels in its decision of 9 May 2000.

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(1) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

22 January 2002

in Case C-218/00 (Reference for a preliminary ruling from the Tribunale di Vicenza): Cisal di Battistello Venanzio & C. Sas v Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL) (1)

(Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC) — Compulsory affiliation to a body providing insurance against accidents at work — Whether such a body is to be treated as an undertaking)

(2002/C 84/42)

(Language of the case: Italian)

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

In Case C-218/00: Reference to the Court under Article 234 EC by the Tribunale di Vicenza (Italy) for a preliminary ruling in the proceedings pending before that court between Cisal di

Battistello Venanzio & C. Sas and Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL), on the interpretation of Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC),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, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges, Advocate General: F.G. Jacobs, Registrar: H. von Holstein, Deputy Registrar, has given a judgment on 22 January 2002, in which it has ruled:

The concept of an undertaking, within the meaning of Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC), does not cover a body which is entrusted by law with the management of a scheme providing insurance against accidents at work and occupational diseases, such as the Istituto nazionale per l'assicurazione contro gli infortuni sul lavori (INAIL).

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(1) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

7 February 2002

in Case C-276/00 (Reference for a preliminary ruling from the Hessisches Finanzgericht, Kassel): Turbon International GmbH v Oberfinanzdirektion Koblenz (1)

(Common customs tariff — Tariff headings — Classification in the Combined Nomenclature of ink-cartridges compatible with Epson Stylus Colour printers — Inks (heading 3215) — Parts and accessories of machines under heading 8471 (heading 8473))

(2002/C 84/43)

(Language of the case: German)

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

In Case C-276/00: Reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Hessisches Finanzgericht, Kassel (Germany), for a preliminary ruling in the proceedings pending before that court between Turbon International GmbH, acting in its capacity as successor to Kores Nordic Deutschland GmbH, and Oberfinanzdirektion Koblenz, on the interpretation of headings 3215 and 8473 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996 (OJ 1996 L 238, p. 1), the Court (Fourth Chamber), composed of: D.A.O. Edward, acting for the President of the Chamber, A. La Pergola and C.W.A. Timmermans (Rapporteur), Judges, Advocate General: J. Mischo, Registrar: R. Grass, has given a judgment on 7 February 2002, in which it has ruled:

Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996, must be interpreted as meaning that an ink-cartridge without integrated print head, consisting of plastic casing, foam, a metal screen, seals, tape seal, labels, ink and packing material, which, as regards both the cartridge and the ink, can only be used in a printer with the same characteristics as ink-jet Epson Stylus Colour printers, is to be classified under sub-heading No 3215 90 80 of the Combined Nomenclature.

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(1) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Second Chamber)

7 February 2002

in Case C-328/00 (Reference for a preliminary ruling from the Bayerisches Verwaltungsgericht Regensburg): Maria Weber and Martin Weber v Freistaat Bayern (1)

(Common agricultural policy — Support system for oil-seeds — Validity of Regulation (EEC) No 525/93)

(2002/C 84/44)

(Language of the case: German)

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

In Case C-328/00: Reference to the Court under Article 234 EC by the Bayerisches Verwaltungsgericht Regensburg (Germany) for a preliminary ruling in the proceedings pending before that court between Maria Weber, Martin Weber and Freistaat Bayern, on the validity of Commission Regulation (EEC) No 525/93 of 8 March 1993 establishing the value of the final

regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1993 L 56, p. 18), the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges, Advocate General: C. Stix-Hackl, Registrar: R. Grass, has given a judgment on 7 February 2002, in which it has ruled:

Consideration of the questions submitted has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EEC) No 525/93 of 8 March 1993 establishing the value of the final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year.

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(1) OJ C 316 of 4.11.2000.

JUDGMENT OF THE COURT

(First Chamber)

of 11 December 2001

in Case C-376/00: Commission of the European Communities v Italian Republic (1)

(Failure of a Member State to fulfil obligations — Directives 75/439/EEC and 75/442/EEC — National reports on implementation — Failure to forward to the Commission)

(2002/C 84/45)

(Language of the case: Italian)

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

In Case C-376/00: Commission of the European Communities (Agents: H. Støvlbaek and R. Amorosi) v Italian Republic (Agent: U. Leanza, assisted by M. Fiorilli) — application for a declaration that, by failing to forward to the Commission, for the period from 1995 to 1997, the reports required under Article 18 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment (OJ 1991 L 377, p. 48), and under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Directive 91/692/EEC, within the periods fixed by those provisions, the Italian Republic has failed to fulfil its obligations under the said directives — the Court (First Chamber), composed of: P. Jann, President of the Chamber, L. Sevón (Rapporteur) and M. Wathelet, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 11 December 2001, in which it:

1. *Declares that, by failing to forward to the Commission, for the period from 1995 to 1997, the report required under Article 18 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment, within the period fixed by that provision, the Italian Republic has failed to fulfil its obligations under that directive;*

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

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(1) OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

(Second Chamber)

17 January 2002

in Case C-394/00: Commission of the European Communities v Ireland (1)

(Failure of a Member State to fulfil its obligations — Directive 96/82/EC — Failure to transpose within the prescribed period)

(2002/C 84/46)

(Language of the case: English)

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

In Case C-394/00, Commission of the European Communities (Agent:G. zur Hausen) v Ireland (Agent:D. O'Hagan): application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13) or, in any event, by failing to notify the Commission of those provisions, Ireland has failed

to fulfil its obligations under that directive, the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges, Advocate General: D. Ruiz-Jarabo Colomer, Registrar: R. Grass, has given a judgment on 17 January 2002, in which it:

1. *Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, Ireland has failed to fulfil its obligations under that directive;*

2. *Orders Ireland to pay the costs.*

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(1) OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

(Second Chamber)

17 January 2002

in Case C-423/00: Commission of the European Communities v Kingdom of Belgium (1)

(Failure of a Member State to fulfil its obligations — Directive 96/82/EC — Failure to implement within the prescribed period)

(2002/C 84/47)

(Language of the case: French)

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

In Case C-423/00, Commission of the European Communities (Agent: G. zur Hausen) v Kingdom of Belgium (Agent: C. Pochet): application for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13) and, in any event, by failing to notify the Commission of those provisions, the Kingdom of Belgium has failed to fulfil its obligations under that directive, the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges, Advocate General: D. Ruiz-Jarabo Colomer, Registrar: R. Grass, has given a judgment on 17 January 2002, in which it:

1. *Declares that by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

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(1) OJ C 28 of 27.1.2001.

JUDGMENT OF THE COURT

15 January 2002

in Case C-196/01: Commission of the European Communities v Grand Duchy of Luxembourg (1)

(Failure by a Member State to fulfil its obligations — Environment — Directive 75/442/EEC — Decision 94/3/EC — European Waste Catalogue)

(2002/C 84/48)

(Language of the case: French)

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

In Case C-196/01, Commission of the European Communities (Agents: H. Støvlbaek and J. Adda) v Grand Duchy of Luxembourg (Agents: N. Mackel, and, subsequently, J. Faltz): application for a declaration that the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), and Commission Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Directive 75/442 (OJ 1994 L 5, p. 15), the Court (First Chamber), composed of: P. Jann, President of the Chamber, L. Sevón (Rapporteur) and M. Wathelet, Judges, Advocate General: P. Léger, Registrar: R. Grass, has given a judgment on 15 January 2002, in which it:

1. *Declares that the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, and Commission Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Directive 75/442;*

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

([1]) OJ C 200 of 14.7.2001.

ORDER OF THE COURT

(Sixth Chamber)

of 27 November 2001

in Case C-208/99: Portuguese Republic v Commission of the European Communities ([1])

(EAGGF, Guidance Section — Decision of the Commission withdrawing financial assistance granted under Article 8 of Regulation (EEC) No 4256/88 — Action for partial annulment against the designation of a Member State as recipient — Manifestly inadmissible)

(2002/C 84/49)

(Language of the case: Portuguese)

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

In Case C-208/99: Portuguese Republic (Agents: L. Fernandes, Â. Cortesão de Seiça Neves and P. Fragão) v Commission of the European Communities (Agents: A.M. Alves Vieira and P. Oliver) — application for partial annulment of C(1999)543, C(1999)544 and C(1999)545 of 4 March 1999 withdrawing the assistance granted to Belgravia Lda, Floreurop — Productos Florestais Lda and Ordinal-Gestão de Investimentos Lda respectively under the Guidance Section of the European Agriculture Guidance and Guarantee Fund (EAGGF) — the Court (Sixth Chamber), composed of: F. Macken, President, N. Colneric, C. Gulmann, J.-P. Puissochet (Rapporteur) and V. Skouris, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 27 November 2001, the operative part of which is as follows:

1. *The application is dismissed as manifestly inadmissible.*

2. *The parties shall bear their own costs.*

([1]) OJ C 226 of 7.8.1999.

ORDER OF THE COURT

(First Chamber)

of 11 October 2001

in Case C-30/00 (reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal)): William Hinton & Sons L[da] v Fazenda Pública, intervener: Ministério Público ([1])

(Article 104(3) of the Rules of Procedure Post-clearance recovery of import duties — Entry in the accounts of the import duties to be collected — Expiry of the time-limit for taking action for recovery — Article 254 of the Act of Accession of Spain and Portugal — Obligation incumbent on the Portuguese Republic to proceed, at its own costs, to the elimination of certain stocks of product)

(2002/C 84/50)

(Language of the case: Portuguese)

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

In Case C-30/00: reference to the Court under Article 234 EC from the Supremo Tribunal Administrativo (Supreme Administrative Tribunal) for a preliminary ruling in the proceedings pending before that court between William Hinton & Sons L[da] and Fazenda Pública, intervener: Ministério Público — on the interpretation of Articles 1, 2 and 5 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1), Article 254 of the 1985 Act concerning the conditions of accession and the adjustments to the Treaties (OJ 1985 L 302, p. 23), Article 8 of Council Regulation (EEC) N3771/85 of 20 December 1985 on stocks of agricultural products in Portugal (OJ 1985 L 362, p. 21) and Articles 4 and 8 of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and

Portugal on 1 March 1986 (OJ 1986 57, p. 21) — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, L. Sevón and M. Wathelet, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has made an order on 11 October 2001, in which it has ruled:

1. *Article 1(2)(c) and the second subparagraph of Article 2(1) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties must be interpreted as meaning that entry in the accounts of the amount originally required of the person liable for payment is an official act which precedes notification regarding recovery and actual recovery and which does not necessarily consist in entry by the customs authority in the accounts books, or any other medium used in their stead, of the amount in question.*

2. *Article 2(2) of Regulation No 1697/79 must be interpreted as meaning that, where an initial act determining the amount of levies payable is annulled and replaced by a second act which, without altering the basis for recovery, fixes such levies in an amount lower than that which was initially decided, the action for recovery must be considered to have been set in motion by the initial act.*

3. *Neither Article 254 of the Act of Accession nor the provisions of Commission Regulation (EEC) No 3771/85 of 20 December 1985 on stocks of agricultural products in Portugal nor of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal preclude the Portuguese Republic from requiring of traders holding surplus stocks of sugar which they should have been able to export within the period prescribed for that purpose to pay the levy provided for by Article 7(1) of Regulation No 579/86.*

4. *The customs authorities of a Member State must refrain from carrying out post-clearance recovery of duties pursuant to Article 5(2) of Regulation No 1697/79 where:*

   — *the duties have not been collected on account of an error of interpretation or application of the provisions on the levy in question in so far as it is the consequence of acts of the competent authorities, which excludes errors caused by incorrect declarations by the person liable*

   — *the person liable acting in good faith could not reasonably have detected that error, despite his professional experience and the diligence shown by him*

   — *the person liable has complied with all of the provisions laid down by the rules in force as far as concerns the declaration of the event to which the collection of the levy in question relates.*

([1]) OJ No C 122 of 29 April 2000.

ORDER OF THE COURT

(Second Chamber)

3 December 2001

in Case C-59/00 (Reference for a preliminary ruling from the Vestre Landsret): Bent Mousten Vestergaard v Spøttrup Boligselskab ([1])

(Article 104(3) of the Rules of Procedure — Public works contracts — Contracts with a value below the threshold values laid down in Directive 93/37/EEC — Clause requiring the use of a product of a specified make, without any possibility of using a similar product — Free movement of goods)

(2002/C 84/51)

(Language of the case: Danish)

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

In Case C-59/00: Reference to the Court under Article 234 EC by the Vestre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between Bent Mousten Vestergaard and Spøttrup Boligselskab, on the interpretation of Articles 6 and 30 of the EC Treaty (now, after amendment, Articles 12 EC and 28 EC), the Court (Second Chamber) composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges, Advocate General: P. Léger, Registrar: R. Grass, after informing the referring court of its intention to give its decision by reasoned order in accordance with Article 104(3) of the Rules of Procedure, after inviting the parties referred to in Article 20 of the EC Statute of the Court of Justice to submit observations, has made an order on 3 December 2001, in which it has ruled:

Article 30 of the EC Treaty (now, after amendment, Article 28 EC) precludes a contracting authority from including in the contract documents for a public works contract which does not exceed the threshold laid down in Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts a clause requiring the use in carrying out the contract of a product of a specified make, where that clause does not include the words 'or equivalent'.

([1]) OJ C 122 of 29.4.2000.

ORDER OF THE COURT

(Sixth Chamber)

of 22 November 2001

in Case C-223/00 (reference for a preliminary ruling from the Supremo Tribunal Administrativo): Director-Geral do Departamento para os Assuntos do Fundo Social Europeu v Partex — Companhia Portuguesa de Serviços SA [1]

(Preliminary references — Inadmissibility)

(2002/C 84/52)

(Language of the case: Portuguese)

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

In Case C-223/00: reference to the Court under Article 234 EC from the Supremo Tribunal Administrativo (Supreme Administrative Court) for a preliminary ruling in the proceedings pending before that court between Director-Geral do Departamento para os Assuntos do Fundo Social Europeu and Partex- Companhia Portuguesa de Serviços SA — on the interpretation of Council Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (OJ 1983 L 289, p. 38) and of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516 — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann, J.-P. Puissochet and R. Schintgen, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has made an order on 22 November 2001, in which it has ruled:

The reference for a preliminary ruling made by the Supremo Tribunal Administrativo, by decision of 10 May 1999, is inadmissible.

