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I

(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

29 January 2002

in Case C-162/00 (Reference for a preliminary ruling from the Bundesarbeitsgericht): Land Nordrhein-Westfalen v Beata Pokrzeptowicz-Meyer [1]

(External relations — Europe Agreement between the Communities and Poland — Interpretation of the first indent of Article 37(1) — Prohibition of discrimination based on nationality as regards conditions of employment or dismissal for Polish workers legally employed in a Member State — Fixed-term contract of employment of a foreign-language assistant — Effect on such a contract of the entry into force of the Europe Agreement)

(2002/C 97/01)

(Language of the case: German)

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

In Case C-162/00: Reference to the Court under Article 234 EC by the Bundesarbeitsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Land Nordrhein-Westfalen and Beata Pokrzeptowicz-Meyer, on the interpretation of Article 37(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), J.-P. Puissochet, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Administrator, Registrar, has given a judgment on 29 January 2002, in which it has ruled:

1. *The first indent of Article 37(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993, which has direct effect, precludes the application to Polish nationals of a national provision according to which positions for foreign-language assistants may be filled by means of fixed-term contracts of employment, whereas, for other teaching staff performing special duties, recourse to such contracts must be individually justified by an objective reason.*

2. *The first indent of Article 37(1) of the Europe Agreement applies, from the date of entry into force of that agreement, to a fixed-term contract of employment which was concluded prior to the date of its entry into force but which is due to expire after that date.*

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[1] OJ C 211 of 22.7.2000.

ORDER OF THE COURT

(Fifth Chamber)

of 22 January 2002

in Case C-447/00 (Reference for a preliminary ruling from the Landesgericht Salzburg): Holto Ltd [1]

(Reference for a preliminary ruling — Registration of a company branch established in a Member State in the commercial register of that State, the company having its seat in another Member State where it conducts no economic activities — Lack of jurisdiction of the Court)

(2002/C 97/02)

(Language of the case: German)

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

In Case C-447/00: Reference to the Court under Article 234 EC by the Landesgericht Salzburg (Austria) for a preliminary

ruling concerning the application for registration in the Commercial Register made to that court by Holto Ltd. — on the interpretation of Articles 43 EC and 48 EC — the Court (Fifth Chamber), composed of P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges; S. Alber, Advocate General; Registrar: R. Grass, has made an order on 22 January 2002 in which it has ordered:

The Court of Justice of the European Communities clearly lacks jurisdiction to answer the questions put by the Landesgericht Salzburg in its order of 27 November 2000.

([1]) OJ C 28 of 27.1.2001.

Reference for a preliminary ruling by the Cour de Cassation (Belgium) by judgement of 6 November 2001 in the case of Office National de l'Emploi against Mohamed Alami

(Case C-23/02)

(2002/C 97/03)

Reference has been made to the Court of Justice of the European Communities by judgement of the Cour de Cassation (National Employment Office) (Belgium) of 6 November 2001, received at the Court Registry on 31 January 2002, for a preliminary ruling in the case of Office National de l'Emploi (National Employment Office) against Mohamed Alami on the following question:

Does the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed in Rabat on 27 April 1976, concluded on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 ([1]), preclude a Member State from taking account only of work periods as an employee completed on its territory by workers of Moroccan nationality for the purposes of determining whether they are entitled to benefit from a supplement for seniority increasing the basic amount of their unemployment benefit?

([1]) Council Regulation (EEC) No 2211/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco (OJ L 264, 27.9.1978, p. 1).

Reference for a preliminary ruling by the Tribunal de Commerce de Marseille by order of 22 January 2002 in the case of Marseille Fret S.A. against Seatrano Shipping Company Limited

(Case C-24/02)

(2002/C 97/04)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal de Commerce de Marseille (Marseille Commercial Court) of 22 January 2002, received at the Court Registry on 31 January 2002, for a preliminary ruling in the case of Marseille Fret S.A. against Seatrano Shipping Company Limited on the following questions:

1. Does Title II of the Brussels Convention of 27 September 1968, as reproduced in Regulation (EC) No 44/2001 of 22 December 2000 ([1]), permit a court of a Member State to restrain a citizen of another Contracting State from bringing proceedings before the courts of his home country, under either his national law or Community law?

2. May an English court, by way of an anti-suit injunction, purport to restrain a person from having access to another Community court which nevertheless have jurisdiction under the Brussels Convention of 27 September 1968, as reproduced in Regulation (EC) No 44/2001 of 22 December 2000?

3. May an English court, by means of that procedure deprive other Community courts of the power to rule on matters falling within their own competence when that power appears to arise from the provisions of Chapter II of Regulation (EC) No 44/2001 of 22 December 2000?

4. Is an order compelling a Community national to withdraw an independent action already commenced before a French court, under threat of punitive sanctions such as those provided for by the English anti-suit injunction procedure, consistent with the fundamental principle of the right to access to a court, as protected by the Court of Justice of the European Communities?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

Reference for a preliminary ruling by the Bundesverwaltungsgericht by order of 8 November 2001 in the case of Katharina Rinke against Ärztekammer Hamburg

(Case C-25/02)

(2002/C 97/05)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesverwaltungsgericht (Federal Administrative Court) of 8 November 2001, received at the Court Registry on 31 January 2002, for a preliminary ruling in the case of Katharina Rinke against Ärztekammer Hamburg (the Hamburg Chamber of Physicians) on the following questions:

1. Does the requirement laid down in Directives 86/457/EEC [1] and 93/16/EEC [2], to the effect that certain components of the specific training in general medical practice — completion of which confers the right to use the title 'general medical practitioner' — must be undertaken full-time, constitute indirect discrimination on grounds of sex within the meaning of Directive 76/207/EEC [3]?

2. If the answer to Question 1 is yes:

   (a) How is the incompatibility of Directive 76/207/EEC on the one hand with Directives 86/457/EEC and 93/16/EEC on the other to be resolved?

