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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Second Chamber)

21 February 2002

in Case C-416/98: Commission of the European Communities v Nea Energeiaki Technologia EPE [1]

(Article 181 of the EC Treaty (now Article 238 EC) — Arbitration clause — Reimbursement of advance payments made under a contract terminated by the Commission for non-performance)

(2002/C 109/01)

(Language of the case: Greek)

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

In Case C-416/98, Commission of the European Communities (Agents: R.B. Wainwright and O. Couvert-Castéra, assisted by M. Bra, avocat, and K. Kapoutzidou, dikigoros) v Nea Energeiaki Technologia EPE, established in Athens (Greece) (Agent: G. Papacharalampous, dikigoros): Application by the Commission under Article 181 of the EC Treaty (now Article 238 EC) for repayment of an advance granted by it to the defendant in relation to a contract concerning the implementation, and practical demonstration, of a pilot programme for wind-generated energy entitled 'Kea Island', which provided for the setting-up of a wind energy converter on a Greek island, the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 February 2002, in which it:

1. *Orders Nea Energeiaki Technologia EPE to pay to the Commission of the European Communities, first, the sum of GRD 9 498 551 resulting from the agreement concluded between Nea Energeiaki Technologia EPE and the Commission on 27 March 1990, namely the principal sum of GRD 9 257 051 plus GRD 241 500 in respect of bank interest, and, second, interest on the principal amount due, calculated on the basis of the European Investment Bank rate applicable on 15 July 1985 for the period from 27 March 1990 to 10 December 1998 and on the basis of the statutory rate under Greek law for the period from 11 December 1998, the date of service of the application on Nea Energeiaki Technologia EPE, until total discharge by the latter of its debt;*

2. *Orders Nea Energeiaki Technologia EPE to pay the costs.*

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[1] OJ C 20 of 23.1.1999.

JUDGMENT OF THE COURT

19 February 2002

in Case C-35/99 (Reference for a preliminary ruling from the Pretore di Pinerolo): Manuele Arduino [1]

(Compulsory tariff for fees of members of the Bar — Decision of the National Council of the Bar — Approval by the Minister for Justice — Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC)

(2002/C 109/02)

(Language of the case: Italian)

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

In Case C-35/99: Reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Pretore di Pinerolo

(Italy) for a preliminary ruling in the criminal proceedings before that court against Manuele Arduino, third parties: Diego Dessi, Giovanni Bertolotto, and Compagnia Assicuratrice RAS SpA, on the interpretation of Article 85 of the EC Treaty (now Article 81 EC), 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 (Rapporteur), R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; H.A. Rühl, Principal Administrator, Registrar, has given a judgment on 19 February 2002, in which it has ruled:

Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC) do not preclude a Member State from adopting a law or regulation which approves, on the basis of a draft produced by a professional body of members of the Bar, a tariff fixing minimum and maximum fees for members of the profession, where that State measure forms part of a procedure such as that laid down in Royal Decree-Law No 1578 of 27 November 1933, as amended.

([1]) OJ C 100 of 10.4.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

7 March 2002

in Case C-145/99: Commission of the European Communities v Italian Republic ([1])

(Failure by a Member State to fulfil its obligations — Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) — Directive 89/48/EEC — Access to and practice of the profession of lawyer)

(2002/C 109/03)

(Language of the case: Italian)

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

In Case C-145/99, Commission of the European Communities (Agents: E. Traversa and B. Mongin) v Italian Republic (Agent: U. Leanza, assisted by F. Quadri): Application for a declaration that:

— by maintaining, contrary to Article 59 of the EC Treaty (now, after amendment, Article 49 EC), the general prohibition whereby lawyers established in other Member States and practising in Italy in the exercise of their freedom to provide services cannot have in that State the infrastructure needed to provide their services,

— by making enrolment at the Italian Bar conditional upon the possession of Italian nationality, the possession of qualifications acquired only in Italy and maintenance of a residence in an Italian judicial district, contrary to Article 52 of the EC Treaty (now, after amendment, Article 43 EC),