[1] OJ 2000 C 233.

ORDER OF THE COURT

(Third Chamber)

of 23 October 2001

in Case C-281/00 P: Una Film 'City Revue' GmbH v European Parliament and Others [1]

(Directive 98/43/EC concerning the advertising and sponsorship of tobacco products — Appeal — No need to adjudicate — Costs)

(2002/C 84/53)

(Language of the case: German)

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

In Case C-281/00 P: appeal by Una Film 'City Revue' GmbH, established in Vienna (Austria), represented by R. Borgelt, Rechtsanwalt, assisted by Professor M. Dauses, against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 27 June 2000 in Joined Cases T-172/98 and T-175/98 to T-177/98 Salamander and Others v Parliament and Council [2000] ECR II-2487, seeking to have that judgment set aside and the claims made by the applicant at first instance upheld, the other parties to the proceedings being: European Parliament (Agents: C. Pennera and M. Berger), Council of the European Union (Agents: R. Gosalbo Bono and S. Marquardt), Commission of the European Communities (Agents: U. Wölker and I. Martínez del Peral), Markenverband eV, established in Wiesbaden (Germany), Manifattura Lane Gaetano Marzotto & Figli SpA, established in Valdagno (Italy), Lancaster BV, established in Amsterdam (Netherlands), French Republic, Republic of Finland, United Kingdom of Great Britain and Northern Ireland, Salamander AG, established in Kornwestheim (Germany), Zino Davidoff SA, established in Fribourg (Switzerland), Davidoff & Cie SA, established in Geneva (Switzerland), Alma Media Group Advertising SA & Co. Partnership, Panel Two and Four Advertising SA, Rythmos Outdoor Advertising SA and Media Center Advertising SA, established in Athens (Greece) — the Court (Third Chamber), composed of: C. Gulmann, acting for the President of the Third Chamber, J.-P. Puissochet (Rapporteur) and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 23 October 2001, the operative part of which is as follows:

1. *There is no need to adjudicate on the appeal brought by Una Film 'City Revue' GmbH.*

2. *Una Film 'City Revue' GmbH, the European Parliament and the Council of the European Union shall bear their own costs.*

3. *The Commission of the European Communities shall bear its own costs.*

(1) OJ C 259 of 9.9.2000.

ORDER OF THE COURT

(Third Chamber)

of 23 October 2001

in Case C-313/00 P: Zino Davidoff SA v European Parliament and Others (1)

(Directive 98/43/EC concerning the advertising and sponsorship of tobacco products — Appeal — No need to adjudicate — Costs)

(2002/C 84/54)

(Language of the case: German)

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

In Case C-313/00 P: appeal by Zino Davidoff SA, established in Fribourg (Switzerland), and Davidoff & Cie SA, established in Geneva (Switzerland), represented by R. Wägenbaur, Avocat, against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 27 June 2000 in Joined Cases T-172/98 and T-175/98 to T-177/98 Salamander and Others v Parliament and Council [2000] ECR II-2487, seeking to have that judgment set aside and the claims made by the applicants at first instance upheld, the other parties to the proceedings being: European Parliament (Agents: C. Pennera and M. Berger), Council of the European Union (Agents: R. Gosalbo Bono and S. Marquardt), defendants at first instance, Lancaster BV, established in Amsterdam (Netherlands), represented by B. Wägenbaur, Avocat, Commission of the European Communities (Agents: U. Wölker and I. Martínez del Peral), Markenverband eV, established in Wiesbaden (Germany), Manifattura Lane Gaetano Marzotto & Figli SpA, established in Valdagno (Italy), French Republic, Republic of Finland, United Kingdom of Great Britain and Northern Ireland, interveners at first instance, Salamander AG, established in Kornwestheim (Germany), Una Film 'City Revue' GmbH, established in Vienna (Austria), Alma Media Group Advertising SA & Co. Partnership, Panel Two and Four Advertising SA, Rythmos Outdoor Advertising SA and Media Center Advertising SA, established in Athens (Greece) — the Court (Third Chamber), composed of: C. Gulmann, acting for the President of the Third Chamber, J.-P. Puissochet (Rapporteur) and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 23 October 2001, the operative part of which is as follows:

1. *There is no need to adjudicate on the appeal brought by Zino Davidoff SA and Davidoff & Cie SA.*

2. *Zino Davidoff SA, Davidoff et Cie SA, the European Parliament and the Council of the European Union shall bear their own costs.*

3. *Lancaster BV and the Commission of the European Communities shall bear their own costs.*

(1) OJ C 302 of 21.10.2000.

ORDER OF THE COURT

(Third Chamber)

of 13 November 2001

in Case C-430/00 P: Anton Dürbeck GmbH v Commission of the European Communities (1)

(Appeals — Common organisation of the markets — Bananas — Importation from ACP States and third countries — Request for additional licences — Case of hardship — Transitional measures — Article 30 of Regulation (EEC) No 404/93 — Limitation of damages — Action for annulment)

(2002/C 84/55)

(Language of the case: German)

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

In Case P: Anton Dürbeck GmbH, established in Frankfurt-am-Main, represented by Dr Gert Meier, Rechtsanwalt — appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 19 September 2000 in Case T-252/97 Dürbeck v Commission [2000] ECR II-3031, seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities (Agents: K.-D. Borchardt and C. van der Hauwert), Kingdom of Spain (Agent: R. Silva de Lapuerta) and by French Republic (Agents: G. de Bergues and C. Vasak) — 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; J. Mischo, Advocate General; R. Grass, Registrar, made an order on 13 November 2001, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Anton Dürbeck GmbH shall pay the costs.*

3. *The French Republic and the Kingdom of Spain shall bear their own cost.*

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(1) OJ C 28 of 27.1.2001.

ORDER OF THE COURT

(First Chamber)

of 22 November 2001

in Case C-80/01 (reference for a preliminary ruling from the Tribunal d'Instance de Châteauroux): Michel SARL v Recettes des douanes (1)

(Article 104(3) of the Rules of Procedure — Question the answer to which may manifestly be deduced from the case-law — Directive 92/12/EEC — General arrangements for, holding, movement and monitoring of products subject to excise duty — Directive 92/81/EEC — Harmonization of the structures of excise duties on mineral oils — Non-reimbursement of an internal tax on petroleum products)

(2002/C 84/56)

(Language of the case: French)

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

In Case C-80/01: reference to the Court under Article 234 EC from the Tribunal d'Instance (District Court), Châteauroux (France), for a preliminary ruling in the proceedings pending before that court between Michel SARL and Recettes des douanes — on the interpretation of Article 3(a) and (b) of the EC Treaty (now, after amendment, Article 3(a) and (b) EC), the first recital in the preamble to, and Article 3(2) of, Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), and the sixth and eighth recitals in the preamble to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12), the Court (First Chamber), composed of: P. Jann, President of Chamber, L. Sevón and M. Wathelet (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, gave a judgment on 22 November 2001, the operative part of which is as follows:

Article 3(a) and (b) of the EC Treaty (now, after amendment, Article 3(a) and (b) EC), the first recital in the preamble to, and Article 3(2) of, Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and the sixth and eighth recitals in the preamble to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils must be interpreted as meaning that they do not preclude a Member State refusing, upon the failure to pay by the customer of a trader in petroleum products, to reimburse an excise duty such as the domestic duty on petroleum products paid by such a trader.

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(1) OJ C 108 of 7.4.2001.

ORDER OF THE COURT

of 24 October 2001

in Case C-186/01 R (reference for a preliminary ruling from the Verwaltungsgericht Stuttgart): Alexander Dory v Federal Republic of Germany (1)

(Applications for interim relief — Preliminary reference procedure — Lack of jurisdiction of the Court)

(2002/C 84/57)

(Language of the case: German)

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

In Case C-186/01 R: reference to the Court under Article 234 EC from the Verwaltungsgericht Stuttgart (Germany) for a preliminary ruling in the proceedings pending before that court between Alexander Dory and The Federal Republic of Germany — on the interpretation of Article 2 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) — the Court has made an order on 24 October 2001 in which it has ruled as follows:

The application for interim relief is inadmissible.

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(1) OJ C 200 of 14.7.2001.

Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that court of 13 September 2001 in the case of Franca Ninni-Orsache v Bundesminister für Wissenschaft, Verkehr und Kunst

(Case C-413/01)

(2002/C 84/58)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Administrative Court of Appeal) of 13 September 2001 which was received at the Court Registry on 17 October 2001, for a preliminary ruling in the case of Franca Ninni-Orsache v Bundesminister für Wissenschaft, Verkehr und Kunst on the following questions:

1.1. Does the fact that an EU citizen works for a short period (two and a half months) that is fixed from the outset in a Member State of which he is not a national confer on him the status of a worker under Article 48 of the EC Treaty (now Article 39 EC)?

1.2. When determining whether he is a worker in the above sense in such a case, are any of the following circumstances significant:

1.2.1. the fact that he took up the job only some years after his entry into the host State;

1.2.2. the fact that shortly after the end of his short, fixed-term employment relationship he became eligible for entry to university in the host country by virtue of having completed his schooling in his country of origin;

1.2.3. the fact that he attempted to find a new job in the period between the end of the short, fixed-term employment relationship and the time when he took up his studies?

2. If he is a (migrant) worker under Question 1:

2.1. Does the termination, by expiry of time, of an employment relationship which is limited from the outset to a fixed term constitute a voluntary termination?

2.2. If so, in such a case, when assessing whether or not the termination of the employment relationship was voluntary or involuntary, are any of the following circumstances significant, either in themselves or in conjunction with the other factors referred to herein:

2.2.1. the fact that shortly after the employment relationship ended he became eligible for entry to university in the host country by virtue of having completed his schooling in his country of origin and/or

2.2.2. immediately following termination of that employment relationship until beginning his studies, he was looking for another job?

Is it relevant to the answer to this question that the other job sought by the person in question constitutes a sort of continuation at a similar (low) level of the job which he was doing for a fixed period but which has come to an end, or a job which corresponds to the higher level of education achieved in the meantime?

Reference for a preliminary ruling by the Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Tercera by order of 3 October 2001 in the case of Sociedad Cooperativa General Agropecuaria (ACOR) and Administración General del Estado, Azucareras Reunidas de Jaén and Azucarera Ebro Agrícolas SA

(Case C-416/01)

(2002/C 84/59)

Reference has been made to the Court of Justice of the European Communities by order of 3 October 2001 by the Tribunal Supremo (Supreme Court), Sala de lo Contencioso-Administrativo, Sección Tercera, (Chamber for Contentious Administrative Proceedings, Division Three), which was received at the Court Registry on 22 October 2001, for a preliminary ruling in the case of Sociedad Cooperativa General Agropecuaria (ACOR) and Administración General del Estado, Azucareras Reunidas de Jaén and Azucarera Ebro Agrícolas SA on the following questions:

If, in the exercise of its power of administrative review of a merger of undertakings, the authorities of a Member State deem it necessary to redistribute sugar production quotas among undertakings situated in its territory in order to safeguard competition:

(a) Do the provisions of Council Regulation (EEC) No 1785/81 of 30 June 1981 [1] and/or of Council Regulation (EEC) No 193/82 of 26 January 1982 [2] preclude those authorities from stipulating that such a transfer or reallocation of quotas is for value and, therefore, that the recipient undertaking or undertakings must pay financial consideration?

(b) Even if the answer is in the negative, do the same provisions nevertheless preclude the price of the quota to be transferred, and the distribution thereof, from being decided by public auction? Do those provisions preclude recourse to public auction even where it has been stipulated that, as part of the reallocation of quotas carried out by such a procedure, the measures required to prevent any possible negative repercussions for national agricultural producers of sugar beet will be adopted?

(c) Is the interpretation of Community law the same, and must the answers also be so, in the light of Council Regulation (EC) No 1260/2001 of 19 June 2001 [3] on the common organisation of the markets in the sugar sector, which repeals the earlier regulations?

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[1] On the common organization of the markets in the sugar sector (OJ 1981 L 177, p. 4).

[2] Laying down general rules for transfers of quotas in the sugar sector (OJ 1982 L 21, p. 3).

[3] OJ 2001 L 178, p. 1.

Reference for a preliminary ruling from the Regeringsrätten (Supreme Administrative Court) of 23 October 2001 in the case of Försäkringsaktiebolaget Skandia and Ola Ramstedt v Riksskatteverket (National Tax Board)

(Case C-422/01)

(2002/C 84/60)

Reference has been made to the Court of Justice of the European Communities by a decision of the Regeringsrätten of 23 October 2001, which was received at the Court Registry on 25 October 2001, for a preliminary ruling in the case of Försäkringsaktiebolaget Skandia and Ola Ramstedt v Riksskatteverket on the following question:

Are the provisions of Community law on freedom of movement for persons, services and capital, in particular Article 49 EC, in conjunction with Article 12 EC, to be interpreted as meaning that they preclude application of national tax rules under which an insurance policy issued by an insurance company in the UK, Germany or Denmark which meets the conditions laid down in Sweden for occupational pension insurance — apart from the condition that the policy must be issued by an insurance company operating in Sweden — is treated as an endowment insurance policy with income tax effects which, depending on the circumstances in the individual case, may be less favourable than the tax effects of an occupational pension policy?

Reference for a preliminary ruling from the Cour de Cassation, Grand Duchy of Luxembourg, by judgment of that court of 8 November 2001 in the case of Design Concept SA v Flanders Expo SA

(Case C-438/01)

(2002/C 84/61)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour de Cassation (Court of Cassation), Grand Duchy of Luxembourg, of 8 November 2001, which was received at the Court Registry on 13 November 2001, for a preliminary ruling in the case of Design Concept SA v Flanders Expo SA on the following question:

'Is Article 9(2)(e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1], concerning "advertising services", applicable to services supplied indirectly to the advertiser and invoiced to a third party who in turn invoices them to the advertiser, if the advertiser does not produce goods in the price of which the cost of the services is going to be included?'

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[1] OJ 1977 L 145, p. 1.