   (b) Does the prohibition of indirect discrimination on grounds of sex constitute a basic unwritten right under Community law that overrides any conflicting rule in secondary legislation?

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[1] OJ L 267, 19.9.1986, p. 26.
[2] OJ L 165, 7.7.1993, p. 1.
[3] OJ L 39, 14.2.1976, p. 40.

Reference for a preliminary ruling by the Tribunal Tributario de 1ª Instancia de Lisboa, — 3º JUIZO — 2ª Secção by order of 27 December 2001 in the case of Recheio Cash & Carry SA against Fazenda Pública and Registo Nacional de Pessoas Colectivas

(Case C-30/02)

(2002/C 97/06)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Tributario de 1ª Instancia de Lisboa, — 3º JUIZO — 2ª Secção (Fiscal Court of First Instance, Lisbon, 3rd Division, 2nd Chamber) of 27 December 2001, received at the Court Registry on 4 February 2002, for a preliminary ruling in the case of Recheio Cash & Carry SA against Fazenda Pública and Registo Nacional de Pessoas Colectivas on the following questions:

1. Is it contrary to Community law for a Member State to fix a limitation period, for actions for repayment of taxes levied in breach of Community law, of 90 days reckoned from the expiry of the period for voluntary payment, so that the exercise of the right to reimbursement is made excessively difficult?

2. If so, what is the minimum period that may be considered compatible with the rule that exercise of that right must not be made excessively difficult?

3. What are the criteria to be used to fix that period?

Reference for a preliminary ruling by the Tribunale Amministrativo Regionale del Veneto — Sezione Terza by orders of 16 January 2002 in the case of Adriano Di Lenardo srl (C-37/02) and Dilexport srl (C-38/02) against Ministero del Commercio con l'Estero — Direzione Generale per la Politica Commerciale e la Gestione del Regime degli Scambi — Divisione II

(Case C-37/02 and C-38/02)

(2002/C 97/07)

Reference has been made to the Court of Justice of the European Communities by orders of the Tribunale Amministrativo Regionale del Veneto — Sezione Terza (Regional Administrative Court of the Veneto — Third Chamber) of 16 January 2002, received at the Court Registry on 13 February 2002, for a preliminary ruling in the case of Adriano Di Lenardo srl (C-37/02) and Dilexport srl (C-38/02) against Ministero del Commercio con l'Estero (Ministry of Foreign Trade) — Direzione Generale per la Politica Commerciale e la Gestione del Regime degli Scambi — Divisione II on the following questions:

(1) Are Articles 1, 3, 4, 5 and 31 of Regulation (EC) No 896/2001 [1] incompatible, in primis, with the Treaty, in particular Article 7 (formerly Article 4) thereof, and with the other provisions and principles enshrined in that Treaty with regard to the principle of the division of functions and powers between the Community institutions (in particular between the Council and the Commission)?

(2) Are those same Articles of Regulation 896/2001 contrary to the principle that laws should not have retrospective effect and to the related principles of the protection of legitimate expectations and legal certainty?

(3) Are the same provisions of Regulation 896/2001 incompatible with Council Regulation EEC No 404/93 [2] of 13 February 1993 (with subsequent amendments and additions), in particular with Article 20 thereof?

(4) If the answer given to the preceding questions is in the negative, the Court is asked to state whether, by precluding persons related to traditional operators from being granted a tariff quota even as 'non-traditional operators', Article 6 of the aforementioned Commission regulation, in particular subparagraph (c) thereof, conflicts with the fundamental right to pursue a professional activity, viewed in relation to the freedom to conduct a business.

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[1] OJ L 126, 8.5.2001, p. 6.

[2] OJ L 47, 25.2.1993, p. 1.

Action brought on 15 February 2002 by Commission of the European Communities against Portuguese Republic

(Case C-44/02)

(2002/C 97/08)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 15 February 2002 by the Commission of the European Communities, represented by António Caeiros, acting as Agent.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 2000/25/EC of the European Parliament and of the Council of 22 May 2000 on action to be taken against the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors and amending Council Directive 74/150/EEC [1], the Portuguese Republic has failed to fulfil its obligations under Article 9 of the aforementioned Directive 2000/25/EC; and

— In the alternative, declare that, by failing to inform the Commission of such provisions, the Portuguese Republic has failed to fulfil its obligations under Article 9 of the aforementioned Directive 2000/25/EC;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Under the first paragraph of Article 10 and the third paragraph of Article 249 of the EC Treaty, Member States must adopt the measures necessary to transpose directives addressed to them into their domestic law before the expiry of the period prescribed for doing so. That period expired on 29 September 2000 without Portugal having brought into force the necessary provisions.

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[1] OJ 2000 L 173, p. 1.

Action brought on 15 February 2002 by Commission of the European Communities against Portuguese Republic

(Case C-45/02)

(2002/C 97/09)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 15 February 2002 by the Commission of the European Communities, represented by António Caeiros, acting as Agent.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/2/EC of 14 January 2000 adapting to technical progress Council Directive 75/322/EEC relating to the suppression of radio interference produced by spark-ignition engines fitted to wheeled agricultural or forestry tractors and Council Directive 74/150/EEC relating to the type-approval of wheeled agricultural or forestry tractors [1], the Portuguese Republic has failed to fulfil its obligations under Article 4 of Directive 2000/2/EC;

— In the alternative, declare that, by failing to inform the Commission immediately of such provisions, the Portuguese Republic has failed to fulfil its obligations under Article 4 of Directive 2000/2/EC;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Pleas in law and main arguments are similar to those put forward in Case C-44/02 [2]; the time-limit for transposition expired on 21 December 2000.

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[1] OJ 2000 L 173, p. 1.
[2] See page 4 of this OJ.

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

(Case C-51/02)

(2002/C 97/10)

An action against Ireland was brought before the Court of Justice of the European Communities on 19 February 2002 by the Commission of the European Communities, represented by Marie Wolfcarius and Michael Shotter, acting as Agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with Commission Directive 1999/52/EC [1] of 26 May 1999 adapting to technical progress Council Directive 96/96/EC [2] on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers, or in any event by failing to inform the Commission of those measures, Ireland has failed to fulfil its obligations under that Directive;

2) order Ireland 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 1 October 2000 without Ireland having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission.