— by applying in a discriminatory manner against lawyers from other Member States the 'compensatory measures' (aptitude test) provided for in Article 4 of 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 1989 L 19, p. 16), and

— by incompletely transposing Directive 89/48, inasmuch as no rules have been laid down regulating the conduct of the aptitude test for lawyers from other Member States, the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the Treaty and Directive 89/48,

the Court (Fifth Chamber), C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 7 March 2002, in which it:

1. *Declares that:*

— *by maintaining, contrary to Article 59 of the EC Treaty (now, after amendment, Article 49 EC), the general prohibition whereby lawyers established in other Member States and practising in Italy in the exercise of their freedom to provide services cannot have in that State the infrastructure needed to provide their services,*

— *by requiring members of the Bar to reside in the judicial district of the court to which the Bar at which they are enrolled is attached, contrary to Article 52 of the EC Treaty (now, after amendment, Article 43 EC), and*

— *by incompletely transposing 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, inasmuch as no rules have been laid down to regulate the conduct of the aptitude test for lawyers from other Member States,*

the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the Treaty and Directive 89/48;

2. *Dismisses the remainder of the application;*

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

([1]) OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

5 February 2002

in Case C-277/99 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Doris Kaske v Landesgeschäftsstelle des Arbeitsmarktservice Wien ([1])

(Social security for migrant workers — Unemployment insurance — Replacing social security conventions concluded between Member States with Regulation (EEC) No 1408/71 — Preservation of advantages enjoyed previously as a result of a combination of domestic law and the law of the relevant convention — Free movement of workers)

(2002/C 109/04)

(Language of the case: German)

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

In Case C-277/99: Reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Doris Kaske and Landesgeschäftsstelle des Arbeitsmarktservice Wien, on the possible application of a convention relating to unemployment insurance concluded between the Federal Republic of Germany and the Republic of Austria on unemployment benefit, in place of Articles 3, 6, 67 and 71 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), by extending the decision in Rönfeldt (Case C-227/89 [1991] ECR I-323, hereinafter 'Rönfeldt') to unemployment benefit and, secondly, the interpretation of Articles 48 and 51 of the EC Treaty (now, after amendment, Articles 39 EC and 42 EC), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, J.-P. Puissochet (Rapporteur), R. Schintgen and V. Skouris, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 5 February 2002, in which it has ruled:

1. *The principles laid down by the Court in Rönfeldt (Case C-277/89) permitting non-application of the provisions of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, to allow for continued application of a bilateral convention which that regulation would otherwise have replaced to a worker who is a national of a Member State also apply where the worker exercised the right to freedom of movement before the regulation entered into force and before the EC Treaty became applicable in his Member State of origin.*

2. *If periods of insurance or employment that entitle a worker who is a national of a Member State to the unemployment benefit claimed by him began to run before the entry into force of Regulation No 1408/71, his situation must be assessed in the light of the provisions of the bilateral convention for the entire period during which he was exercising his right to freedom of movement, and taking into account all the periods of insurance or employment completed by him regardless of whether those periods preceded or succeeded the entry into force of the Treaty and of Regulation No 1408/71 in his Member State of origin. If, however, after having exhausted all his rights under the convention, he exercises his right to freedom of movement anew, and if he completes further periods of insurance or employment entirely after the entry into force of Regulation No 1408/71, his new situation is governed by that regulation.*

3. *National law may contain more favourable rules than Community law provided that they comply with the principles of Community law. A rule in a Member State which, for the purposes of the criteria for entitlement to unemployment benefit, favours workers who spent 15 years in that Member State before their last employment abroad is incompatible with Article 48 of the Treaty.*

([1]) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

19 February 2002

in Case C-309/99 (Reference for a preliminary ruling from the Raad van State): J.C.J. Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten [1]

(Professional body — National Bar — Regulation by the Bar of the exercise of the profession — Prohibition of multidisciplinary partnerships between members of the Bar and accountants — Article 85 of the EC Treaty (now Article 81 EC) — Association of undertakings — Restriction of competition — Justification — Article 86 of the Treaty (now Article 82 EC) — Undertaking or group of undertakings — Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 and 49 EC) — Applicability — Restrictions — Justification)