Reference for a preliminary ruling by the Bundesverwaltungsgericht by order of 18 September 2001 in the case of Stadt Villingen-Schwenningen v Ophilia Akosua Owusu

(Case C-444/01)

(2002/C 84/62)

Reference has been made to the Court of Justice of the European Communities by order of 18 September 2001 by

the Bundesverwaltungsgericht (Federal Administrative Court), which was received at the Court Registry on 19 November 2001, for a preliminary ruling in the case of Stadt Villingen-Schwenningen v Ophilia Akosua Owusu on the following questions:

1. With regard to the legal position on 16 May 1997, was prostitution engaged in on a self-employed basis by a national of Member State A in Member State B covered by freedom of establishment (Article 52 of the EC Treaty) and/or freedom to provide services (Article 59 of the EC Treaty)? Is it in this regard relevant whether prostitution was at that time considered in Member State B to be immoral and anti-social?

2. If the first question is answered in the negative:

   With regard to the legal position on 16 May 1997, did the national of Member State A derive a right to reside in Member State B directly from Article 8a of the EC Treaty?

3. If the second question is answered in the negative:

   As the law stood on 16 May 1997, did that person have a right of residence under the conditions set out in Article 1 of Council Directive 90/364/EEC [1] of 28 June 1990 on the right of residence, even though Member State B had not yet at that date implemented that directive in its domestic law?

4. If the third question is answered in the affirmative:

   Was that person required at the time of her entry to have sufficient resources and to demonstrate this to the competent authority, or does it suffice if, during her period of residence in Member State B, she did not claim any social assistance?

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[1] OJ L 180, p. 26.

Reference for a preliminary ruling by the Giudice Unico del Tribunale di Beilla by order of 18 October 2001 in case of Roberto Simoncello and Piera Boerio v Direzione Provinciale del Lavoro, Vercelli (Principal Labour Administration, Vercelli)

(Case C-445/01)

(2002/C 84/63)

Reference has been made to the Court of Justice of the European Communities by order of 18 October 2001 of the Giudice Unico del Tribunale di Beilla (Single-Judge Court of Beilla), which was received at the Court Registry on 19 November 2001, for a preliminary ruling in the case of Roberto Simoncello and Piera Boerio v Direzione Provinciale del lavoro (Vercelli) on the following question:

Are Article 9 bis (2) of Law No 608 of 28 November 1996, in so far as it provides that an employer is required to notify the Sezione Circoscrizionale per l'Impiego of the hiring of every worker, and Article 10 of Legislative Decree No 469 of 23 December 1997, in so far as it refers to Article 9 bis of Law 608/1996 in cases where non-authorised parties have acted as intermediaries, consistent with the principles of Community law laid down by Articles 48, 52 and 90 of the EC Treaty (now, after amendment, Articles 39, 43, and 86 EC).

Reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen, Vienna, by order of that court of 5 November 2001 in the case of DLD Trading Company Import-Export, spol.s.r.o. v Republic of Austria

(Case C-447/01)

(2002/C 84/64)

Reference has been made to the Court of Justice of the European Communities by an order of the Landesgericht für Zivilrechtssachen (Regional Court for Civil Matters), Vienna, of 5 November 2001, which was received at the Court Registry on 20 November 2001, for a preliminary ruling in the case of OLD Trading Company Import-Export, spol.s.r.o. v Republic of Austria on the following questions:

1. Was a provision of directly applicable Community law or a directive infringed and, if so, which one, as a result of the government action described in the facts, in particular the alteration as from 1 January 1998 of the travellers' duty-free amount to EUR 75 or EUR 100, according to the case under Paragraph 97a of the customs implementing law [ZollR-DG] in conjunction with Paragraph 19a of the corresponding implementing regulation [ZollR-DV] and the quantitative restriction in regard to the relief from turnover tax and excise duty on tobacco products.

2. If Question 1 is answered affirmatively:

   Is the infringed provision of directly applicable Community law or of that directive one which confers an individual right on the plaintiff in the main proceedings?

3. If Question 2 is answered affirmatively:

   Does the Court of Justice have available to it on the basis of the reference for a preliminary ruling all the information needed in order to be able itself to assess whether the government body as mentioned in the facts as set out caused specific injury to the defendant or will it leave the reply to that question to the referring Austrian court?

Reference for a preliminary ruling from the Bundesvergabeamt (Austria) by order of that tribunal of 13 November 2001 in the case of (1) EVN AG and (2) Wienstrom GmbH v Republic of Austria

(Case C-448/01)

(2002/C 84/65)

Reference has been made to the Court of Justice of the European Communities by an order of the Bundesvergabeamt (Federal Procurement Office) of 13 November 2001, which was received at the Court Registry on 20 November 2001, for a preliminary ruling in the case of (1) EVN AG and (2) Wienstrom GmbH v Republic of Austria on the following questions:

1. Do the provisions of Community law relating to the award of public contracts, in particular Article 26 of Directive 93/36/EEC [1], prohibit a contracting authority from laying down an award criterion in relation to the supply of electricity which is given a 45 % weighting and which requires a tenderer to state, without being bound to a defined supply period, how much electricity he can supply from renewable sources to a group of consumers not more closely defined, where the maximum number of points is given to whichever tenderer states the highest amount and a supply volume is taken into account only to the extent that it exceeds the volume of consumption to be expected in the context of the contract to which the invitation to tender relates?

2. Do the provisions of Community law relating to the award of public contracts, in particular Article 2(1)(b) of Directive 89/665/EEC [2], prohibit making the setting aside of an unlawful decision in review proceedings under Article 1 of Directive 89/665/EEC dependent on proof that the unlawful decision was material to the outcome of the procurement procedure?

3. Do the provisions of Community law relating to the award of public contracts, in particular Article 26 of Directive 93/36/EEC, prohibit making the setting aside of an unlawful decision in review proceedings under Article 1 of Directive 89/665/EEC dependent on proof that the unlawful decision was material to the outcome of the procurement procedure, where that proof has to be achieved by the review body examining whether the ranking of the tenders actually submitted would have been different had they been re-evaluated disregarding the unlawful award criterion?

4. Do the provisions of Community law relating to the award of public contracts, in particular Article 26 of Directive 93/36/EEC, require the contracting authority to cancel the invitation to tender if it transpires in review proceedings under Article 1 of Directive 89/665/EEC that one of the award criteria it laid down is unlawful?

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[1] OJ 1993 L 199, p. 1.
[2] OJ 1989 L 395, p. 33.

Reference for a preliminary ruling by the Court of Appeal (England and Wales) (Civil Division) by order of that court dated 11 May 2001, in the case of Abbey Life Assurance Company Ltd against Kok Theam Yeap

(Case C-449/01)

(2002/C 84/66)

Reference has been made to the Court of Justice of the European Communities by an order of the Court of Appeal (England and Wales) (Civil Division) dated 11 May 2001, which was received at the Court Registry on 21 November 2001, for a preliminary ruling in the case of Abbey Life Assurance Company Ltd and Kok Theam Yeap on the following questions:

1) Can 'policies for life assurance, annuities, health and pension business, unit trusts, offshore funds business, personal equity plans and other contracts offered by Abbey' or any of them be described as 'goods' that fall within the provisions of 1993 Regulations and/or in the Directive?

2) Do 'policies for life assurance, annuities, health and pension business, unit trusts, offshore funds business, personal equity plans and other contracts offered by Abbey' or any of them have to be:

   (i) marketable, and/or

(ii) assignable

before they can be described a 'goods' that fall within the provisions of 1993 Regulations and/or in the Directive?

Reference for a preliminary ruling by the Verwaltungsgerichtshof (Austria) by order of 19 October 2001 in the case of 1. Margarete Ospelt, 2. Schlössle Weissenberg Familienstiftung v Unabhängiger Verwaltungssenat des Landes Vorarlberg

(Case C-452/01)

(2002/C 84/67)

Reference has been made to the Court of Justice of the European Communities by order of 19 October 2001 by the Verwaltungsgerichtshof (Higher Administrative Court, Austria), which was received at the Court Registry on 22 November 2001, for a preliminary ruling in the case of 1. Margarete Ospelt, 2. Schlössle Weissenberg Familienstiftung v Unabhängiger Verwaltungssenat des Landes Vorarlberg on the following questions:

1. Are Article 12 EC (ex Article 6 of the EC Treaty) and Article 56 EC et seq. (ex Article 73b et seq. of the EC Treaty) to be interpreted as meaning that rules whereby transactions in agricultural and forestry plots are subject to restrictions imposed by the administrative authorities in the public interest of preserving, strengthening or creating a viable farming community are also permitted in relation to Member States of the EEA as 'third countries' under Article 56(1) EC (ex Article 73b of the EC Treaty) having regard to the fundamental freedoms guaranteed by an applicable law of the European Union, in particular the free movement of capital?

2. In the event that the first question is answered in the affirmative:

   Are Article 12 EC (ex Article 6 of the EC Treaty) and Article 56 EC et seq. (ex Article 73b et seq. of the EC Treaty) to be interpreted as meaning that the fact that the appellant must, in the case of transfers of agricultural and forestry plots, undergo an 'authorisation procedure' even before the property right is entered in the land register, pursuant to the (Voralberg) Gesetz über den Verkehr mit Grundstücken (Land Transfer Law — VGVG 1993) published in Voralberg LGBl. No 61/1993, entails an infringement of Community law and of one of the appellant's fundamental freedoms guaranteed by the law of the European Union, which is also applicable to Member States of the EEA as 'third countries' under Article 56(1) EC (ex Article 73b of the EC Treaty)?

Action brought on 27 November 2001 by the Commission of the European Communities against the Italian Republic

(Case C-455/01)

(2002/C 84/68)

An action against the Italian Republic was brought before Court of Justice on 27 November 2001 by the Commission of the European Communities, represented by Richard B. Wainwright and Roberto Amorosi, acting as Agents.

The applicant claims that the Court of Justice should:

— Declare that, by keeping in force legislation under which products in respect of which there has not yet been full harmonisation, intended for use on merchant vessels flying the Italian flag, may be marketed only if a certificate of conformity has been issued by a national body — so that in some cases the right to market the products is enjoyed only by the grantee of the certificate — and by not recognising the validity of tests carried out in accordance with international standards by bodies officially recognised in the other Member States or States signatory to the EEA Agreement, even where the relevant information is made available to the competent authority and it is clear from the certificates that the equipment guarantees an equivalent degree of safety, the Italian Republic has failed to fulfil its obligations under Articles 28 and 30 of the Treaty;

— Order the Italian Republic to pay the costs.

Pleas and principal arguments

The slavish application — when not justified by overriding requirements — to goods lawfully produced and marketed in other Member States of rules laid down for domestically produced goods, and in particular the refusal to take account, for the purposes of issuing 'type approval declarations', of certificates accompanying such goods, even where they contain the information needed to assess how safe they are, undoubtedly constitutes a measure having an effect equivalent to a quantitative restriction on imports which is liable to hinder intra-Community trade.

The foregoing is common ground. At issue is the measure adopted by the Italian State in order to adjust its domestic legislation to the principles laid down in Community law once

such legislation has been found to be non-compliant. It is untenable to think that service order No 57/2000 of 4 August 2000 issued by the authority governing harbourmasters is capable of amending Decree No 347/94 containing the contested provisions.

In the Commission's view, the Italian authorities are well aware of the above considerations, as is clear from the undertaking given several times — but so far not fulfilled — to make the necessary amendments to Presidential Decree No 347/94 in order to bring Italian legislation into line with Community law.

Appeal brought on 28 November 2001 by Henkel KGaA against the judgment delivered on 19 September 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-335/99, between Henkel KGaA and the Office for Harmonization in the Internal Market (Trade Marks and Designs)

(Case C-456/01 P)

(2002/C 84/69)

An appeal against the judgment delivered on 19 September 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-335/99, between Henkel KGaA and the Office for Harmonization in the Internal Market (Trade Marks and Designs) [1], was brought before the Court of Justice of the European Communities on 28 November 2001 by Henkel KGaA, represented by Rechtsanwälte Holger Friedrich Wissel and Dr. Christian Osterrieth, Düsseldorf, with an address for service in Luxembourg.

The applicant claims that the Court should:

— partially annul the judgment of the Court of First Instance of the European Communities of 19 September 2001 in Case T-335/999, served on 1 October 2001;

annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market of 21 September 1999 in Case R 71/1999-3 relating to Community trade mark application number 703 231;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Infringement of Article 7(1)(b) of Council Regulation No 40/94 on the Community trade mark [2]. Contrary to the view of the Court of First Instance, the mark applied for lacks distinctive character. At the time of the application, neither the tablet shape nor the colour combination, and especially the combination of the two, were typical for a washing powder and they were certainly not technically necessary.

Contrary to the view taken by the Court of First Instance, there is no reason why consumers should in principle be regarded as less attentive when purchasing goods for everyday use; rather, the opposite is true.

In the alternative: even if the time of registration were decisive, the possibility cannot be ruled out that the contested trade mark application could serve to designate the origin of the goods, since it is prohibited, when considering the list of goods, to rule out distinctiveness on the grounds that there may be similarities between the goods. That approach conflates to an unacceptable degree the issue of registrability with that of scope of protection, or likelihood of confusion. Even where a mark is confusingly similar, it is for the proprietor of the mark having priority to obtain refusal of the earlier mark under Article 8 of Regulation 40/94.

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[1] Not yet published in the court reports.
[2] OJ L 11, p. 1.

Appeal brought on 28 November 2001 by Henkel KGaA against the judgment delivered on 19 September 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-336/99, between Henkel KGaA and the Office for Harmonization in the Internal Market (Trade Marks and Designs)

(Case C-457/01 P)

(2002/C 84/70)

An appeal against the judgment delivered on 19 September 2001 by the Second Chamber of the Court of First Instance of the European Communities in Case T-335/99, between Henkel KGaA and the Office for Harmonization in the Internal Market (Trade Marks and Designs) [1], was brought before the Court of Justice of the European Communities on 28 November 2001 by Henkel KGaA, represented by Rechtsanwälte Holger Friedrich Wissel and Dr. Christian Osterrieth, Düsseldorf, with an address for service in Luxembourg.

The applicant claims that the Court should:

— partially annul the judgment of the Court of First Instance of the European Communities of 19 September 2001 in Case T-336/999, served on 1 October 2001;

annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market of 21 September 1999 in Case R 71/1999-3 relating to Community trade mark application number 703 231;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

The same as in Case C-456/01P.