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[1] OJ L 142, 5.6.1999, p. 26.
[2] of 20 December 1996 (OJ L 46, 17.2.1997, p. 1).

Action brought on 20 February 2002 by the Commission of the European Communities against the United Kingdom

(Case C-52/02)

(2002/C 97/11)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 20 February 2002 by the Commission of the European Communities, represented by Michael Shotter, 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 with Directive 2000/71/EC [1] of 7 November 2000 to adapt the measuring methods as laid down in Annexes I, II, III and IV to Directive 98/70/EC [2] of the European Parliament and of the Council to technical progress as foreseen in Article 10 of that Directive or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 2(1) and 2(2) 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 1 January 2001 without the United Kingdom having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission.

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[1] OJ L 287, 14.11.2000, p. 46.
[2] of 13 October 1998 (OJ L 350, 28.12.1998, p. 58).

Action brought on 14 February 2002 by the Italian Republic against the Commission of the European Communities

(Case C-54/02)

(2002/C 97/12)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 February 2002 by the Italian Republic, represented by Umberto Leanza, acting as Agent, assisted by Gianni De Bellis, avvocato dello Stato.

The applicant claims that the Court should:

— annul Commission Decision 2001/889/EC of 12 December 2001 in so far as it:

  (a) provides for a reduction in the advances on agricultural expenditure, taking into account the interest relating thereto;

  (b) alternatively, provides definitively rather than provisionally for a reduction in the advances on agricultural expenditure, taking into account the interest relating thereto;

  (c) fails to reimburse to Italy the sum of LIT 45 145 363 199 (EUR 23 315 634,29), the same having been improperly withheld;

  (d) incorrectly determines the amount of any interest which may be due to the Fund without taking account of the reductions made in the advances;

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

Pleas in law and main arguments

1996/97 period: reduction in advances and refusal of financing

In Case C-231/00 Lattepiù the Tribunale Amministrativo Regionale per il Lazio has referred for a preliminary ruling under Article 234 EC a question on the correct interpretation of the Community rules applicable in the matter and on whether the national rules should be disapplied. In those circumstances, the Commission's decision to exclude certain expenditure by Italy from Community financing appears unacceptable on account of its definitive nature, which does not seem to take account of the question referred for a preliminary ruling in the pending Case C-231/00, referred to above.

The Italian Government considers that it is constrained to challenge the Commission's decision in order to prevent the definitive nature of that decision from constituting an obstacle to the effects of the judgment to be delivered in Case C-231/00.

In addition to challenging the reduction in the advances and in any event the definitive nature of the Commission's determination, the Italian Government seeks annulment of the contested decision on the ground that it infringes Articles 3, 5 and 8 of Regulation (EEC) No 729/70 [1] and inasmuch as (in relation to the 1995/96 period) it provides for reductions in advances which are greater than the levies which are to be paid to it.

1995/96 and 1996/97 periods: claim for default interest

In calculating the amount of the interest due on the additional levy payable each month for the period following the prescribed date (1 September 1996 and 1 September 1997 respectively), the Commission has correctly excluded from the capital sum the amounts declared to the EAGGF from 1 September 1996 (and 1997) to December 2001; however, it has not taken account of the reductions in the advances made in the course of 1997.

For the 1995/96 period, the Commission, working on the basis of the reductions in the advances granted to Italy for agricultural expenditure, has already obtained for the assets of the Fund the entire amount of the additional levies (indeed, the reduction in the advance was even greater).

Likewise, the reduction in the advances for the 1996/97 period, although not sufficient to cover the entire amount of the additional levies, was not taken into account in the interest calculation.

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[1] OJ, English Special Edition 1970(1), p. 218.

Action brought on 22 February 2002 by Commission of the European Communities against Portuguese Republic

(Case C-55/02)

(2002/C 97/13)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 22 February 2002 by the Commission of the European Communities, represented by Jörn Sack and Miguel França, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by restricting the concept of 'collective redundancies' to redundancies for structural, technological or cyclical reasons, and by failing to extend the concept to redundancies for any other reason not specific to the workforce itself, the Portuguese Republic has failed to fulfil its obligations under Articles 1, 6 and 7 of Directive 98/59/EC; [1]

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Commission takes the view that the concept of collective redundancies in Portuguese law does not cover all the cases of collective redundancies envisaged by the directive. For example, it does not cover redundancies declared by an employer for reasons unrelated to the workforce where the undertaking is wound up or liquidated, sold, the premises burnt down or other cases of force majeur, or where the undertaking has ceased trading on the death of its owner. The current situation not only undermines the protection of workers, it is also manifestly contrary to the principle of legal certainty. Without calling in question the constitutional provisions which guarantee workers' right to work, the Commission points out that in any event that does not make good the inadequate transposition of a directive whose purpose is to strengthen the protection of workers in the event of collective redundancies and to provide workers with certain guarantees as regards observance of the rules and procedure for redundancies. Thirdly, by relying on the case law and the rules of Portuguese law according to which the directive would not be applicable to collective redundancies for reasons not specific to the workforce, since such cases would be time-barred, the Portuguese authorities have improperly restricted the scope of the directive. Finally, the Commission considers that to accept the argument that application of the rules laid down in the directive is 'not viable' in those cases where termination of the employment contract which under Portuguese law is considered to limit rights of action, would amount to acknowledging that a Member State may invoke provisions of domestic law to justify failure to fulfil its obligations under a Community directive, which is manifestly contrary to Community law.

(1) 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.

Action brought on 25 February 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-59/02)

(2002/C 97/14)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 25 February 2002 by the Commission of the European Communities, represented by Michel Nolin and Minas Konstantinidis, Legal Advisers.