(2002/C 109/05)

(Language of the case: Dutch)

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

In Case C-309/99: Reference to the Court under Article 234 EC by the Raad van State for a preliminary ruling in the proceedings pending before that court between J.C.J. Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV and Algemene Raad van de Nederlandse Orde van Advocaten, intervener: Raad van de Balies van de Europese Gemeenschap, on the interpretation of Articles 3(g) of the EC Treaty (now, after amendment, Article 3(1)(g) EC), 5 of the EC Treaty (now Article 10 EC), 52 and 59 of the EC Treaty (now, after amendment, Articles 43 and 49 EC), and 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC), 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 (Rapporteur), R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; H. von Holstein, Registrar; Deputy Registrar, has given a judgment on 19 February 2002, in which it has ruled:

1. *A regulation concerning partnerships between members of the Bar and other professionals, such as the Samenwerkingsverordening 1993 (1993 regulation on joint professional activity), adopted by a body such as the Nederlandse Orde van Advocaten (the Bar of the Netherlands), is to be treated as a decision adopted by an association of undertakings within the meaning of Article 85(1) of the Treaty (now Article 81 EC).*

2. *A national regulation such as the 1993 Regulation adopted by a body such as the Bar of the Netherlands does not infringe Article 85(1) of the Treaty, since that body could reasonably have considered that that regulation, despite effects restrictive of competition, that are inherent in it, is necessary for the proper practice of the legal profession, as organised in the Member State concerned.*

3. *A body such as the Bar of the Netherlands does not constitute either an undertaking or a group of undertakings for the purposes of Article 86 of the Treaty (now Article 82 EC).*

4. *It is not contrary to Articles 52 and 59 of the Treaty (now, after amendment, Articles 43 and 49 EC) for a national regulation such as the 1993 Regulation to prohibit any multidisciplinary partnerships between members of the Bar and accountants, since that regulation could reasonably be considered to be necessary for the proper practice of the legal profession, as organised in the country concerned.*

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[1] OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

7 March 2002

in Case C-310/99: Italian Republic v Commission of the European Communities [1]

(State aid — Guidelines on aid to employment — Measures intended to promote youth employment and convert fixed-term contracts into open-ended ones — Reduction of social security contributions)

(2002/C 109/06)

(Language of the case: Italian)

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

In Case C-310/99, Italian Republic (Agent: U. Leanza, assisted by O. Fiumara) v Commission of the European Communities (Agents: initially G. Rozet and P. Stancanelli, and, subsequently, G. Rozet and V. Di Bucci): Application for annulment of Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment (OJ 2000 L 42, p. 1) the Court (Sixth Chamber), composed of: N. Colneric

(Rapporteur), President of the Second Chamber, acting for the President of the Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 7 March 1999, in which it:

1. *Dismisses the application;*

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

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(1) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

5 March 2002

in Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 (Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Salzburg): Hans Reisch e.a. v Bürgermeister der Landeshauptstadt Salzburg, Grundverkehrsbeauftragter des Landes Salzburg, Grundverkehrslandeskommission des Landes Salzburg (1)

(Free movement of capital — Article 56 EC — Prior notification and authorisation procedure for the acquisition of building plots — Absence of purely internal situation)

(2002/C 109/07)

(Language of the case: German)

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

In Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99: Reference to the Court under Article 234 EC by the Unabhängiger Verwaltungssenat Salzburg (Austria) for a preliminary ruling in the proceedings pending before that court between Hans Reisch (C-515/99), Walter Riedl (C-527/99), Alexander Hacker (C-528/99), Gerhard Eckert (C-529/99), Franz Gstöttenbauer (C-530/99), Helmut Hechwarter (C-531/99), Alois Bixner (C-532/99), Geza Aumüller (C-533/99), Berthold Garstenauer (C-534/99 and C-536/99), Robert Eder (C-535/99), Hartmut Ramsauer (C-537/99 and C-538/99), Harald Kronberger (C-539/99), Erich Morianz (C-540/99) and Bürgermeister der Landeshauptstadt Salzburg, Grundverkehrsbeauftragter des Landes Salzburg, on the interpretation of Articles 56 EC to 60 EC, 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; L.A. Geelhoed, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 5 March 2002, in which it has ruled:

Articles 56 EC to 60 EC:

— *do not preclude a prior notification procedure such as that laid down by the scheme for the acquisition of land established by the Salzburger Grundverkehrsgesetz 1997;*

— *preclude a prior authorisation procedure such as that laid down by that scheme.*

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(1) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

27 February 2002

in Case C-6/00 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Abfall Service AG (ASA) v Bundesminister für Umwelt, Jugend und Familie (1)

(Environment — Waste — Regulation (EEC) No 259/93 on shipments of waste — Competence of the authority of dispatch to scrutinise the classification of the purpose of a shipment (recovery or disposal) and to object to a shipment on the ground of an incorrect classification — Directive 75/442/EEC on waste — Classification of deposit of waste in a disused mine)

(2002/C 109/08)

(Language of the case: German)

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

In Case C-6/00: Reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Abfall Service AG (ASA) and Bundesminister für Umwelt, Jugend und Familie, on the interpretation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the

European Community (OJ 1993 L 30, p. 1), as amended by Commission Decision No 98/368/EC of 18 May 1998 (OJ 1998 L 165, p. 20), and 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 by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr and A. La Pergola (Rapporteur), Judges; F.G. Jacobs, Advocate General; D. Louterman-Hubeau, Head of Division, Registrar, has given a judgment on 27 February 2002, in which it has ruled:

1. *It follows from the system established by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Commission Decision 98/368/EC of 18 May 1998,*

   — *that the competent authority of dispatch, within the meaning of Article 2(c) thereof, is competent to verify whether a proposed shipment classified in the notification as a 'shipment of waste for recovery' does in fact correspond to that classification, ssssand*

   — *that, if that classification is incorrect, the authority must oppose the shipment by raising an objection founded on that misclassification within the period prescribed by Article 7(2) of the Regulation.*

2. *The deposit of waste in a disused mine does not necessarily constitute a disposal operation for the purposes of D 12 of Annex II A to 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 96/350/EC of 24 May 1996.*

   The deposit must be assessed on a case-by-case basis to determine whether the operation is a disposal or a recovery operation within the meaning of that Directive.

   Such a deposit constitutes a recovery if its principal objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose.

(1) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

26 February 2002

in Case C-23/00 P: Council of the European Union v Boehringer Ingelheim Vetmedica GmbH e.a. (1)

(Appeal — Admissibility — Application to set aside a judgment of the Court of First Instance to the extent to which that Court declared that there was no need to rule on an objection of inadmissibility raised against an application dismissed by it as unfounded)

(2002/C 109/09)

(Language of the case: English)

In Case C-23/00 P, Council of the European Union (agents: M. Sims-Robertson and I. Díez Parra): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 1 December 1999 in Joined Cases T-125/96 and T-152/96 Boehringer v Council and Commission [1999] ECR II-3427, seeking to have that judgment set aside in part, the other parties to the proceedings being: Boehringer Ingelheim Vetmedica GmbH, C.H. Boehringer Sohn, established in Ingelheim am Rhein (Germany), (agents: D. Waelbroeck and D. Fosselard), Commission of the European Communities (agent: X. Lewis), Fédération européenne de la santé animale (Fedesa), established in Brussels (Belgium), (agent: A. Vandencasteele), Stichting Kwaliteitsgarantie Vleeskalverensector (SKV), established in La Haye (Netherlands) (agents: G. van der Wal and L. Parret) and United Kingdom of Great Britain and Northern Ireland (agent: G. Amodeo, assisted by D. Lloyd Jones, QC), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken and N. Colneric (Presidents of Chambers), A. La Pergola (Rapporteur), J.-P. Puissochet, M. Wathelet, R. Schintgen and V. Skouris, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 26 February 2002, in which it:

1. *Dismisses the appeal;*

2. *Orders the Council of the European Union to pay the costs incurred by Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland, the Commission of the European Communities, the Fédération Européenne de la Santé Animale (Fedesa) and the Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) to bear their own costs.*

(1) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

26 February 2002

in Case C-32/00 P: Commission of the European Communities v Boehringer Ingelheim Vetmedica GmbH e.a. (1)

(Appeal — Veterinary medicinal products — Partial annulment of Commission Regulation (EC) No 1312/96 in so far as, in fixing the maximum residue limits for clenbuterol chlorhydrate, it further specifies the permissible therapeutic indications for that substance — Possibility for the Commission, in fixing the maximum residue limits of veterinary medicinal products, to take into account Directive 96/22/EC concerning the prohibition on the use of certain substances)

(2002/C 109/10)

(Language of the case: English)

In Case C-32/00 P, Commission of the European Communities (agent: X. Lewis): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 1 December 1999 in Joined Cases T-125/96 and T-152/96 Boehringer v Council and Commission [1999] ECR II-3427, seeking to have that judgment set aside in part, the other parties to the proceedings being: Boehringer Ingelheim Vetmedica GmbH, C.H. Boehringer Sohn, established in Ingelheim am Rheim (Germany) (agents: D. Waelbroeck and D. Fosselard), Council of the European Union, Fédération européenne de la Santé animale (Fedesa), established in Brussels (Belgium) (agents: A. Vandencasteele and D. Brinckman), Stichting Kwaliteistsgarantie Vleeskalverensector (SKV), established in La Haye (Netherlands) (agents: G. van der Wal and L. Parret) and United Kingdom of Great Britain and Northern Ireland, the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken and N. Colneric (Presidents of Chambers), A. La Pergola (Rapporteur), J.-P. Puissochet, M. Wathelet, R. Schintgen and V. Skouris, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 26 February 2002, in which it:

1. *Sets aside points 2 and 5 of the operative part of the judgment of the Court of First Instance of 1 December 1999 in Joined Cases T-125/96 and T-152/96 Boehringer v Council and Commission;*

2. *Dismisses the action for annulment brought by Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn against Commission Regulation No 1312/96 of 8 July 1996 amending Annex III to Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin;*

3. *Orders Boehringer Ingelheim Vetmedica GmbH and C.H. Boehringer Sohn, both in the proceedings before the Court of First Instance in Case T-152/96 and in those before the Court of Justice, to bear their own costs and to pay the whole of the costs incurred by the Commission of the European Communities;*

4. *Orders the Council of the European Union to bear the costs which it has incurred in the proceedings before the Court of First Instance in Case T-152/96;*

5. *Orders the Fédération Européenne de la Santé Animale (Fedesa) and the Stichting Kwaliteitsgarantie Vleeskalverensector (SKV) to bear the costs which they have incurred both in the proceedings before the Court of First Instance in Case T-152/96 and in those before the Court of Justice.*

(1) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

27 February 2002

in Case C-37/00 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Herbert Weber v Universal Ogden Services Ltd (1)

(Brussels Convention — Article 5(1) — Courts for the place of performance of the contractual obligation — Contract of employment — Place where the employee habitually carries out his work — Definition — Work performed partly at an installation positioned over the continental shelf adjacent to a Contracting State and partly in the territory of another Contracting State)

(2002/C 109/11)

(Language of the case: Dutch)

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

In Case C-37/00: Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of

the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between Herbert Weber and Universal Ogden Services Ltd, on the interpretation of Article 5(1) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 27 February 2002, in which it has ruled:

1. *Work carried out by an employee on fixed or floating installations positioned on or above the part of the continental shelf adjacent to a Contracting State, in the context of the prospecting and/or exploitation of its natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, the Convention of 25 October 1982 on the Accession of the Hellenic Republic and the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic.*

2. *Article 5(1) of that convention must be interpreted as meaning that where an employee performs the obligations arising under his contract of employment in several Contracting States the place where he habitually works, within the meaning of that provision, is the place where, or from which, taking account of all the circumstances of the case, he in fact performs the essential part of his duties vis-à-vis his employer.*

   In the case of a contract of employment under which an employee performs for his employer the same activities in more than one Contracting State, it is necessary, in principle, to take account of the whole of the duration of the employment relationship in order to identify the place where the employee habitually works, within the meaning of Article 5(1).