(1) Not yet published in the court reports.

Action brought on 29 November 2001 by the Commission of the European Communities against the Italian Republic

(Case C-458/01)

(2002/C 84/71)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 29 November 2001 by the Commission of the European Communities, represented by Chiara Cattabriga and Arnaud Bordes, acting as Agents.

The applicant claims that the Court should:

— declare that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/90/EC of 15 November 1999 amending Directive 90/539/EEC on animal health conditions governing intra-Community trade in and imports from third countries of poultry and hatching eggs the Italian Republic has failed to fulfil its obligations under the EC Treaty;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 249 EC (formerly Article 189 of the EC Treaty), which provides that a directive is binding, as to the result to be achieved, on the Member State to which it is addressed, entails an obligation on the Member States to adhere to the time-limits for implementation laid down in directives. That time-limit expired on 1 July 2000 before the Italian Republic had taken the necessary measures to comply with the directive which is the subject of the Commission's claims.

Action brought on 29 November 2001 by the Commission of the European Communities against Ireland

(Case C-459/01)

(2002/C 84/72)

An action against Ireland was brought before the Court of Justice of the European Communities on 29 November 2001 by the Commission of the European Communities, represented by Christopher Docksey and Karen Banks, acting as agents, with an address for service in Luxembourg.

The Applicant requests that the Court should:

1. declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with European Parliament and Council Directive 95/46/EC of 24 October 1995 concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data (1) and European Parliament and Council Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (2), or, in any event, by failing to inform the Commission of those measures, Ireland has failed to fulfil its obligations under the said Directives, and

2. order Ireland to pay the costs of this action.

Pleas in law and main arguments

Article 249 EC, under which a directive shall be binding as to the result to be achieved, upon each Member State, carries by

implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period has expired without Ireland having enacted the provisions necessary to comply with the directives referred to in the conclusions of the Commission.

(1) OJ L 281, 23.11.1995, p. 31-50.
(2) OJ L 024, 30.1.1998, p. 1.

Action brought on 28 November 2001 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-460/01)

(2002/C 84/73)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 28 November 2001 by the Commission of the European Communities, represented by H.M.H. Speyart and G. Wilms, acting as Agents.

The applicant claims that the Court should:

(1) declare that, by having, between 1 January 1991 and 31 December 1995:

— failed, where the declarant in an external Community transit procedure has not, within three months from notification by the customs office of departure that the consignment has not been presented at the customs office of destination, furnished proof of the regularity of the transit operation concerned — at the latest on the third day following the expiry of that time-limit, to take steps to enter in the accounts and recover the customs debt and other charges involved, or by having done so later than provided for by Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ, English Special Edition 1971 (II), p. 354);

— failed promptly to make available to the Commission the own resources relating thereto; and

— refused to pay the default interest connected therewith,

the Kingdom of the Netherlands has failed to fulfil its obligations under the second sentence of the second subparagraph of Article 11(2) of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure [1], the third sentence of Article 49(2) of Commission Regulation (EEC) No 1214/92 of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure [2] and the third sentence of Article 379(2) of 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 [3] and under Articles 2 and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources [4];

(2) order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

— Infringement of the second sentence of the second subparagraph of Article 11(2) of Regulation No 1062/87, the third sentence of Article 49(2) of Regulation No 1214/92 and the third sentence of Article 379(2) of Regulation No 2454/93 (the regulation implementing the Community Customs Code, hereinafter 'the implementing regulation'): Article 96 of Regulation No 2913/92 [5] (the Community Customs Code, hereinafter 'the CCC') and Articles 356 and 379 of the implementing regulation lay down mandatory time-limits for the acts to be performed by the declarant and the offices of departures and destination in the context of an external Community transit procedure, in particular where a consignment covered by that transit procedure is not presented in good time to the office of destination. The Netherlands and the Commission are in disagreement concerning the correct application of the period of three months which starts to run on the day of notification of non-discharge (Article 379(2) of the implementing regulation and analogous previous provisions). That time-limit is primarily binding on the declarant, since he is required within that period to furnish proof of the regularity of the transit operation concerned. However, that time-limit is also binding on the Member State in which the customs office of departure is located, inasmuch as it follows from the penultimate sentence of Article 317(2) of the implementing regulation that where, following the expiry of that time-limit, proof has not been furnished by the declarant, the Member State concerned is required to take prompt steps to recover the customs debt in question. On the first day of the fourth month after notification of non-discharge, the office of departure has available to it all the particulars necessary in order to calculate the customs debt in question (Article 217(1) and the opening wording and subparagraph (a) of 218(3) of the CCC) and to identify the debtor concerned — in this case, the declarant (opening wording and subparagraph (b) of 218(3) of the CCC). Under Articles 218 and 219 of the CCC, the debt must then be entered in the accounts within two days or, in certain circumstances, within 14 days. Consequently, subject to possible extension of the time-limit pursuant to Article 219 of the CCC, the Member State has no discretion enabling it to decide at what point in time it

should proceed to enter the customs debt in question in the accounts. By virtue of Article 221(1) of the CCC, the Member State is required to take immediate steps, following the entry in the accounts, to recover the debt by communicating the amount thereof to the debtor. The Netherlands is incorrect in its view that it may take as much time as it wishes to carry out a careful assessment, 'having regard to the quantity and complexity of the evidence produced in a given case'. The argument advanced by the Netherlands can only be regarded as seeking the application of Article 219 of the CCC. However, Articles 218 and 219 of the CCC are provisions designed to safeguard the financial interests of the Community, for which customs receipts constitute a form of own resources, and which thus has an interest in the rapid determination of those receipts. Consequently, it is not open to the Member States to invoke, at will, extensions under Article 219 of the CCC as against the Commission. On the contrary, the Member States must always show why the reasons invoked by them render it necessary to extend the time-limit for entry in the accounts.

— Infringement of Articles 9 and 10 of Regulation No 1552/89.

— Infringement of Article 11 of Regulation No 1552/89: the infringements complained of in the last two pleas are necessary consequences of the infringement described in the first plea. During the period in question, the Netherlands failed to make the principal sum available. In addition, it has hitherto constantly refused to pay the corresponding default interest. Since the end of 1996 the Commission has been requesting the Netherlands authorities to pay to it the sum of NLG 5 323 395,06 by way of default interest.

([1]) OJ 1987 L 107, p. 1.
([2]) OJ 1992 L 132, p. 1.
([3]) OJ 1993 L 253, p. 1.
([4]) OJ 1989 L 155, p. 1.
([5]) OJ 1992 L 302, p. 1.

Reference for a preliminary ruling by the Halmstads Tingsrätt (Sweden) by order of that court of 8 November 2001 in the case of Åklagaren v Ulf Hammarsten

(Case C-462/01)

(2002/C 84/74)

Reference has been made to the Court of Justice of the European Communities by order of the Halmstads Tingsrätt (District Court, Halmstad) of 8 November 2001, which was received at the Court Registry on 3 December 2001, for a preliminary ruling in the case of Åklagaren v Ulf Hammarsten on the following questions:

(1) Does Article 28 of the Treaty of Rome permit a Member State to prohibit cultivation or other processing of 'industrial hemp' allowed under EC regulations?

(2) If that is not the case, can an exception nevertheless be made under Article 30 of the Treaty of Rome with the result that such a prohibition does not conflict with EC law?

(3) If that is not the case, can the Swedish prohibition be accepted on some other ground?

Action brought on 4 December 2001 by the Commission of the European Communities against the Republic of Austria

(Case C-465/01)

(2002/C 84/75)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 4 December 2001 by the Commission of the European Communities, represented by Jörn Sack, Legal Adviser in the Commission of the European Communities, with an address for service at the office of Luis Escobar Guerrero, of the Commission's Legal Service, Wagner Centre, Kirchberg, Luxembourg.

The applicant claims that the Court should:

(1) declare that:

(a) by excluding workers from other EC/EEA Member States from the right to stand for election to chambers of workers, the Republic of Austria has failed to fulfil its obligations under Article 8 of Regulation (EEC) No 1612/68([1]) on freedom of movement for workers within the Community and under Article 28 of the Agreement on the European Economic Area;

(b) by excluding workers from third countries who are lawfully employed in a Member State from the right to stand for election to the works councils and general assemblies of chambers of workers, the Republic of Austria has failed to fulfil its obligations under the provisions of the Association Agreements concluded by the Community with such third countries, which prohibit discrimination against such workers;

(2) order the Republic of Austria to pay the costs.

Pleas in law and main arguments:

According to Article 39(2) EC, the right to freedom of movement within an EC Member State enjoyed by nationals of other Member States entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. Article 28 of the EEA Agreement contains analogous provisions. In addition, Article 8(1) of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community expressly confers on workers from other Member States the 'right of eligibility for workers' representative bodies in the undertaking'. That wording includes within its ambit the right to elect, and to stand for election to, workers' representative bodies within a Member State.

The Commission further argues that the notion of conditions of work and employment as contained in the Association Agreements and comparable agreements must be interpreted as having the same meaning as in Article 39(2) EC and Article 8 of Regulation (EEC) No 1612/68, according to which it covers the exercise of rights of participation in management, such as the right to vote and to stand as a candidate in works council elections and elections to chambers of workers.

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

Action brought on 4 December 2001 by the Commission of the European Communities against the Hellenic Republic

(Case C-466/01)

(2002/C 84/76)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 4 December 2001 by the Commission of the European Communities, represented by Maria Kondou-Durande, Legal Adviser.

The Commission claims that the Court should:

— declare that, by not adopting within the time-limit laid down the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/89/EC([1]) of 15 November 1999 amending Directive 91/494/EEC on animal health conditions governing intra-Community trade in and imports from third countries of fresh poultrymeat, the Hellenic Republic has failed to fulfil its obligations under the Treaty and that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

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

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

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

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

([1]) OJ No L 300, 23.11.1999, p. 17.

Appeal brought on 6 December 2001 by Procter & Gamble Company against the judgment delivered on 19 September 2001 by the Second Chamber of the Court of First Instance of the European Communities in case T-129/00 [1] between Procter & Gamble Company and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

(Case C-474/01 P)

(2002/C 84/77)

An appeal against the judgment delivered on 19 September 2001 by the Second Chamber of the Court of First Instance of the European Communities in case T-129/00 between Procter & Gamble Company and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of Justice of the European Communities on 6 December 2001 by Procter & Gamble Company, established in Cincinnati, Ohio (United States of America), represented by C.J.J.C. van Nispen and G. Kuipers, lawyers.

The Appellant claims that the Court should:

— annul the judgment; insofar as the remainder of the action was dismissed;

— order the OHIM to pay the costs both at first instance and on appeal.

Pleas in law and main arguments

See case C-473/01 P.

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[1] OJ C 192, 8.7.2000, p. 25.

Action brought on 11 December 2001 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-478/01)

(2002/C 84/78)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice on 11 December 2001 by the Commission of the European Communities, represented by M. Patakia, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

(1) declare that, by maintaining the obligation for patent agents, when providing services, either to maintain an official place of business on Luxembourg territory or, failing that, to maintain an official address care of an approved agent, and by failing to supply information concerning the precise conditions for the application of Article 85(2) of the Law of 20 July 1992 and Articles 19 and 20 of the Law of 28 December 1988, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 et seq. EC and Article 10 EC respectively;

(2) order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

— The obligation to maintain an official address, imposed by Article 83(4) of the Law of 20 July 1992, constitutes a restriction on the principle of freedom to provide services as laid down by Article 49 EC, since it impedes the activities of the service provider by causing him to bear additional costs and obliging him to create professional links with a local operator in the same sector, who may even be a competitor. Moreover, that obligation is likely to prompt foreign applicants to have recourse to the services of patent agents established in Luxembourg.

— The fact that the detailed information requested by the Commission has not been supplied means that it is impossible to establish whether it is justified, even as regards straightforward acts of an administrative nature, to require industrial property advisers in other Member States to fulfil the criteria for recognition of their professional qualifications (Council Directive 89/48/EEC [1]). That lack of any response constitutes a failure to collaborate within the meaning of Article 10 EC.

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[1] Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ L 19 of 21.1.1989, p. 16).

Action brought on 11 December 2001 by Commission of the European Communities against Kingdom of Belgium

(Case C-479/01)

(2002/C 84/79)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 11 December 2001 by the Commission of the European Communities, represented by M. Wolfcarius, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt or by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 1999/19/EC of 18 March 1999 amending Council Directive 97/70/EC of 11 December 1997 [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive and the EC Treaty;

2. Order Belgium to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case C-466/01; the period prescribed by the directive expired on 31 May 2000.

[1] Commission Directive 1999/19/EC of 18 March 1999 amending Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over OJ 1999 L 83, p. 48.

Action brought on 13 December 2001 by the Commission of the European Communities against the French Republic

(Case C-483/01)

(2002/C 84/80)

An action against the French Republic was brought before the Court of Justice of the European Communities on 13 December 2001 by the Commission of the European Communities, represented by R. Tricot, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by failing to adopt all the laws, regulations and administrative measures necessary in order to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation [1], or at any rate by failing to notify those measures to the Commission, the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case C-389/01 [2]; although the prescribed time-limit (13 May 2000) has expired, France has not yet adopted the majority of the provisions necessary in order to transpose the directive into national law.

[1] OJ L 314 of 4.12.1996, p. 20.
[2] OJ C 348 of 8.12.2001, p. 16.

Action brought on 13 December 2001 by the Commission of the European Communities against the French Republic

(Case C-484/01)

(2002/C 84/81)

An action against the French Republic was brought before the Court of Justice of the European Communities on 13 December 2001 by the Commission of the European Communities, represented by R. Tricot, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionizing radiation in relation to medical exposure [1], or at any rate by failing to notify those measures to the Commission, the French Republic has failed to fulfil its obligations under Article 14 of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case C-389/01 [2]; although the prescribed time-limit (13 May 2000) has expired, France has not yet adopted the majority of the provisions necessary in order to transpose the directive into national law.

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[1] OJ L 180 of 9.7.1997, p. 22.
[2] OJ C 348 of 8.12.2001, p. 16.