The Commission claims that the Court should:

— declare that, by not adopting or, in any event, by failing to communicate to the Commission (all) the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/86/EC [1] of 11 November 1999 adapting to technical progress Directive 76/763/EEC on the approximation of the laws of the Member States relating to passenger seats for wheeled agricultural or forestry tractors, the Hellenic Republic has failed to fulfil its obligations under Article 4 of 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, despite the expiry on 1 January 2001 of the period laid down, the Hellenic Republic has not adopted the appropriate measures for the full incorporation of the directive at issue into Greek law.

(1) OJ L 297, 18.11.1999, p. 22.

Action brought on 26 February 2002 by the Commission of the European Communities against the Republic of Austria

(Case C-61/02)

(2002/C 97/15)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 26 February 2002 by the Commission of the European Communities, represented by Gerald Braun, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg.

The Commission claims that the Court should:

1. declare that, by not adopting within the time-limit laid down the provisions and measures necessary to comply with Council Directive 98/58/EC [1] of 20 July 1998 concerning the protection of animals kept for farming purposes, the Republic of Austria has failed to fulfil its obligations under the EC Treaty;

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

Pleas in law and main arguments

By virtue of the binding nature of the third paragraph of Article 249 EC and the first paragraph of Article 10 EC, the Member States are obliged to transpose a directive addressed to them into national law so that it has full effect on expiry of the period laid down for its transposition. The period for transposition laid down in Article 10 of the directive expired on 31 December 1999 without all Länder having as yet adopted the necessary provisions.

[1] OJ L 221, 8.8.1998, p. 23.

Action brought on 4 March 2002 by Commission of the European Communities against Portuguese Republic

(Case C-72/02)

(2002/C 97/16)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 4 March 2002 by the Commission of the European Communities, represented by António Caeiros, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that

1. by failing to transpose the following provisions into its legal system:

   — Article 3(3), Article 10, Article 11 and Article 12(4) of Directive 92/43/EEC;

   — Article 7, Article 8 and Article 12 of Directive 79/409/EEC; and

2. by failing to transpose correctly

   — Article 1, Article 6(3), Article 6(4), Article 12(1)(d), Article 6(1) and Article 6(2) of Directive 92/43/EEC,

   — Article 2, Article 4(1), Article 4(4) and Article 6 of Directive 79/409/EEC,

   the Portuguese Republic failed to fulfil its obligations under Article 23 of Directive 92/43/EEC Council Directive 92/43/EEC [1] of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Article 18 of Council Directive 79/409/EEC [2] of 2 April 1979 on the conservation of wild birds;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese Republic has not contested any of the Commission's complaints set out in the reasoned opinion. Rather, it appears from the reply of the Portuguese Government and, in particular, from the report that legislation implementing Directives 79/409/EEC and 92/43/EEC is being prepared, that that Government admits that those complaints are well founded.

[1] OJ 1992 L 206, p. 7.
[2] OJ 1979 L 103, p. 1.

Action brought on 5 March 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-74/02)

(2002/C 97/17)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 5 March 2002 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser in the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of the Commission's Legal Service, C 254, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars [1], or at any rate to notify the same to the Commission, the Federal Republic of Germany has infringed its obligations under Article 12(1) of that directive;

(2) order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The mandatory nature of directives pursuant to the third paragraph of Article 249 EC and the first paragraph of Article 10 EC is such as to require Member States to whom directives are addressed to transpose the provisions thereof into national law so as to give full practical effect to them before the expiry of the time-limit for transposition. The time-limit prescribed in Article 12 of the directive expired on 18 January 2001.

[1] OJ 2000 L 12, p. 16.

Action brought on 13 March 2002 by the Commission of the European Communities against the French Republic

(Case C-85/02)

(2002/C 97/18)

An action against the French Republic was brought before the Court of Justice of the European Communities on 13 March 2002 by the Commission of the European Communities, represented by M. Wolfcarius, acting as Agent, with an address for service in Luxembourg.

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

(1) declare that, by failing to adopt the laws, regulations and administrative measures necessary in order to transpose point 12 in Annex II to Directive 91/439/EC of 29 July 1991 [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;

(2) 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-74/02; the time-limit for transposition expired on 1 July 1996.

[1] Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1).

Removal from the register of Case C-318/01 [1]

(2002/C 97/19)

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-318/01 (Reference for a preliminary ruling by the Commissione Tributaria Provinciale di Roma): Informatica e Telecomunicazioni I & T SpA v Direzione Regionale delle Entrate per il Lazio.

[1] OJ C 303 of 27.10.2001.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

11 December 2001

in Case T-46/00: Kvitsjøen AS v Commission of the European Communities [1]

(Fisheries — Measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway — Withdrawal of a licence and special fishing permit — Audi alteram partem principle — Principle of proportionality)

(2002/C 97/20)

(Language of the case: Dutch)

Case T-46/00, Kvitsjøen AS, established in Fosnavag (Norway), represented by K. Storalm, J. Hoekstra and G. Vanquathem, lawyers, with an address for service in Luxembourg, v Commission of the European Communities, represented by T. van Rijn, acting as Agent, assisted by F. Tuytschaever, lawyer, with an address for service in Luxembourg: application for the annulment of the Commission decision of 22 December 1999 withdrawing from the Norwegian fishing vessel Kvitsjøen its licence and special fishing permit for Community waters and refusing to grant it that licence and permit before 30 June 2000, the Court of First Instance (Fifth Chamber), composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges, Registrar: J. Plingers, Administrator, has given a judgment on 11 December 2001, in which it has ruled:

1. *Dismisses the action;*

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

[1] OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 January 2002

in Case T-101/00: Miguel Ángel Martín de Pablos v Commission of the European Communities [1]

(Officials — Open competition — Non-admission of the applicant to the oral test — Action for annulment — Action for damages)

(2002/C 97/21)

(Language of the case: Spanish)