   Failing other criteria, that will be the place where the employee has worked the longest.

   It will only be otherwise if, in light of the facts of the case, the subject-matter of the dispute is more closely connected with a different place of work, which would, in that case, be the relevant place for the purposes of applying Article 5(1) of the convention.

   In the event that the criteria laid down by the Court of Justice do not enable the national court to identify the habitual place of work, as referred to in Article 5(1) of the convention, the employee will have the choice of suing his employer either in the courts for the place where the business which engaged him is situated, or in the courts of the Contracting State in whose territory the employer is domiciled.

3. *National law applicable to the main dispute has no bearing on the interpretation of the concept of the place where an employee habitually works, within the meaning of Article 5(1) of the convention, to which the second question relates.*

([1]) OJ C 122 of 29.4.2000.

JUDGMENT OF THE COURT

(Second Chamber)

21 February 2002

in Case C-65/00: Commission of the European Communities v Italian Republic ([1])

(Failure by a Member State to fulfil obligations — Environment — Hazardous waste — Directives 75/442/EEC and 91/689/EEC)

(2002/C 109/12)

(Language of the case: Italian)

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

In Case C-65/00, Commission of the European Communities (Agents: L. Ström and M.G. Bisogni) v Italian Republic (Agent: U. Leanza): Application for a declaration that, by exempting undertakings and establishments which carry out hazardous waste recovery operations covered by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20) from the permit requirement laid down by

Article 10 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), without making such exemption conditional upon satisfaction of the requirements laid down by Article 3(2) of Directive 91/689, the Italian Republic has failed to fulfil its obligations under Article 11 of Directive 75/442, as amended by Directive 91/156, and under Article 3 of Directive 91/689, the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 21 February 2002, in which it:

1. *Declares that, by exempting undertakings and establishments which carry out hazardous waste recovery operations covered by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste from the permit requirement laid down by Article 10 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, without making such exemption conditional upon satisfaction of the requirements laid down by Article 3(2) of Directive 91/689, the Italian Republic has failed to fulfil its obligations under the combined provisions of Article 11 of Directive 75/442, as amended by Directive 91/156, and Article 3 of Directive 91/689;*

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

([1]) OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT

(Second Chamber)

7 March 2002

in Case C-107/00 (Reference for a preliminary ruling from the Tribunal du Travail de Mons): Caterina Insalaca v Office national des pensions (ONP) ([1])

(Social security — Articles 46 to 46c of Regulation (EEC) No 1408/71 — National rules against overlapping — Benefits of the same kind)

(2002/C 109/13)

(Language of the case: French)

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

In Case C-107/00: Reference to the Court under Article 234 EC by the Tribunal du Travail de Mons (Belgium) for a preliminary ruling in the proceedings pending before that court between Caterina Insalaca and Office National des Pensions (ONP), on the interpretation of Articles 46a and 46b 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 (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), as amended by Council Regulation (EEC) No 1248/92 of 30 April 1992 (OJ 1992 L 136, p. 7), the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 7 March 2002, in which it has ruled:

1. *The legislation of a Member State governing the calculation of a survival pension and establishing a restriction of the ceiling fixed for the overlapping of a retirement and a survivor's pension where the surviving spouse can claim a survivor's pension payable by another Member State is a provision on reduction within the meaning of Articles 46a and 46b 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 (EEC) No 2001/83 of 2 June 1983, as amended by Council Regulation (EEC) No 1248/92 of 30 April 1992.*

2. *Articles 46a and 46b of Regulation No 1408/71 of 14 June 1971, as amended and updated by Regulation No 2001/83, as amended by Regulation No 1248/92, preclude the application of the legislation of a Member State containing a provision against overlapping under which a survivor's pension received in that Member State must be reduced because of a survivor's pension acquired in another Member State, where the benefits payable in application the legislation of the first Member State are less favourable than those determined in application of Article 46 of that regulation.*