Appeal brought on 17 December 2001 by the Front National against the judgment of 2 October 2001 delivered by the Third Chamber of the Court of First Instance of the European Communities in Joined Cases T-222/99, T-327/99 and T-329/99 between J.C. Martinez and Ch. de Gaulle, the Front National, E. Bonino and Others and the European Parliament

(Case C-486/01 P)

(2002/C 84/82)

An appeal against the judgment delivered on 2 October 2001 by the Third Chamber of the Court of First Instance of the European Communities in Joined Cases T-222/99, T-327/99 and T-329/99 between J.C. Martinez and Ch. de Gaulle, the Front National, E. Bonino and Others and the European Parliament was brought before the Court of Justice of the European Communities on 17 December 2001 by the Front National.

The appellant claims that the Court should:

— declare admissible the appeal brought by the Front National against the judgment of 2 October 2001 of the Court of First Instance of the European Communities,

— find that there has been an infringement of Community law by the Court of First Instance,

— quash the limbs and grounds of the contested judgment in whole or in part,

— rule in accordance with the law, set aside the contested judgment, or, in the alternative, remit the case to the Court of First Instance of the European Communities pursuant to Article 54 of the Statute of the Court of Justice,

— order the European Parliament to pay the whole of the costs.

Pleas in law and main arguments

— Error of law as regards the application of Article 29(1) of the Rules of Procedure of the European Parliament. The constitution of a parliamentary group united around a common idea, solidarity consisting in the search for a balance between the rights of all MEP's or parliamentarians, cannot be refused on the grounds of a lack of political affinity.

— Lack of legal basis on the review by the Parliament as to the conformity with Rule 29(1) of the 'Rules of Procedure of the Groupe Technique des Députés Indépendants' (TDI group); infringement of the principle of equal treatment and of the provisions of the rules: contrary to what is stated by the Court of First Instance, Rule 180 does not give the Parliament power to monitor the correct application and interpretation of its Rules of Procedure; that rule solely allows the European Parliament to refer a matter to the competent committee for its opinion. The fact of having adopted a joint position and of constituting a group in order to ensure that each MEP may exercise his parliamentary mandate in full constitutes political affinity for the purposes of Rule 29(1). Contrary to paragraph 122 of the judgment, different component parts of the TDI group lodged documents in association with each other on several occasions.

— Infringement of the principle of equal treatment with regard to members of the TDI group: while the Court of First Instance, in paragraph 165, seems to agree that there

is discrimination between MEP's who are members of a political group and non-attached MEP's, it refuses to accept that this unequal treatment is a ground for annulment of the contested measure. Even though an exception of the illegality of Rule 29(1) of the rules has not been raised by the applicants, it is nevertheless the case that the members of the TDI group suffer from discriminatory treatment in the light of the contested decision.

The Court of First Instance has not drawn the correct inferences from the abandonment by the European Parliament of its previous practice, nor from the unequal treatment imposed on the TDI group in comparison with the 'Groupe pour l'Europe des démocraties et des différences'. Lastly, the Court of First Instance could not reject the observations evidencing the political affinity of the TDI group, even though the facts relied on post-date the contested measure.

— Failure to observe the regulatory traditions common to the Member States: in refusing to draw the legal consequences from comparative law and to find discrimination by the measure at issue, the Court of First Instance fails to apply the rules and principles governing Community law.

— Infringement of essential procedural requirements: the scope of the contested measure is wider than that of interpretation of the rules.

— Presumption of misuse of procedure: the Court of First Instance fails to appreciate the reality of the misuse of procedure which may be inferred from various examples of amendments to the rules, clearly showing that there is indeed a desire on the part of the European Parliament to reduce systematically the rights of some of its members.

Appeal brought on 17 December 2001 by J.C. Martinez against the judgment of 2 October 2001 delivered by the Third Chamber of the Court of First Instance of the European Communities in Joined Cases T-222/99, T-327/99 and T-329/99 between J.C. Martinez and Ch. de Gaulle, the Front National, E. Bonino and Others and the European Parliament

(Case C-488/01 P)

(2002/C 84/83)

An appeal against the judgment delivered on 2 October 2001 by the Third Chamber of the Court of First Instance of the European Communities in Joined Cases T-222/99, T-327/99 and T-329/99 between J.C. Martinez and Ch. de Gaulle, the Front National, E. Bonino and Others and the European Parliament was brought before the Court of Justice of the European Communities on 17 December 2001 by J.C. Martinez.

The appellant claims that the Court should:

— declare admissible the appeal brought by Mr Martinez against the judgment of 2 October 2001 of the Court of First Instance of the European Communities,

— find that there has been an infringement of Community law by the Court of First Instance,

— quash the limbs and grounds of the contested judgment in whole or in part,

— rule in accordance with the law, set aside the contested judgment, or, in the alternative, remit the case to the Court of First Instance of the European Communities pursuant to Article 54 of the Statute of the Court of Justice,

— order the European Parliament to pay the whole of the costs.

Pleas in law and main arguments

Four pleas are identical to the first four pleas submitted in Case C-486/01 P([1]).

— Infringement of the principle of democracy: the Court of First Instance wrongly rejected this plea on the basis of a failure to raise an objection of illegality against the Parliament's Rules of Procedure.

— Infringement of the principle of freedom of association: the Court of First Instance does not show how the fact of making the constitution of a group of MEP's subject to a requirement of political affinities constitutes a legitimate ground if this maintains discrimination between non-attached MEP's and members of a constituted political group.

([1]) See page 47 of this Official Journal.

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

(Case C-489/01)

(2002/C 84/84)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 17 December 2001 by the Commission of the European Communities, represented by Ms Christina Tufvesson, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply, as regards the territory of Gibraltar, with Directive 97/9/EC [1] of the European Parliament and of the Council of 3 March 1997 on investor-compensations schemes, or, in any case, by not notifying these measures to the Commission, the United Kingdom has failed to fulfil its obligations under Article 15 of this Directive;

2) order the United Kingdom to pay the costs.

Pleas in law and main arguments

Article 249 EC, under which a directive shall be binding as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired on 26 September 1998 without the United Kingdom having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission, as regards the territory of Gibraltar.

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[1] OJ L 84, 26.3.1997, p. 22.

Action brought on 24 December 2001 by the Kingdom of the Netherlands against the Commission of the European Communities

(Case C-501/01)

(2002/C 84/85)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 December 2001 by the Kingdom of the Netherlands, represented by H.G. van Sevenster, C.M. Wissels and J. van Bakel, acting as Agents.

The applicant claims that the Court should: annul the contested decision [1] in so far as the Community financial contribution fixed for the eradication of classical swine fever in the Netherlands in 1998 represents a reduction of 25 % in the compensation paid to livestock farmers, and order the Commission to pay the costs.

Pleas in law and main arguments

— Incorrect factual basis: none of the six files selected by the Commission contains any mention of any irregularities which might be of a repetitive and systematic nature and which might form the factual basis for the imposition of a reduction.

— Infringement of the law: Council Decision 90/424/EEC on expenditure in the veterinary field [2] makes no provision for the application of a general reduction. The concept of 'adequate' compensation (seventh indent in Article 3(2) of Decision 90/424/EEC) is not defined in Directive 80/217/EEC or in Decision 90/424/EEC or anywhere else in Community law. The Commission's assertion that, in the application of the concept of adequate compensation as interpreted by the Netherlands, too high a value was placed on swine, disregards the content and scope of the applicable Netherlands rules. In addition, the Commission incorrectly ignores the discretionary power in the matter which is enshrined in the Community rules.

— Violation of the principle of proportionality.

— Violation of the principle of legal certainty.

— Non-compliance with the obligation to provide a statement of reasons.

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[1] Commission Decision 2001/739/EC of 17 October 2001 on the total amount of Community aid for the eradication of classical swine fever in the Netherlands in 1998.

[2] OJ 1990 L 224, p. 19.

Reference for a preliminary ruling by the Sozialgericht Hannover by order of 12 December 2002 in the case of Silke Gaumain-Cerri against Kaufmännische Krankenkasse-Pflegekasse, additional party Bundesversicherungsanstalt für Angestellte

(Case C-502/01)

(2002/C 84/86)

Reference has been made to the Court of Justice of the European Communities by order of the Sozialgericht Hannover (Social Court, Hanover) of 12 December 2001, received at the Court Registry on 27 December 2001, for a preliminary ruling in the case of Silke Gaumain-Cerri against Kaufmännische Krankenkasse-Pflegekasse, additional party Bundesversicherungsanstalt für Angestellte [Federal Insurance Office for Clerical Staff], on the following questions:

(a) Can the expressions 'sickness benefit' and 'old-age benefit' within the meaning of Article 1 of Regulation No 1408/71 [1] cover benefits paid by one insurer to another if the insured derives only an abstract and indirect advantage therefrom (payment of pension insurance contributions by the care insurance fund on behalf of a voluntary carer)? If they can, under what circumstances can they do so?

(b) Is there a prohibition of discrimination under primary or secondary Community law from which it follows that a benefit as described in (a) above is to be granted irrespective of whether the activity conferring the entitlement to benefit is carried on in Germany or in another EU Member State, and irrespective of where the insured or the immediate beneficiary has his residence?

[1] OJ L 149, p. 2.

Reference for a preliminary ruling by the Verwaltungsgericht Sigmaringen by order of 28 November 2001 in the case of Ludwig Leichtle against the Bundesanstalt für Arbeit

(Case C-8/02)

(2002/C 84/87)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht Sigmaringen (Sigmaringen Administrative Court) of 28 November 2001, received at the Court Registry on 11 January 2002, for a preliminary ruling in the case of Ludwig Leichtle against the Bundesanstalt für Arbeit on the following questions:

1. Are Articles 49 and 50 EC to be interpreted as precluding rules of national law (in this case Paragraph 13(3) of the Allgemeine Verwaltungsvorschrift für Beihilfen in Krankheits-, Pflege-, Geburts- und Todesfällen (General Administrative Provisions concerning Assistance in the Event of Sickness, Treatment, Birth and Death — 'the Assistance Provisions') which render the assumption of the costs of a health cure in another Member State conditional on the health cure being absolutely necessary outside the Federal Republic of Germany on account of greatly increased prospects of success, on this being proven by a report from a medical officer or a medical consultant, and on the spa concerned being listed in the Register of Spas?

2. Are Articles 49 and 50 EC to be interpreted as precluding rules of national law (in this case point 3 in the first sentence of Paragraph 13(3) of the Assistance Provisions, read in conjunction with Paragraph 8(3)(2) thereof) under which advance recognition of a health cure is not possible if the person concerned does not wait for the application procedure or any subsequent court proceedings to be concluded before commencing the health cure and the only matter in dispute is whether the rules of national law correctly rule out eligibility for assistance in the form of a health cure in a Member State of the European Union?

Reference for a preliminary ruling by the Bayerisches Oberstes Landesgericht by order of 19 December 2001 in criminal proceedings against Marco Grilli

(Case C-12/02)

(2002/C 84/88)

Reference has been made to the Court of Justice of the European Communities by order of the Bayerisches Oberstes Landesgericht (Bavarian Supreme Court) of 19 December 2001, received at the Court Registry on 16 Janaury 2002, for a preliminary ruling in the criminal proceedings against Marco Grilli on the following question:

Is Article 29 EC to be interpreted as precluding a national rule that makes it a criminal offence for an Italian national to obtain a transit registration mark from the competent Italian authorities, affix licence plates bearing that mark to a vehicle offered for sale in Germany, and then drive that vehicle on the public highway from Germany to Italy?

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat Salzburg by order of 16 January 2002 in the appeals concerning Dr Roman Moser, the Bürgermeister der Landeshauptstadt Salzburg, and the land transfer agent of the Land of Salzburg

(Case C-15/02)

(2002/C 84/89)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängiger Verwaltungssenat Salzburg (Independent Administrative Chamber, Salzburg) of 16 January 2002, received at the Court Registry on 22 January 2002, for a preliminary ruling in the appeals concerning Dr Roman Moser, the Bürgermeister der Landeshauptstadt Salzburg, and the land transfer agent of the Land of Salzburg on the following question:

Are the provisions of Article 56 et seq. of the EC Treaty to be interpreted as precluding the application of Paragraphs 12, 36 and 43 of the Salzburger Grundverkehrsgesetz (Salzburg Land Transfer Law) of 1997 in the version published in LGBl. No. 11/1999, whereby any person who wishes to acquire a building plot in the federal Land of Salzburg must comply with a notification or authorisation procedure in respect of the acquisition of that plot, with the consequence that one of the fundamental freedoms of the acquirer of title as guaranteed by the laws of the European Union has been infringed in this case?

Action brought on 5 February 2002 by the Commission of the European Communities against the Italian Republic

(Case C-32/02)

(2002/C 84/90)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 5 February 2002 by the Commission of the European Communities, represented by A. Aresu acting as Agent.

The applicant claims that the Court should:

— Declare that, by not adopting provisions in respect of employers engaged in non-profit-making activities, the Italian Republic has failed to fulfil its obligations under Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16);

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission claims that Directive 98/59 applies to collective redundancies carried out by any 'employer', that is by any natural or legal person who has created an employment relationship, regardless of whether he is engaged in profit-making activities. It follows, therefore, that the implementing Italian regulations, and in particular Law No 223/91, which restricts the application of the guarantees to employees of 'undertakings' alone, wrongfully exclude all employers engaged in non-profit-making activities.

Action brought on 6 February 2002 by the Commission of the European Communities against the Republic of Austria

(Case C-33/02)

(2002/C 84/91)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 6 February 2002 by the Commission of the European Communities, represented by Josef Christian Schieferer, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, at Centre Wagner C 254, Kirchberg.