In Case T-101/00: Miguel Ángel Martín de Pablos, residing in Madrid, represented by J. Moreno Núñez, lawyer, of Calle Santo Cruz de Marcenado 7, Madrid, v Commission of the European Communities (Agents: G. Valsesia, J. Currall and E. Gippini Fournier) — application, first, for annulment of the decision of the selection board refusing to admit the applicant to the oral test in open competition COM/A/11/98 and, second, for compensation for the damage allegedly caused by the late notification of that decision — the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, and N. Forwood and H. Legal, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 23 January 2002, in which it:

1. *Dismisses the application;*

2. *Orders the parties to bear their own costs, including those relating to the proceedings for interim measures.*

[1] OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 January 2002

in Case T-386/00 Margarida Gonçalves v European Parliament [1]

(Officials of the European Communities — Competition notice — Non-admission to a competition — Consistency between pleas put forward during the administrative procedure and those set out in the application — Admissibility — Statement of reasons — Administration's duty to have regard for the interests of officials and the principle of sound administration)

(2002/C 97/22)

(Language of the case: French)

In Case T-386/00, Margarida Gonçalves, former member of the temporary staff, residing in Brussels, represented by L. Tinti, lawyer, with an address for service in Luxembourg, against European Parliament (Agents: J.F. De Wachter and D. Moore) — application to annul the decisions of the selection board rejecting the application of the applicant in internal competition B/172, establishing the list of suitable candidates and all decisions taken by the defendant on the basis of such decisions, and for compensation for the pecuniary and non-pecuniary damage allegedly suffered as a result of those decisions, — the Court of First Instance (Single Judge: M. Vilaras); Registrar: J. Plingers, Administrator, has given a judgment on 23 January 2002, the operative part of which is as follows:

1. *The application is dismissed.*

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

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[1] OJ 2001 C 61.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 7 December 2001

in Case T-192/01 R: Lior GEIE v Commission of the European Communities

(Procedure for interim relief — Payment under a contract — Interim measures — Urgency)

(2002/C 97/23)

(Language of the case: French)

In Case T-192/01 R: Lior GEIE, established in Brussels, represented by V. Marien and J. Choucroun, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agent: H. van Lier) — application for an order requiring the Commission to pay the sum of 68 070 EUR in the context of ALTENER-AGORES contract No X-VII/4.1030/Z/99-085, together with interest at the Belgian statutory rate applying from 23 July 2001, to be paid within eight days from delivery of the decision to be given, or in default to pay a periodic penalty of 100 EUR for each day's delay — the President of the Court of First Instance made an order on 7 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 24 January 2002 by Falk-Ulrich von Hoff against the European Parliament

(Case T-13/02)

(2002/C 97/24)

(Language of the case: German)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 24 January 2002 by Falk-Ulrich von Hoff, of Berlin (Germany), represented by B. Wägenbaur, lawyer.

The applicant claims that the Court should:

— annul the European Parliament's decision of 17 April 2001;

— order the European Parliament to pay to the applicant the installation allowance amounting to two months' salary, together with interest at the rate of 8 % from the date of the request (15 March);

— order the defendant to pay the costs.

Pleas in law and main arguments

In the context of the transfer of the liaison centre of the European People's Party from Bonn to Berlin, the applicant, whose place of employment was Brussels and who took over as head of the liaison centre, was moved to Berlin. He applied for the grant of an installation allowance pursuant to Article 5 of Annex VII to the Staff Regulations. The institution refused that application on the ground that the applicant had returned to live with his family, who had already been residing in Berlin prior to the transfer of the applicant.

The applicant asserts that the decision refusing his application is contrary to Article 5(2) of Annex VII, since the conditions for granting an installation allowance are fulfilled, and that the European Parliament cannot validly rely on the ground of exclusion laid down in Article 5(4) of Annex VII.

Action brought on 30 January 2002 by Audi AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-16/02)

(2002/C 97/25)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 30 January 2002 by Audi AG, of Ingolstadt (Germany), represented by L. von Zumbusch, lawyer.

The applicant claims that the Court should:

— annul the decision adopted on 8 November 2001 by the First Board of Appeal in appeal No R 0652/2000-1;

— order the defendant Office to pay the costs.

Pleas in law and main arguments

The trade mark concerned:	the verbal mark 'TDI' — application No 19752
Goods or services:	goods and services in Classes 12 and 37 (vehicles and constructive parts thereof; repair and maintenance of vehicles)
Decision contested before the Board of Appeal:	refusal of registration by the examiner
Decision of the Board of Appeal:	rejection of the appeal
Grounds of claim:	— incorrect application of the provisions of Regulation (EC) No 40/94 [1] and of Regulation (EC) No 2868/95 [2]; — incorrect application of Article 7(1)(b) and (c) of Regulation (EC) No 40/94; — incorrect application of Article 7(3) of Regulation (EC) No 40/94.

[1] Council Regulation (EC) No 40/94 of 20.12.1003 on the Community trade mark (OJ 1994 L 11, p. 1).
[2] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 29 January 2002 by Fred Olsen S.A. against Commission of the European Communities

(Case T-17/02)

(2002/C 97/26)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 January 2002 by Fred Olsen S.A., whose registered office is in Santa Cruz de Tenerife (Spain), represented by Rafael Marín Correa, lawyer.

The applicant claims that the Court should:

— annul the decision of the Commission of 25 July 2001

— order the Commission of the European Communities to initiate the procedure for verifying whether aid is compatible with the EC Treaty in accordance with its judgment;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a Spanish maritime company which, although the majority of its shares are held in the Netherlands, has for a long time been operating a number of sea routes between the islands of the Canaries archipelago, is challenging the Commission decision

(a) not to contest the payment to Transmediterránea S.A. of PTA 15 560 625 000 intended to make up for the losses arising from the provision of cabotage services during 1997 and, secondly, to settle the rights and obligations of the State directly linked to the public service contract entered into in 1977 between Transmediterránea and the Spanish State and,

(b) not to raise any objection whatever to the aid valued at PTA 1 650 000 000 paid to Transmediterránea in the form of public service compensation for the maritime cabotage services provided by that company in the Canaries archipelago during 1998.