([1]) OJ C 149 of 27.5.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

7 March 2002

in Case C-169/00: Commission of the European Communities v Republic of Finland [1]

(Failure by a Member State to fulfil its obligations — Sixth VAT Directive, Articles 2 and 28(3)(b) and point 2 of Annex F — Act of Accession of the Republic of Finland — Exemption for the services supplied by authors, artists and performers of works of art — Derogating provisions)

(2002/C 109/14)

(Language of the case: Finnish)

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

In Case C-169/00, Commission of the European Communities (Agents: E. Paasivirta and E. Traversa) v Republic of Finland (Agent: E. Bygglin): Application for a declaration that, by maintaining in force legislation under which supplies of works of art by artists or their agents and imports of works of art bought directly from artists are exempted from value added tax, the Republic of Finland has failed to fulfil its obligations under Article 2 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr (Rapporteur) and A. La Pergola, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 7 March 2002, in which it:

1. *Declares that, by maintaining in force legislation exempting from value added tax the sale of a work of art by the artist, either directly or through an agent, and the importation of a work of art by the owner-artist, the Republic of Finland has failed to fulfil its obligations under Article 2 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.*

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

(Fifth Chamber)

21 February 2002

in Case C-215/00 (Reference for a preliminary ruling from the Regeringsrätten): Arbetsmarknadsstyrelsen v Petra Rydergård [1]

(Social security — Unemployment benefit — Conditions governing the retention of entitlement to benefits for an unemployed person travelling to another Member State)

(2002/C 109/15)

(Language of the case: Swedish)

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

In Case C-215/00: Reference to the Court under Article 234 EC by the Regeringsrätten (Sweden) for a preliminary ruling in the proceedings pending before that court between Arbetsmarknadsstyrelsen and Petra Rydergård, on the interpretation of Article 69(1)(a) 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: P. Jann (Rapporteur), President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 21 February 2002, in which it has ruled:

1. *The question as to the conditions under which a person may be regarded as having remained available to the employment services of the competent State within the meaning of Article 69(1)(a) 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, must be examined on the basis of the rules of national law of that State.*

2. *Article 69(1)(a) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, must be construed as meaning that, in order to retain entitlement to unemployment benefits as provided for therein, a person seeking work must have remained available to the employment services of the competent State for a total of at least four weeks after the commencement of unemployment, regardless of whether that period was continuous or not.*

(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

7 March 2002

in Case C-259/00 (Reference for a preliminary ruling from the Finanzgericht München): Biochem Zusatzstoffe Handels- und Produktions GmbH v Oberfinanzdirektion Nürnberg (1)

(Common Customs Tariff — Tariff headings — Tariff classification of immunoglobulin concentrates from colostrum — Classification in the Combined Nomenclature)

(2002/C 109/16)

(Language of the case: German)

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

In Case C-259/00: Reference to the Court under Article 234 EC by the Finanzgericht München (Germany) for a preliminary ruling in the proceedings pending before that court between Biochem Zusatzstoffe Handels- und Produktions GmbH and Oberfinanzdirektion Nürnberg, on the interpretation of Chapter 30 of the Combined Nomenclature, set out 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 2086/97 of 4 November 1997 (OJ 1997 L 312, p. 1), the Court (Fourth Chamber), composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fourth Chamber, A. La Pergola and C.W.A. Timmermans, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 7 March 2002, in which it has ruled:

On a proper construction of 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 Regulation (EC) No 2086/97 of 4 November 1997, immunoglobulin concentrates from dried, defatted and decaseinated colostrum, standardised by means of lactose, are to be classified as pharmaceutical products in Chapter 30 of the Combined Nomenclature.