The applicant claims that the Court should:

— declare that the Republic of Austria has failed to fulfil its obligations under Article 3(3) and (4), Article 7(1) and (2), Article 11(3), and Article 13(1) in conjunction with Article 2(3) of Council Directive 94/67/EC of 16 December 1994 on the incineration of hazardous waste, by

1. incorrectly transposing, in Paragraph 3 no. 3.2 and no. 3.3 of the Verordnung des Bundesministers für wirtschaftliche Angelegenheiten über die Verbrennung gefährlicher Abfälle in gewerblichen Betriebsanlagen (Regulation of the Federal Minister for Economic Affairs on the incineration of hazardous waste in commercial plants) (the 'BMwA Regulation'), the rule in Article 3(3) of the directive that the heat release from coincineration may not exceed 40 % of the total heat, in respect of 'the total heat released in the plant at each moment of its operation';

2. permitting non-binding emission guide values in certain cases, under Paragraph 8(3) of the BMwA Regulation, contrary to the requirement imposed by Article 3(4) of the directive concerning the determination of binding emission limit values;

3. failing to set limit values for heavy metal, dioxin and furan emissions in exhaust gases at cement production plants under Paragraph 15(1) of the BMwA Regulation, contrary to Article 7(1) and (2) of the directive;

4. laying down criteria for compliance with emission limit values in Paragraph 10(5) no. 2 of the BMwA Regulation which contravene Article 11(3) of the directive; and

5. laying down transitional provisions in Paragraph 19(1) of the Verordnung des Bundesministers für Umwelt, Jugend und Familie über die Verbrennung von gefährlichen Abfällen (Regulation of the Federal Minister for Environment, Youth and the Family on the incineration of hazardous substances) and Paragraph 16(2) of the BMwA Regulation which exempt existing plants from the application of the directive for the period from 31 December 1996 to 1 February 1999, contrary to Article 13(1) in conjunction with Article 2(3) of the directive.

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission has reached the conclusion that the provisions in force in Austria do not fully comply with the provisions of Directive 94/67 EC, namely, in that they:

— Infringe Article 3(3) of the directive (for coincineration, maximum of 40 % of total heat released in the plant):

Contrary to Article 3(3), which lays down a total heat release from a plant of a maximum of 40 % from the incineration of hazardous wastes 'at each moment of its operation', the provisions in force in Austria permit plants to operate with a total heat release of more than 40 % , and in certain circumstances exclusively, from the incineration of hazardous wastes, over lengthy operating periods (e.g, for a number of days or even weeks). (Calculation on the basis of quarterly averages)

— Infringe the second paragraph of Article 3(4) of the directive (determination of emission guide values):

Contrary to the second indent of Article 3(4) of the directive which provides that the permit for a coincineration plant is only to be granted if it is demonstrated in the application that, according to calculations laid down in Annex II, the provisions of Article 7, which contains the emission limit values for exhaust gases, have been complied with, the Austrian rules provide that for certain coincineration plants, the authorities are, in individual cases, to lay down emission guide values for individual pollutants.

— Infringe Article 7(1) and (2) of the directive (failure to lay down limit values for heavy metal, dioxin and furan emissions in exhaust gases at cement production plants):

Contrary to Article 7(1) and (2) of the directive, the Republic of Austria has not laid down limit values for heavy metal, dioxin and furan emissions in exhaust gases at cement production plants in which waste is coincinerated.

— Infringe the first paragraph of Article 11(3) of the directive (compliance criteria for limit values):

Contrary to the first indent of Article 11(3) which specifies the circumstances in which emission limit values are deemed to be complied with, the Austrian Government has laid down rules which provide that emission limit values are only exceeded where more than 3 % of the half-hourly averages exceed the emission limit value by more than 20 %. That threshold of 20 % is not, however, contained in the directive.

— Infringe Article 13(1) in conjunction with Article 18(1) of the directive (entry into force and transitional provisions for existing plants):

Contrary to the directive, Austria treats plants which were granted permits between 31 December 1996 and the date of transposition of the directive (1 February 1999) as 'existing plants'. Consequently, under Austrian law, incineration plants which were granted permits between 31 December 1996 and 1 February 1999 were covered by the transitional period until 30 June 2000, whereas, according to the directive, such plants should have fallen fully within the scope of the directive from the time of their authorisation.

Reference for a preliminary ruling by the Tribunale di Roma, Terza Sezione Lavoro by order of 24 January 2002 in the case of Sante Pasquini against INPS (Istituto Nazionale della Previdenza Sociale)

(Case C-34/02)

(2002/C 84/92)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Roma,

Terza Sezione (Rome District Court, Third Employment Chamber) of 24 January 2002, received at the Court Registry on 8 February 2002, for a preliminary ruling in the case of Sante Pasquini against INPS (Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution]) on the following questions:

Is a provision of national law, which provides, without any time-limit and thus, in breach of the principle of legal certainty, for the recovery of an undue payment arising from the application of Community legislation, compatible with the objectives of Council Regulations No 1408/71 [1] and 574/72 [2]?

Are the Community provisions cited in (1) to be interpreted as precluding the application of a provision of national law which does not lay down time-limits for the recovery of undue payments arising from the belated or improper application of the relevant Community provisions?

Is it possible, given that the transitional rules for the application of the social security regulations provide for a time-limit of two years in which to claim, with retrospective effect, the rights conferred by those regulations, to apply a contrario the same time-limit of two years from notification of recovery of undue payment in cases of reduction of rights previously conferred, except where more favourable time-limits are laid down by national law, and provided that the person concerned is not guilty of improper conduct?

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[1] OJ, English Special Edition 1971 (II), p. 416.

[2] OJ, English Special Edition 1972 (I), p. 159.

Action brought on 19 February 2002 by the Commission of the European Communities against the Italian Republic

(Case C-50/02)

(2002/C 84/93)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 19 February 2002 by the Commission of the European Communities, represented by M. Wolfcarius and R. Amorosi, acting as Agents.

The applicant claims that the Court should:

— Declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Commission Directive 1999/48/EC [1] of 21 May 1999 adapting for the second time to technical progress Council Directive 96/49/EC [2] on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail or in any event by not notifying the same to the Commission, the Italian Republic has failed to fulfil its obligations under that directive;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 189 of the EC Treaty (now Article 249 EC), which provides that a directive is to be binding as to the result to be achieved on each Member State to which it is addressed, implies an obligation that the Member States comply with the time-limits for transposition prescribed by directives. In the present case the prescribed period expired on 1 July 1999 without the Italian Republic having adopted the provisions necessary to comply with the directive referred to in the Commission's claim.

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[1] OJ 1999 L 169, p. 58.

[2] OJ 1996 L 235, p. 25.

Removal from the register of Case C-18/99 [1]

(2002/C 84/94)

By order of 6 November 2001 the President of the Fourth Chamber of the Court of Justice of the European Communities ordered the removal from the register of Case C-18/99: Commission of the European Communities v Aiolika Parka Siteias AE.

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[1] OJ C 86 of 27.3.1999.

Removal from the register of Case C-48/01 [1]

(2002/C 84/95)

By order of 23 October 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-48/01: Commission of the European Communities v Ireland.

[1] OJ C 95 of 24.3.2001.

Removal from the register of Joined Cases C-51/01 and C-52/01 [1]

(2002/C 84/96)

By order of 6 November 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Joined Cases C-51/01 and C-52/01: Commission of the European Communities v Beta Television SpA (Videomusic/TMC2) and Internazionale SpA.

[1] OJ C 118 of 21.4.2001.

Removal from the register of Case C-118/01 [1]

(2002/C 84/97)

By order of 19 November 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-118/01: Commission of the European Communities v French Republic.

[1] OJ C 134 of 5.5.2001.

Removal from the register of Case C-119/01 [1]

(2002/C 84/98)

By order of 22 October 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-119/01: Commission of the European Communities v Finland.

[1] OJ C 134 of 5.5.2001.

Removal from the register of Case C-244/01 [1]

(2002/C 84/99)

By order of 19 November 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-244/01: Commission of the European Communities v French Republic.

[1] OJ C 212 of 28.7.2001.

Removal from the register of Case C-336/01 [1]

(2002/C 84/100)

By order of 19 November 2001 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-336/01: Commission of the European Communities v Kingdom of Belgium.

[1] OJ C 317 of 10.11.2001.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

13 December 2001

in Joined Cases T-45/98 and T-47/98: Krupp Thyssens Stainless GmbH et Acciai speciali Terni SpA v Commission of the European Communities [1]

(ECSC Treaty — Competition — Agreements, decisions and concerted practices — Alloy surcharge — Price fixing — Rights of the defence — Duration of the infringement — Fine — Guidelines on the method of setting fines — Cooperation during the administrative procedure — Principle of equal treatment)

(2002/C 84/101)

(Language of the case: German and Italian)

In Joined Cases T-45/98 and T-47/98, Krupp Thyssen Stainless GmbH, established in Duisberg, Germany, represented by M. Klusmann, O. Lieberknecht and K. Moosecker, lawyers, with an address for service in Luxembourg, Acciai Speciali Terni SpA, established in Terni, Italy, represented by L. G. Radicato di Brozolo, lawyer, with an address for service in Luxembourg applicants, v Commission of the European Communities, represented by W. Wils and K. Leivo, acting as Agents, assisted by H.-J. Freund and A. dal Ferro, lawyers, with an address for service in Luxembourg: application for the annulment of Commission Decision 98/247/ECSC of 21 January 1998 relating to a proceeding under Article 65 of the ECSC Treaty (Case IV/35.814 — Alloy Surcharge) (OJ 1998 L 100, p. 55), the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, M. Vilaras and N.J. Forwood, Judges, Registrar: G. Herzig, has given a judgment on 13 December 2001, in which it has ruled:

1. *Joins Cases T-45/98 and T-47/98 for the purposes of the judgment;*

2. *Annuls Article 1 of Decision 98/247/ECSC of 21 January 1998 relating to a proceeding under Article 65 of the ECSC Treaty (Case IV/35.814 — Alloy Surcharge) in so far as it attributes to Krupp Thyssen Nirosta GmbH responsibility for the infringement committed by Thyssen Stahl AG;*

3. *Sets the amount of the fines imposed on Krupp Thyssen Nirosta GmbH and Acciai Speciali Terni SpA by Article 2 of Decision 98/247 at EUR 4 032 000;*

4. *For the rest, dismisses the applications in Cases T-45/98 and T-47/98 in all other respects;*

5. *In case T-45/98, orders Krupp Thyssen Stainless GmbH and the Commission to bear their own costs;*

6. *In case T-47/98, orders Acciai Speciali Terni SpA to bear its own costs and to pay two-thirds of those of the Commission and orders the Commission to bear one-third of its own costs.*

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[1] OJ C 166 of 30.5.1998 and C 151 of 16.5.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

13 December 2001

in Case T-48/98: Compañia española para la fabricación de aceros inoxidables, SA (Acerinox) v Commission of the European Communities [1]

(ECSC Treaty — Competition — Agreements, decisions and concerted practices — Alloy surcharge — Price fixing — Burden of proof — Duration of the infringement — Fine — Guidelines on the method of setting fines — Cooperation during the administrative procedure — Principle of equal treatment)

(2002/C 84/102)

(Language of the case: English)

In Case T-48/98, Compañía Española para la Fabricación de Aceros Inoxidables SA (Acerinox), established in Madrid, Spain, represented by A. Vandencasteele and D. Waelbroeck, lawyers, with an address for service in Luxembourg, v Commission of the European Communities, represented by W. Wils and K. Leivo, acting as Agents, with an address for service in Luxembourg: Application for the annulment of Commission Decision 98/247/ECSC of 21 January 1998 relating to a proceeding under Article 65 of the ECSC Treaty (Case IV/35.814 — Alloy Surcharge) (OJ 1998 L 100, p. 55), the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, M. Vilaras and N.J. Forwood, Judges, Registrar: G. Herzig, Administrator, has given a judgment on 13 December 2001, in which it has ruled:

1. *Sets the amount of the fine imposed on Compañía Española para la Fabricación de Aceros Inoxidables SA at EUR 3 136 000;*

2. *For the rest, dismisses the application;*

3. *Orders Compañía Española para la Fabricación de Aceros Inoxidables SA to bear its own costs and to pay two-thirds of the Commission's costs and orders the Commission to bear one-third of its own costs.*

([1]) OJ C 137 of 2.5.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

11 December 2001

in Case T-191/99: David Petrie and Others v Commission of the European Communities ([1])

(Transparency — Public access to documents — Commission Decision 94/90/ECSC, EC, Euratom — Proceedings for failure to fulfil obligations — Formal notice — Reasoned opinion — Exception relating to protection of the public interest — Inspections and investigations — Court proceedings — Authorship rule — Direct effect of Article 255 EC)

(2002/C 84/103)

(Language of the case: Italian)

In Case T-191/99, David Petrie, Victoria Jane Primhak and David Verzoni, residing respectively in Verona, Naples and Bologna (Italy), Associazione lettori di lingua straniera in Italia, incorporating Committee for the Defence of Foreign Lecturers (ALLSI/CDFL), established in Verona, represented by L. Picotti and C. Medernach, avocats, with an address for service in Luxembourg, v Commission of the European Communities, represented by P. Stancanelli and U. Wölker, acting as Agents, with an address for service in Luxembourg: application for the annulment of the Commission decision of 20 July 1999 refusing access to documents relating to Infringement Procedure No 96/2208 brought under Article 226 EC against the Italian Republic and concerning the situation of foreign-language lecturers employed in Italian universities, the Court of First Instance (Fourth Chamber, Extended Composition), composed of: P. Mengozzi, President, R. García-Valdecasas, V. Tiili, R.M. Moura Ramos and J.D. Cooke, Judges, Registrar: J. Palacio González, Administrator, has given a judgment on 11 December 2001, in which it has ruled:

1. *Dismisses the action;*

2. *Orders the applicants to pay the defendant's costs in addition to their own costs.*

([1]) OJ C 314 of 30.10.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

6 December 2001

in Case T-196/99: Area Cova SA e.a. v Council of the European Union and Commission of the European Communities ([1])

(Action for compensation — Non-contractual liability — Fisheries — Conservation of marine resources — Convention on Future Multilateral Cooperation in the North-West Atlantic Fisheries — Greenland halibut — Catch quota allocated to the Community fleet)

(2002/C 84/104)

(Language of the case: Spanish)