As regards the first aspect, that is to say the amounts paid to Transmediterránea in the form of settling accounts for 1997 and final settlement of the contract which the Commission accepts because it deems such payments existing aid — prior to the accession of Spain — in that they arise directly from the implementation of the contract entered into in 1977, the applicant claims that the contested decision is vitiated by an error of assessment inasmuch as it allows:

— certain expenditure relating to staff reduction to be charged to the accounts for 1997 and for final settlement; and

— payment of the entire amount by way of final settlement without charging the debts to the financial years in which they may have arisen and without offsetting them with any surpluses.

As regards the second aspect, that is to say the aid granted in the form of compensation for the routes provided in the Canaries during 1998, which the Commission classifies as new aid, the applicant alleges that the contested decision:

— infringes Article 88 of the EC Treaty, since the competent Spanish authority, by granting the aid, has failed to fulfil its obligations under the recommendation, drawn up by the Commission pursuant to the aforementioned article, on the upkeep and maintenance of the system of aid applicable to Transmediterránea.

— infringes Article 86(2) of the EC Treaty and general communications on services in the general interest and those specifically concerning aid to maritime transport by considering, in blatant contradiction to those provisions, that the aid is compatible with Article 86(2). The applicant would point out in that respect that:

(a) there is no act emanating from the public authorities defining the content of services in the general interest and recommending Transmediterránea to provide them;

(b) it was not necessary to declare Canary routes as being in the general interest; and

(c) the routes were not awarded by means of an open tender procedure.

Action brought on 8 February 2002 by Daiichi Pharmaceutical Co. Ltd. against the Commission of the European Communities

(Case T-26/02)

(2002/C 97/27)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8th February 2002 by Daiichi Pharmaceutical Co. Ltd., represented by Mr Jacques Buhart and Mr Pierre-M. Louis of Coudert Brothers LLP, Brussels (Belgium).

The applicant claims that the Court should:

— annul Article 3 (f) of the Commission Decision of 21 November 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No. COMP/E-1/37,512 — Vitamins);

— alternatively, substantially decrease the fine levied on the applicant; and

— order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant is a Japanese pharmaceutical company whose subsidiary company manufactured D-pantolactone and D-Calcium Pantothenate (Vitamin B5) and Pyridoxine (Vitamin B6) during the relevant period. In the contested Decision, the Commission imposed fines upon the applicant and seven other companies for participating in eight distinct secret market-sharing and price-fixing cartels affecting vitamin products.

The applicant does not dispute the Commission's finding that the applicant had infringed Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement by participating in agreements affecting the Community and EEA markets for Vitamins B5 and B6. Furthermore, the applicant does not contest the facts found by the Commission. The applicant seeks, however, the annulment of Article 3(f) of the Decision imposing a fine of EUR 23.4 million upon the applicant or, alternatively, a substantial reduction of that fine.

The applicant submits inter alia that the Commission committed a manifest error of judgement, erroneously applied the law to the facts and infringed the Fining Guidelines

— by failing to place the applicant in a third category, behind both Hoffmann-La Roche and BASF, in setting the starting point for the amount of the fine relating to the gravity of the infringement, or, alternatively and in violation of the principle of equal treatment, in failing to place the applicant in the second category with BASF;

— by failing to treat the applicant's less-than-full implementation of the Vitamin B5 cartel as an attenuating circumstance warranting a substantial reduction of the basic amount of the fine;

— by failing to grant to the applicant total immunity or a very substantial reduction of 75 % to 100 % of the fine for the Vitamin B5 infringement pursuant to Section B of the Leniency Note on the basis of the applicant's cooperation during the procedure or, alternatively, a lesser reduction of the fine pursuant to Section C or Section D of the Leniency Notice.

Action brought on 21 February 2002 by the Associazione Bancaria Italiana (ABI) against the Commission of the European Communities

(Case T-36/02)

(2002/C 97/28)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 February 2002 by the Associazione Bancaria Italiana (ABI), represented by Alberto Santa Maria, Claudio Biscaretti di Ruffia, Giuseppe Pizzonia and Marcello Valenti, lawyers.

The applicant claims that the Court should:

— annul the contested decision, issued on 11 December 2001 by the Commission of the European Communities, on the grounds that it infringes essential procedural requirements and/or is unfounded, contradictory and/or lacking in a statement of reasons in accordance with Article 253 of the EC Treaty in conjunction with Articles 87 and 77 and with Council Regulation No 659/1999, as expounded in the application;

— alternatively, annul the decision in question wholly or in part pursuant to the second paragraph of Article 230 of the EC Treaty, inasmuch as it infringes or misapplies Article 87(1) or, in the further alternative, Article 87(3)(b) or (c) of the EC Treaty, as expounded in the application;

— in the still further alternative, in the inconceivable event that the Court finds that the articles of Law No 461 of 23 December 1998 and of Legislative Decree No 153 of 17 May 1999, to which the contested decision relates, constitute a system of State aid which is incompatible with the common market, rule that the contested decision of the Commission cannot have any retroactive effect;

subject to the reservation of all rights.

Pleas in law and main arguments

The present action is directed against the Commission's decision of 11 December 2001 concerning the system of State aid implemented by Italy in favour of banks (C/54/A/2000/EC [ex NN 70/2000]). That system of aid results from the application of Law No 461 of 23 December 1998 (the 'Legge Ciampi') and of Legislative Decree No 153 of 17 May 1999, which lay down certain fiscal measures in relation to mergers between banking institutions and the transfer of capital goods and equipment, as part of the composite scheme for the privatisation of the sector.

In support of its claims, the applicant association puts forward the following pleas and arguments:

— The fiscal measures in favour of mergers between banking institutions are not selective and do not constitute ad hoc aid. It should be borne in mind in that regard that the introduction of fiscal incentives for mergers between banking institutions, as provided for under the Italian rules since 1990, the primary aim of which is to facilitate the privatisation of the sector, is solely intended to improve the functioning and flexibility of the tax rules with specific reference to the reality of the developments taking place in the Italian banking system.

— The fiscal measures provided for in favour of transfers of capital goods and equipment to institutions do not constitute aid, inasmuch as they do not involve any effective waiver by the State of the collection of tax revenues.

— Neither of those types of fiscal measures distorts or threatens to distort competition. No preliminary investigation whatever has been carried out by the Commission in relation to this point. It must be emphasised in that regard that, compared with their competitors in the Community, Italian banks are additionally penalised by a higher tax burden which cannot easily be reconciled with the tax regimes applying in other Member States.

— The fiscal measures adopted in relation to mergers between banking institutions do not affect trade between Member States.

— No preliminary investigation has been carried out, and no statement of reasons has been given as to why this case does not concern de minimis aid.

— The defendant's refusal to carry out any specific assessment of the Italian rules in question meant that it was not able to gain a better understanding of the scope and content of those rules; this would probably have enabled it to ascertain that they complied with Article 87(1) and (3) EC and correctly to assess the appropriateness of their intended purpose. In actual fact, the Commission understood neither the content nor the scope of the Italian rules forming the subject-matter of the case.

— In the contested decision, the Commission, when assessing the possible incompatibility of certain provisions of the law in question for the purposes of Article 87(1) EC, wholly failed to take into account the significance, dealt with at length in the procedure before the Commission, of the common validity and continuity of the 'Legge Amato' (Law No 218 of 30 July 1990) and the 'Legge Ciampi' in the context of the privatisation of the Italian banking system, which was initiated by the first of those laws. In that regard, it should be borne in mind that the 'Legge Amato' had been expressly considered by the defendant on various occasions in connection with Sicilian banks and the Banco di Napoli. In the latter connection, the applicant pleads infringement of the principles of the protection of legitimate expectations, proportionality and legal certainty.

Action brought on 22 February 2002 by Groupe Danone against the Commission of the European Communities

(Case T-38/02)

(2002/C 97/29)

(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 22 February 2002 by Groupe Danone, established in Paris, represented by Antoine Winckler and Marc Waha, lawyers.

The applicant claims that the Court should:

— annul the decision in issue, pursuant to Article 230 of the EC Treaty;

— alternatively, reduce the fine imposed on the applicant by the decision, pursuant to Article 229 of the EC Treaty;

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision contested in the present case concerns two agreements relating to the Belgian beer market. The first was concluded between Interbrew N.V. and Brouwerijen Alken-Maes N.V. It included, in particular, a general 'non-aggression pact', an agreement regarding retail prices and a market-sharing arrangement in the hotel/restaurant/café sector. The Commission has not censured Alken-Maes for having participated in that agreement, but only its majority shareholder at the time, namely the applicant, on account of its own participation in the agreement and the fact that it formed an economic entity with Alken-Maes.

The defendant has also established the existence of a second agreement, concerning beers sold under distributors' brand names, concluded between Interbrew, Alken-Maes, Haacht and Martens, involving market-sharing and collusion in respect of price-fixing. As regards that second agreement, the contested decision does not censure the applicant in relation to the acts of its former subsidiary, since it was not involved therein.

The applicant does not challenge the basic findings underlying the contested decision. In support of its claims, it puts forward the following pleas in law and main arguments:

— The Commission has infringed the principles of proportionality and equal treatment by taking the sum of 25 million EUR as the 'basic amount' of the fine.

— The decision is factually unfounded, inasmuch as it finds that the infringement lasted from 28 January 1993 to 28 January 1998. In so finding, the Commission applied too high a multiplier to the amount of the fine.

— The decision is factually unfounded in so far as it finds that the applicant forced Interbrew to participate in the agreement.

— The decision is unfounded in law and in fact, in that there was no justification for increasing the fine on account of the fact that the applicant had already been found on two earlier occasions to have acted unlawfully. In that regard, the Commission has infringed the principles of 'nulla poena sine lege', 'ne bis in idem' and legal certainty.

— The decision is unfounded in law and in fact, inasmuch as it reduces the fine by only 10 % on account of mitigating circumstances. It omitted to take into account the influence of the price control system and the tradition of concerted practices in the brewing sector, the fact that the agreement had no effect on the market, the dependent situation of Alken-Maes by comparison with the dominant position occupied by Interbrew, the financial difficulties facing Alken-Maes and the crisis situation prevailing during the period in question.

— The decision is unfounded in law and in fact, inasmuch as it finds that the applicant contested the facts alleged against it. In that respect, the applicant should have been entitled to a substantial reduction in the fine.

The applicant company also pleads violation of its rights of defence and failure on the part of the Commission to comply with its obligation to provide a statement of reasons.

Action brought on 25 February 2002 by Jungbunzlauer AG against the Commission of the European Communities

(Case T-43/02)

(2002/C 97/30)

(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 25 February 2002 by Jungbunzlauer AG, of Basle (Switzerland), represented by R. Bechtold, M. Karl and U. Soltész, lawyers.

The applicant claims that the Court should:

— annul the Commission's decision of 5 December 2001 (Case COMP/E-1/36.604 — Citric acid);

— alternatively, reduce the fine imposed in Article 3 of the decision;

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

Pleas in law and main arguments

The subject-matter of the dispute is the Commission's decision of 5 December 2001 (Case COMP/E-1/36.604 — Citric acid) in which the Commission found that the applicant and four other undertakings had infringed Article 81(1) EC and Article 53 of the EEA Agreement, in that they had participated in a continuing agreement and/or a concerted practice in the citric acid sector. A fine of EUR 17,64 million was imposed on the applicant.

First, the applicant claims that the decision was directed to the wrong addressee. The decision should, in fact, have been directed to Jungbunzlauer Ladenburg GesmbH, an associate company of the applicant.

The applicant claims that the Commission did not adequately establish the actual effects on the market and that it refused to take into account, in the applicant's favour, the fact that Jungbunzlauer Gesmbh played a special role in the cartel.