In Case T-196/99, Area Cova, SA, established in Vigo (Spain), Armadora José Pereira, SA, established in Vigo, Armadores Pesqueros de Aldán, SA, established in Vigo, Centropesca, SA, established in Vigo, Chymar, SA, established in Vigo, Eloymar, SA, established in Estribela (Spain), Exfaumar, SA, established in Bueu (Spain), Farpespan, SL, established in Moaña (Spain), Freiremar, SA, established in Vigo, Hermanos Gandón, SA, established in Cangas (Spain), Heroya, SA, established in Vigo, Hiopesca, SA, established in Vigo, José Pereira e Hijos, SA, established in Vigo, Juana Oya Pérez, residing in Vigo, Manuel Nores González, residing in Marín (Spain), Moradiña, SA, established in Cangas, Navales Cerdeiras, SL, established in Camariñas (Spain), Nugago Pesca, SA, established in Bueu, Pesquera Austral, SA, established in Vigo, Pescaberbés, SA, established in Vigo, Pesquerías Bígaro Narval, SA, established in Vigo, Pesquera Cíes, SA, established in Vigo, Pesca Herculina, SA, established in Vigo, Pesquera Inter, SA, established in Cangas, Pesquerías Marinenses, SA, established in Marín, Pesquerías Tara, SA, established in Cangas, Pesquera Vaqueiro, SA, established in Vigo, Sotelo Dios, SA, established in Vigo, represented by A. Creus Carreras and A. Agustinoy Guilayn, lawyers, v Council of the European Union, represented by R. Gosalbo Bono, J. Carbery and M. Sims, acting as Agents, and Commission of the European Communities, represented by T. Van Rijn and J. Guerra Fernandez, acting as Agents, with an address for service in Luxembourg: Application for compensation pursuant to Article 235 EC and the second paragraph of Article 288 EC in respect of loss suffered by the applicants as a result of (1) the acceptance by the Commission and the Council of a total allowable catch for 1995 of 27 000 tonnes of Greenland halibut in the Regulatory Area defined in the Convention on Future Multilateral Cooperation in the North West Atlantic Fisheries and (2) the conclusion of a bilateral agreement between the Community and Canada and the adoption of Council Regulation (EC) No 1761/95 of 29 June 1995 amending, for the second time, Regulation (EC) No 3366/94 laying down for 1995 certain conservation and management measures for fishery resources in the Regulatory Area as defined in the Convention on Future Multilateral Cooperation in the North-west Atlantic Fisheries (OJ 1995 L 171, p. 1) establishing, with effect from 16 April 1995, a quota of 5 013 tonnes of Greenland halibut for Community

vessels, the Court of First Instance of the European Communities (Third Chamber), composed of: J. Azizi, President, K. Lenaerts and M. Jaeger, Judges, Registrar: J. Palacio González, Administrator, has given a judgment on 6 December 2001, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 333 of 20.11.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 4 December 2001

in Case T-125/00: Joaquín López Madruga v Commission of the European Communities ([1])

(Officials — Transfer of part of remuneration in the currency of a Member State other than that of the country in which the institution has its seat — Article 17(2)(a) and (b) of Annex VII to the Staff Regulations — Combined application)

(2002/C 84/105)

(Language of the case: Spanish)

In Case T-125/00: Joaquín López Madruga, an official of the Commission of the European Communities, residing in Brussels, represented by J.R. Iturriagagoitia, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agents: J. Currall, J. Rivas Andres and J.J. Guttierrez Gisbert) — application for partial annulment of the decision implicitly rejecting the applicant's request of 12 October 1999 for the transfer of part of his remuneration under Article 17 of Annex VII to the Staff Regulations — the Court of First Instance (Single Judge: A.W.H. Meij); H. Jung, Registrar, has given a judgment on 4 December 2001, in which it:

1. *Annuls the implicit decision of the Commission of 23 March 2000 in so far as it limits to 19 % of the applicant's net monthly remuneration the amount which he may transfer pursuant to Article 17(2)(b) of Annex VII to the Staff Regulations;*

2. *Orders the Commission to bear its own costs and to pay one half of the applicant's costs.*

([1]) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

11 December 2001

in Case T-138/00: Erpo Möbelwerk GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — 'DAS PRINZIP DER BEQUEMLICHKEIT' — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 40/94)

(2002/C 84/106)

(Language of the case: German)

In Case T-138/00, Erpo Möbelwerk GmbH, established in Ertingen (Germany), represented by S. von Petersdorff-Campen, Rechtsanwalt, with an address for service in Luxembourg, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by F. López de Rego and G. Schneider, acting as Agents, with an address for service in Luxembourg: action brought against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 March 2000 (Case R 392/1999-3) concerning the registration of 'DAS PRINZIP DER BEQUEMLICHKEIT' as a Community trade mark, the Court of First Instance (Fourth Chamber), composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges, Registrar: J. Palacio González, Administrator, has given a judgment on 11 December 2001, in which it has ruled:

1. *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 March 2000 (Case R 392/1999-3);*

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

([1]) OJ C 233 of 12.8.2000.

ORDER OF THE COURT OF FIRST INSTANCE

8 November 2001

in Case T-65/96: Kish Glass & Co. Ltd v Commission of the European Communities [1]

(Taxation of costs — Indispensable expenses incurred for the purposes of the proceedings — Lawyer's fees)

(2002/C 84/107)

(Language of the case: English)

In Case T-65/96 DEP, Kish Glass & Co. Ltd, established in Dublin (Ireland), represented by M. Byrne, Solicitor, with an address for service in Luxembourg, v Commission of the European Communities (agents: R. Lyal, R. Caudwell and B. Doherty), supported by Pilkington United Kingdom Ltd, established in Saint Helens, Merseyside (United Kingdom), represented by J. Kallaugher, Solicitor, A. Weitbrecht, and M. Hansen, lawyers, with an address for service in Luxembourg: Application for taxation of the costs to be reimbursed by the applicant to the intervener, Pilkington United Kingdom, pursuant to the judgment of the Court of First Instance in Case T-65/96 Kish Glass v Commission [2000] ECR II-1885, the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges, Registrar: J. Palacio González, Administrator, has made an order on 8 November 2001, the operative part of which is as follows:

The total amount of costs to be reimbursed by Kish Glass & Co. Ltd to the intervener, Pilkington United Kingdom Ltd is fixed at BEF 1 200 000.

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[1] OJ C 210 of 20.7.1996.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 5 December 2001

in Case T-216/01 R: Reisebank AG v Commission of the European Communities

(Procedure for interim relief — Decision refusing access to certain documents — Admissibility of the action in the main proceedings)

(2002/C 84/108)

(Language of the case: German)

In Case T-216/01 R: Reisebank AG, established in Frankfurt am Main (Germany), represented by M. Klusmann and F. Wiemer, lawyers, v Commission of the European Communities (Agent: S. Rating) — application for interim measures consisting of, first, suspension of operation of the Commission's decision of 14 August 2001 refusing to allow the applicant access to certain documents concerning the abandonment of the procedure brought against other banks in case COMP/E-1/37.919 — Bank charges for exchanging euro zone currencies and, second, suspension of the procedure under Article 81 EC in the same case as regards the applicant — the President of the Court of First Instance made an order on 5 December 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 5 December 2001

in Case T-219/01 R: Commerzbank AG v Commission of the European Communities

(Procedure for interim relief — Decision refusing access to certain documents — Admissibility of the action in the main proceedings)

(2002/C 84/109)

(Language of the case: German)

In Case T-219/01 R: Commerzbank AG, established in Frankfurt am Main (Germany), represented by H. Satzky and B.M. Maassen, lawyers, v Commission of the European Communities (Agent: S. Rating) — application for interim measures consisting of, first, suspension of operation of the Commission's decision of 17 August 2001 refusing to allow the applicant access to certain documents concerning the abandonment of the procedure brought against other banks in case COMP/E-1/37.919 — Bank charges for exchanging euro zone currencies and, second, suspension of the procedure under Article 81 EC in the same case as regards the applicant — the President of the Court of First Instance made an order on 5 December 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 6 December 2001 by SIC — Sociedade Independente de Comunicação S.A. against Commission of the European Communities

(Case T-297/01)

(2002/C 84/110)

(Language of the case: Portuguese)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 December 2001 by SIC — Sociedade Independente de Comunicação S.A., whose registered office is at Carnaxide, Linda-a-Velha (Portugal), represented by Carlos Botelho Moniz, lawyer.

The applicant claims that the Court should:

— find the action admissible;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant is a commercial company whose sole object is the pursuit of television broadcasting activities.

On 30 July 1993, the applicant lodged with Directorate General for Competition — DG IV of the Commission — a complaint against the Portuguese Republic and RTP — Radiotelevisão Portuguesa, alleging breach of Community rules on competition, in particular of Articles 87 and 88 of the EC Treaty.

The complaint concerned a number of measures adopted by the Portuguese Government in favour of RTP, a public operator holding the public service television concession, taking the view that such measure constituted State aid within the meaning of Article 87 of the EC Treaty and that such aid had been granted contrary to Article 88(3) of the Treaty.

More than 2 years after the complaint was lodged, and despite various approaches by SIC, SIC found that the Commission had failed to adopt a position on the complaint.

In view of the inactivity of the Community institution, the applicant, in accordance with Article 232 of the EC Treaty, in August 1995 requested the Commission to adopt a position on the complaint, in particular with regard to the request that it initiate the procedure under Article 88(2) of the EC Treaty.

The Commission requested additional information of the Portuguese authorities.

Disappointed with that request, which it considered to be merely interlocutory in nature, and in view of the Commission's failure to act, SIC brought an action for failure to act under Article 232 of the EC Treaty (Case T-231/95).

Following the adoption by the Commission of the decision of 7 November 1996 on the financing from public funds granted to RTP, the action for failure to act was emptied of purpose and the applicant abandoned the action.

Meanwhile, on 22 October 1996 SIC lodged a fresh complaint with the Commission against the Portuguese Republic claiming infringement of Articles 87 and 88 of the EC Treaty in respect of the manner in which the concession for public service television was granted.

The second complaint was, in essence, based on the same legal grounds as the first.

On 6 October 1997 the applicant received a copy of the abovementioned decision of the Commission of 7 November 1996 addressed to the Portuguese Republic concerning the financing of public television channels in which the Commission took the view that the measures referred to did not amount to State aid granted by the Portuguese State to RTP and were therefore not covered by the Treaty State aid rules.

By application of 3 March 1997 SIC brought an action for annulment of that decision (Case T-46/97).

In the judgment delivered on 10 May 2000, the Court of First Instance held that the Commission was under a duty to initiate the procedure under Article 88(2) of the EC Treaty in respect of a number of financial measures adopted by the Portuguese State *vis-à-vis* RTP.

By letter of 3 January 2001, SIC asked the Commission what measures it intended to adopt in order to comply with the judgment.

In the absence of any reply from the Commission, the applicant, by letter of 26 July 2001, called upon it to take action in accordance with the second paragraph of Article 232.

After the expiry of the period of two months prescribed by the Treaty, the Commission had not initiated the procedure nor responded to the call to take action.

In early November 2001, after the abovementioned two-month period had expired, the applicant received a letter from the Commission informing it that the internal preparatory work for compliance with the judgment of the Court of First Instance of May 2000 was almost complete.

The applicant takes the view that that letter is a merely provisional step which does not define the position of the defendant institution.

Action brought on 6 December 2001 by SIC — Sociedade Independente de Comunicação S.A. against Commission of the European Communities

(Case T-298/01)

(2002/C 84/111)

(Language of the case: Portuguese)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 December 2001 by SIC — Sociedade Independente de Comunicação S.A., whose registered office is at Carnaxide, Linda-a-Velha (Portugal), represented by Carlos Botelho Moniz, lawyer.

The applicant claims that the Court should:

1. find the action admissible;

2. accordingly, in view of the duty incumbent on the Commission under Articles 87 and 88 of the EC Treaty as regards the preliminary assessment of State aid measures brought to its attention, as well as of the general principles of law to which it is subject, in particular the principles of legality, good administration and care, declare that the Commission failed, contrary to Articles 87 and 88 of the Treaty and the abovementioned general principles of law, in its duty to adopt a decision regarding the request for the procedure under Article 88(2) to be initiated in respect of the measures which were the subject of the complaints of 22 October 1996 and 20 June 1997 lodged by the applicant;

3. order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant is a commercial company whose sole object is the pursuit of television broadcasting activities.

On 22 October 1996, the applicant lodged with Directorate General for Competition — DG IV of the Commission — a complaint against the Portuguese Republic and RTP — Radiotelevisão Portuguesa, alleging breach of Community rules on competition, in particular of Articles 87 and 88 of the EC Treaty.

The complaint concerned a number of measures adopted by the Portuguese Government in favour of RTP, a public operator holding the public service television concession, taking the view that such measure constituted State aid within the meaning of Article 87 of the EC Treaty and that such aid had been granted contrary to Article 88(3) of the Treaty.

The complaint related, in particular, to compensatory payments made in 1994, 1995 and 1996 by the Portuguese Republic to RTP.

The payments for 1994 and 1995 were the subject of a Commission decision of 7 November 1996, against which an action for annulment was brought.

The failure to act which constitutes the subject-matter of the present action relates to the compensatory payment for 1996.

Such a measure constitutes State aid within the meaning of Article 87 of the EC Treaty, since it was implemented by the Portuguese State contrary to Article 88(3) without previously notifying the Commission.

The measure was brought to the attention of the Commission by means of the complaint of 22 October 1996, that is to say, more than 5 years ago, no decision having been taken by that Community institution with regard to the 1996 compensatory payment until the end of November 2001.

On 20 June 1997 the applicant lodged with Directorate General for Competition — DG IV of the Commission — a fresh complaint against the Portuguese Republic and RTP alleging breach of Community rules on competition, in particular of Articles 87 and 88 of the EC Treaty.

In view of the inactivity of the Community institution, the applicant, by letter of 26 July 2001, received by the Commission on 30 July 2001, more than 53 months after the complaint was lodged, called on the Commission, in accordance with Article 232 of the EC Treaty, to adopt a position on the complaint and initiate the procedure under Article 88(2) of the EC Treaty.

The Commission replied, after the two-month time-limit prescribed by Article 232, in a letter of 24 October 2001, in which it does not define its position, but merely states that it is completing the internal preparatory work with regard to the complaints.

Action brought on 17 December 2001 by Norway Seafoods Denmark A/S against the Commission of the European Communities

(Case T-319/01)

(2002/C 84/112)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 17 December 2001 by Norway Seafoods Denmark A/S, represented by Mr Jacob Ørndrup of Gorrissen Federspiel Kierkegaard, Copenhagen (Denmark).