In addition, the applicant claims that the Commission, when fixing the amount of the fine, failed to take account of the size of the undertakings concerned, and that it imposed two separate fines on the applicant in the 'citric acid' and 'sodium gluconate' cases [1], although both products belong to the same family of products and it would have been proper to deal with them together. The applicant submits that the fine imposed on the applicant is highly excessive and that the Commission applied the 10 % maximum prescribed by Article 15(2) of Regulation 17/62 in different ways in cases based on similar facts, which severely prejudiced the applicant's position. That course of action violated the principle of proportionality, the Commission's guidelines, and its own practice. Moreover, that method results in discrimination against small and medium-sized undertakings, and therefore violates the general principle of equal treatment and the principle of the individual assessment of fines.

The applicant further claims that, when calculating the fine, the Commission refused to take into account the fact that fines had already been imposed in the USA and Canada in respect of the same state of affairs, which amounts to an error of assessment.

Finally, the applicant submits that its right to be heard in accordance with the law has been violated, since the Commission did not give it access to the entire investigation file. In addition, due to the protracted length of the procedure, the lawful growth of the undertaking had a detrimental effect on the applicant by increasing the potential range of the fine. Moreover, as a result of the slow conduct of the procedure, the applicant was subject to the new, significantly harsher, practice of the Commission in the imposition of fines.

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[1] See Commission Decision C(2001) 2931 final of 2 October 2001 which is being contested by the applicant in Case T-312/01 Jungbunzlauer v Commission (not yet published).

Action brought on 28 February 2002 by Vereins- und Westbank AG against the Commission of the European Communities

(Case T-54/02)

(2002/C 97/31)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 February 2002 by Vereins- und Westbank AG, of Hamburg, represented by Josef Lothar Schulte, Michael Ewen and Alexandra Neus, lawyers.

The applicant claims that the Court should:

— annul the contested decision C(2001) 3693 final of the Commission of the European Communities of 11 December 2001 in Case COMP/E-1/37.919 (ex 37.391) — Bank charges for currency exchange within the Euro zone — Germany, in so far as it imposes a fine on the applicant;

— alternatively, cancel or, in the further alternative, reduce the fine imposed on the applicant;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is contesting the defendant's decision C(2001) 3693 of 11 December 2001, adopted in a procedure under Article 81 of the EC Treaty concerning Case COMP/E-1/37.919 (ex 37.391) — Bank charges for currency exchange within the Euro zone — Germany.

The contested decision of the defendant of 11 December 2001, which was notified in Hamburg, Germany, on 19 December 2001, is unlawful.

It constitutes an infringement of the EC Treaty and of the rules of law relating to its application (second paragraph of Article 230 of the EC Treaty), and should therefore be annulled. The defendant bases its decision on an incorrect view of the facts. The applicant participated only by chance in the decisive foreign exchange dealers' meeting which took place on 15 October 1997. That meeting did not fulfil the criteria for an agreement in restraint of competition within the meaning of Article 81 of the EC Treaty.

The defendant's contrary findings were based on an insufficient and prejudiced ascertainment of the facts, and on a grossly erroneous assessment of the evidence.

The administrative procedure did not correspond to the requirements of Community law, inasmuch as the applicant's rights of defence, its right to a fair hearing and its right to inspect the file were consistently infringed.

Moreover, the decision was reached in a manner which infringed essential procedural requirements within the meaning of the second paragraph of Article 230 of the EC Treaty; in particular, the defendant failed to give a sufficient statement of reasons for the decision.

The defendant misused its powers within the meaning of the second paragraph of Article 230 of the EC Treaty. In carrying out its procedure, it was not seeking to put an end to infringements of the competition rules but to lower the charges for the conversion of foreign currencies.

The amount of the fine was also such as to render it unlawful. The defendant did not correctly apply the relevant principles for the calculation of fines.

Action brought on 25 February 2002 by Peter Finch against the Commission of the European Communities

(Case T-55/02)

(2002/C 97/32)

(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 25 February 2002 by Peter Finch, residing in Luxembourg, represented by Jean-Noël Louis, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision concerning the crediting of years of pensionable service under the Staff Regulations to be taken into account pursuant to Article 11(2) of Annex VIII to the Staff Regulations in consequence of the transfer to the Community pension scheme of the pension rights acquired by the applicant prior to his entry into service;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official of the defendant institution who, prior to his entry into service, had worked in France, Belgium and the Netherlands and acquired pension rights under various pension schemes in those countries, is contesting the calculation contained in the contested decision, which relates to the crediting of all of the transferred rights. More specifically, the applicant is contesting the fact that the appointing authority took the date of his establishment as the reference date and not the date of his entry into service.

In support of his claims, the applicant pleads:

— infringement of Article 11(2) of Annex VIII to the Staff Regulations;

— infringement of the general provisions for the implementation of Article 11(2) of Annex VIII to the Staff Regulations;

— infringement of the principles of equal treatment and non-discrimination.

Action brought on 1 March 2002 by Léopold Radauer against the Council of the European Union

(Case T-67/02)

(2002/C 97/33)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 1 March 2002 by Léopold Radauer, residing in Brussels, represented by Georges Vandersanden and Laure Levi, avocats.

The applicant claims that the Court should:

— annul the defendant's decision of 17 April 2001 fixing at 3 years, 10 months and 10 days the number of years of pensionable service to be taken into account for the applicant's Community pension following the transfer of his pension rights acquired in Austria prior to his entry into the service of the European Communities and, in so far as necessary, annul the Council decision, dated 15 November 2001, to reject the applicant's complaint of 17 July 2001;

— order the defendant to fix again, on an amended legal basis and in a manner devoid of any illegality, the years of pensionable service to be taken into account for the applicant's Community pension following the transfer of his pension rights acquired in Austria;

— order the defendant to pay all of the costs.

Pleas in law and main arguments

The single plea in law raised is the same as that in Case T-204/01 Maria-Luise Lindorfer v Council of the European Union (OJ C 317, 10.11.2001, p. 32).