The applicant claims that the Court should:

— annul Commission Decision K(2001)3079 of 16 October 2001

— order the Commission to pay the costs.

Pleas in law and main arguments

The present application has been lodged against Commission Decision K(2001)3079 of 16 October 2001, regarding the reduction and repayment of financial aid to Foodmark A/S under Commission Decision K(93)1823 of 5 July 1993, as amended by Decision K(94)119 of 27 January 1994, for Project SM/DNK/02/93, the object of which was an application for financial aid pursuant to Council Regulation (EEC) No. 4028/88 of 18 December 1986, on Community measures to improve and adapt structures in the fisheries and aquaculture sector as amended by Council Regulation (EEC) No. 3944/90 of 20 December 1990 [1]. The applicant's name at the time of this application was Foodmark A/S; this name was later changed to Foodmark Holding A/S and later still to Norway Seafoods Denmark A/S.

It was stated in the application that the Community Shipowners should hold 60 % of the shares of the joint enterprise, while the partner in the relevant third Country, Namibia, should hold 40 % of the shares. After the withdrawal of the project of the Spanish company E. Vieira S.A. and the replacement of two of the four vessels involved with two other vessels, the applicant and the Namibian partner concluded an agreement, according to which the applicant owned 28,51 % of the share capital, but only 13,68 % of the voting rights. Finally, with effect from 1 May 1995, the applicant transferred part of its shareholding in the joint entreprise to the Namibian partner under an agreement providing that the applicant's shareholding was reduced to 1 % of the share capital. According to the contested Decision, the basis for providing financial aid has ceased to exist because of this reduction to 1 % of the applicant's shareholding in the joint undertaking, which is not be considered sufficient for a joint enterprise, as defined by Community Regulations.

The contested Decision infringes Article 44(1) of the above mentioned Council Regulation (EEC) No. 4028/86.

— The reduction of the applicant's shareholding in the joint enterprise to 1 % did not mean that a joint enterprise within the meaning of the Regulation no longer existed.

— The applicant had a legitimate expectation that the reduction of the Applicant's shareholding in the joint enterprise to 1 % would not result in any demand for repayment of aid from the Commission.

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[1] OJ L 380 of 31.12.1990, p. 1.

Action brought on 19 December 2001 by Mercedes Alvarez Moreno against Commission of the European Communities

(Case T-323/01)

(2002/C 84/113)

(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 19 December 2001 by Mercedes Alvarez Moreno, residing in Berlin, represented by Georges Vandersanden and Laura Levi, avocats.

The applicant claims that the Court should:

— annul the decision taken by the defendant, as communicated to her by letters of 13 February 2001 and 23 February 2001, to apply an age limit set at 65 years to freelance interpreters and therefore to apply that age limit to her;

— annul, in so far as necessary, the rejection of the applicant's complaint by the Commission on 7 September 2001, received on 10 September 2001;

— find that the applicant may continue to work as freelance interpreter, for the Community institutions, beyond the age of 65;

— make good the damage caused to the applicant provisionally assessed at 1 euro;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of her arguments, the applicant relies on the same pleas in law as those put forward in T-153/01 Mercedes Alvarez Moreno v Commission (OJ 2001 C 275, p. 11).

Action brought on 21 December 2001 by Giorgio Lebedef against Commission of the European Communities

(Case T-326/01)

(2002/C 84/114)

(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 21 December 2001 by Giorgio Lebedef, residing in Senningerberg (Grand Duchy of Luxembourg), represented by Gilles Bounéou, lawyer.

The applicant claims that the Court should:

— annul the applicant's staff report for 1995-1997 inasmuch as it does not take account of the opinion of the *ad hoc* working party, the *ad hoc* appeals joint working party and the staff reports Joint Committee, in that it does not assess his duties as a trade union representative and his status as an elected member as being part of the duties which he is required to undertake in his institution;

— make an order as to costs requiring the defendant to pay the costs and fees incurred.

Pleas in law and main arguments

The applicant, an official of the Commission, contests the rejection of his complaint seeking the annulment of his staff report for 1995-1997.

In support of his arguments, he claims that certain assessments are not justified and that his professional situation and his career development were adversely affected following his election to a local staff committee and as a result of his union activities. He alleges psychological harassment or mobbing intended to restrict his freedom of association, infringement of the general provisions implementing Article 43 of the Staff Regulations and breach of the principle of sound administration.

Action brought on 21 December 2001 by Archer Daniels Midland Company against the Commission of the European Communities

(Case T-329/01)

(2002/C 84/115)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 December 2001 by Archer Daniels Midland Company, represented by Professor Carl Otto Lenz, Ms Lynda Martin Alegi, Mr Edward William Batchelor and Ms Marta Garcia of Baker & McKenzie, London (United Kingdom).

The applicant claims that the Court should:

— annul Article 1 of the Commission Decision of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/36.756 — Sodium Gluconate) insofar as it pertains to ADM at least to the extent that it finds ADM was party to an infringement after 4 October 1994;

— annul Article 3 of the Commission Decision of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/36.756 — Sodium Gluconate) insofar as it pertains to ADM;

— in the alternative, modify Article 3 of the Decision as it pertains to ADM, so as to annul or substantially reduce the fine imposed on ADM therein;

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

Pleas in law and main arguments

The grounds and main arguments are similar to those raised in case T-322/01 Roquette Frères/Commission

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Action brought on 27 December 2001 by EuroCommerce A.I.S.B.L. against the Commission of the European Communities

(Case T-336/01)

(2002/C 84/116)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 December 2001 by EuroCommerce A.I.S.B.L., represented by Mr Pierre V. F. Bos and Mr Morten Nissen of Dorsey & Whitney LLP, Brussels (Belgium).

The applicant claims that the Court should:

— annul the Commission's Decision dated 9 August 2001 relating to proceedings under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No COMP/29.373 — Visa International);

— order that the Commission pay the costs of the proceedings;

— order that the Commission pay the costs incurred by EuroCommerce in the present proceedings.

Pleas in law and main arguments

The applicant is an international association with as its aim the research into and solution of problems concerning trade. The applicant has lodged in this respect several complaints with the Commission regarding the non-tariff rules and the multilateral interchange fees used by payment card organisations. The multilateral interchange fee is paid by the acquiring bank (the merchant's bank) to the issuing bank (the customer's bank). This fee has, according to the applicant, a direct influence on the fee that a merchant has to pay to his acquiring bank for the use of payment cards for payment by his customers. The non-tariff rules are a set of rules concerning the issuing and acquiring of payment cards.

The Commission decided, in the contested decision, that there was no need for any action under Article 81 EC Treaty with regard to the non-tariff rules. According to the applicant, this decision violates both the EC Treaty and the EEA agreement.

The applicant claims that the Commission did not respect its right to be heard. In its comments on the second letter sent under Article 6 of Commission Regulation 2842/98, the applicant made a conditional withdrawal of its complaints, in the belief that the Commission would prohibit the multilateral interchange fee. This fee, according to the applicant, is closely intertwined with the non-tariff rules. Later, the Commission changed its opinion on this point. According to the applicant, however, it had then no opportunity to give its comments.

Furthermore, the applicant claims that there has been a violation of Article 81 of the EC Treaty and the principle of sound administration, in that the Commission failed to consider the non-tariff rules and the multilateral interchange fees together. According to the applicant, they should have been considered together in order to establish whether or not they have a detrimental effect on competition. The Commission has cleared the non-tariff rules in the contested decision and has the intention of clearing the multilateral interchange fee. The applicant, however, states that these aspects are closely intertwined and that their joint effect on competition should have been investigated.

The applicant also states that the Commission has erred in law and in fact by clearing the 'no-discrimination rule', according to which merchants are prohibited from charging their costs for the use of debit card by a customer to that customer. According to the applicant, this rule constitutes a restriction on competition, since it prevents the merchants from using the threat of such discrimination as pressure in order to bargain for lower merchant's fees. The applicant states that the Commission has made an incomplete market investigation on this point.

Likewise, the applicant claims that the Commission has erred in clearing several other rules with the contested decision. Thus the Commission clears the 'cross-border issuing rules' that require that a bank wishing to start issuing cards in another state must comply with the rules applicable in that state. According to the applicant, this partitions the market de facto and prevents less restrictive rules in one state from being used by issuing banks as a competitive advantage in another state. Furthermore, the Commission erred in clearing the 'cross-border acquiring rule', which prevents, according to the applicant, merchants in one state from seeking an acquiring bank in another state where the multilateral interchange fee is lower.

Finally, the Commission gives insufficient reasoning for its clearance of the 'No acquiring without issuing rule'. This rule requires that a bank, wishing to acquire merchants, must issue a certain number of cards to customers before it may begin its acquiring activities. This amounts, according to the applicant, to a market sharing agreement between the current issuers.

Action brought on 3 January 2002 by Robert Polinsky against Court of Justice of the European Communities

(Case T-1/02)

(2002/C 84/117)

(Language of the case: French)

An action against the Court of Justice was brought before the Court of First Instance of the European Communities on 3 January 2002 by Robert Polinsky, residing in Thionville (France), represented by Juan-Ramón Iturriagagoitia, lawyer.

The applicant claims that the Court should:

— annul the decision of the Court of Justice of 25 September 2001;

— order the defendant to pay to the applicant, by way of compensation for the damage suffered and to be suffered, EUR 350 000, fixed with all manner of reservations, together with default interest at the rate of 10 % *per annum* as from 7 October 1999 until the date on which it is actually paid;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is suffering from an occupational disease contracted after working in the Court of Justice building which contained asbestos.

According to the applicant, the Court of Justice confuses two categories of damage: that covered by Article 288 of the EC Treaty and that covered by Article 73 of the Staff Regulations. The applicant is not seeking a finding under Article 73 of the Staff Regulations that his health has deteriorated but compensation, under Article 288 of the EC Treaty, for non-material damage as a result of his illness, damage which is non-medical and non-economic.

The applicant claims that all the conditions for the granting of such compensation are met in his case. In particular, he has suffered actual damage in that his family and social lives have been disrupted as a result of his illness. Secondly, there is, in the applicant's view, a causal link between the damage suffered and the act complained of in that the Court of Justice did not take appropriate protective measures. Thirdly, the damage is unusual and special in nature.

Action brought on 10 January 2002 by Schlüsselverlag J.S. Moser Gesellschaft m.b.H. and Others against the Commission of the European Communities

(Case T-3/02)

(2002/C 84/118)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 January 2002 by Schlüsselverlag J.S. Moser Gesellschaft m.b.H., established in Innsbruck (Austria), J. Wimmer GmbH, established in Linz (Austria), Zeitungs- und Verlags-Gesellschaft m.b.H., established in Bregenz (Austria), Eugen Russ Vorarlberger Zeitungsverlag und Druckerei Gesellschaft mbH, established in Schwarzach (Austria), 'Die Presse' Verlagsgesellschaft m.b.H., established in Vienna (Austria), and 'Salzburger Nachrichten' Verlags-Gesellschaft m.b.H. & Co KG, established in Salzburg (Austria), represented by M. Krüger, lawyer.

The applicants claim that the Court should:

— declare that, by failing to reach a decision on the complaint lodged by the applicants against a concentration with a Community dimension, which was notified and approved at national level by the Vienna Oberlandesgericht (Higher Regional Court), in its capacity as Kartellgericht (Restrictive Practices Court) by decision of 26 February 2001, or, in the alternative, by failing to require the parties to the concentration to notify the defendant of the concentration, the defendant failed to fulfil its obligations under the EC Treaty;

— order the defendant to pay the costs.

Pleas in law and main arguments

By letter of 25 May 2001, the applicants, as owners of Austrian newspapers, lodged with the defendant a complaint regarding a media concentration which had been approved in Austria, to which the companies Bertelsmann, Gruner+Jahr, Raffeisen, KURIER-Magazine and NEWS were parties, and which, according to the applicants, had a Community dimension. The complaint was accompanied by the request that the parties to the concentration be required to notify the concentration in accordance with Council Directive (EEC) No 4064/89.

DG Competition took the view, in a number of letters, that the abovementioned regulation was not applicable to the concentration in question, as there had only been a partial transfer, which did not involve at least two undertakings with turnovers of more than EUR 250 million. DG Competition pointed out, however, that that view was not binding on the defendant.

Since the defendant failed to react within two months to the applicants' request for a formal decision on the complaint, the applicants have brought an action under Article 232 EC for a declaration of failure to act. They submit that in the absence of a decision attributable to the defendant, it is not possible to bring an action for annulment before the Court of First Instance, and that the applicants are directly and individually concerned by the defendant's failure to adopt a decision.

The applicants claim that the national decision is invalid under Article 81 EC in conjunction with Regulation 4064/89, because, contrary to Article 21(2) of that regulation, the Republic of Austria applied its national competition law to a concentration with a Community dimension. In addition, they claim that there are two parties to the concentration with turnovers in excess of EUR 250 million, one of which does not achieve more than two-thirds of its annual turnover within one and the same Member State. Finally, this was not a partial transfer of an undertaking but a merger.

Action brought on 18 January 2002 by Michael Gerhard Franz Platte against Commission of the European Communities

(Case T-6/02)

(2002/C 84/119)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 January 2002 by Michael Gerhard Franz Platte, residing in Tielt-Winge (Belgium), represented by Xavier De Kesel, lawyer.

The applicant claims that the Court should:

— annul the decision of 6 September 2001 being appealed against and make an order emending and implementing what the appointing authority ought to have done, namely appoint the applicant to Grade C 4.

Pleas in law and main arguments

The applicant was classified, upon taking up his duties, in Grade C 5. In his application, the applicant contests that decision. According to the applicant, he should, in view of his previous experience and of the fact that the requirements of the service call for the recruitment of a particularly well-qualified person, have been classified in Grade C 4.

Removal from the register of Case T-315/00 [1]

(2002/C 84/120)

(Language of the case: Italian)

By order of 29 November 2001 the President of the Fourth Chamber of the Court of First Instance of the European Communities Case T-315/00 Associazione delle Cantine Sociali Venete e della Cantina dei Colli Berici against Commission of the European Communities, was removed from the register.

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[1] OJ C 335 of 25 November 2000.