(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

7 February 2002

in Case C-279/00: Commission of the European Communities v Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Freedom to supply services — Free movement of capital — Business of providing temporary labour)

(2002/C 109/17)

(Language of the case: Italian)

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

In Case C-279/00, Commission of the European Communities (Agents: E. Traversa and M. Patakia) v Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo): Application for a declaration that, by requiring undertakings engaged in the provision of temporary labour which are established in other Member States to maintain their registered office or a branch office on Italian territory, and to lodge a guarantee of ITL 700 million with a credit institution having its registered office or a branch office on Italian territory, the Italian Republic has failed to fulfil its obligations under Articles 49 EC and 56 EC, the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), V. Skouris, J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 7 February 2002, in which it:

1. *Declares that, by requiring undertakings engaged in the provision of temporary labour which are established in other Member States to maintain their registered office or a branch office on Italian territory, and so lodge a guarantee of ITL 700 million with a credit institution having its registered office or a branch office on Italian territory, the Italian Republic has failed to fulfil its obligations under Articles 49 EC and 56 EC.*

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

([1]) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Third Chamber)

19 February 2002

in Case C-295/00: Commission of the European Communities v Italian Republic ([1])

(Failure by a Member State to fulfil its obligations — Infringement of Article 1 of Regulation (EEC) No 4055/86 — Disembarkation/embarkation tax payable by passengers — Tax not applicable to passengers travelling between ports on Italian territory)

(2002/C 109/18)

(Language of the case: Italian)

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

In Case C-295/00, Commission of the European Communities (agents: E. Traversa and B. Mongin) v Italian Republic (agent: U. Leanza, assisted by G. De Bellis): Application for a declaration that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste (Italy) when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), the Court (Third Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann and J.-P. Puissochet (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 19 February 2002, in which it:

1. *Declares that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste (Italy) when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;*

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

([1]) OJ C 285 of 7.10.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

27 February 2002

in Case C-302/00: Commission of the European Communities v French Republic ([1])

(Failure by a Member State to fulfil its obligations — Directives 95/59/EC and 92/79/EEC — Article 95 of the EC Treaty (now, after amendment, Article 90 EC) — Taxes affecting the consumption of manufactured tobaccos — Minimum reference price for all cigarettes of the same brand — Different rates of tax on dark-tobacco and light-tobacco cigarettes)

(2002/C 109/19)

(Language of the case: French)

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

In Case C-302/00, Commission of the European Communities (Agents: E. Traversa and C. Giolito) v French Republic (Agents: G. de Bergues and S. Seam): for a declaration that by maintaining in force:

— a system imposing a minimum reference price on all cigarettes, and

— a system imposing different tax rates on dark-tobacco and light-tobacco cigarettes, to the disadvantage of the latter,

the French Republic has failed to fulfil its obligations under Article 9(1), Article 8(2) and Article 16(5) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40), as amended by Council Directive 1999/81/EC of 29 July 1999 (OJ 1999 L 211, p. 47), and Article 2 of Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes (OJ 1992 L 316, p. 8), and under the first paragraph of Article 95 of the EC Treaty (now, after amendment, the first paragraph of Article 90 EC), or alternatively under the second paragraph of Article 95 of the EC Treaty, the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr (Rapporteur) and A. La Pergola, Judges; S. Albert, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 27 February 2002, in which it:

1. *Declares that, by maintaining in force*

   — *a system imposing a minimum reference price on all cigarettes sold under the same brand and*

   — *a system imposing a different rate of tax for dark- and light-tobacco cigarettes, to the detriment of the latter,*

   the French Republic has failed to fulfil its obligations under Article 9(1), Article 8(2) and Article 16(5) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco, as amended by Council Directive 1999/81/EC of 29 July 1999, Article 2 of Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes and the first paragraph of Article 95 of the EC Treaty;

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

([1]) OJ C 285 of 7.10.2000.

JUDGMENT OF THE COURT

(Third Chamber)

19 February 2002

in Case C-366/00: Commission of the European Communities v Grand Duchy of Luxembourg ([1])

(Failure by a Member State to fulfil its obligations — Incomplete transposition of Directive 97/11/EC)

(2002/C 109/20)

(Language of the case: French)

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

In Case C-366/00, Commission of the European Communities (agents: R. Tricot and P. Panayotopoulos) v Grand Duchy of Luxembourg (agent: J. Faltz): Application for a declaration that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed period, the laws, regulations and administrative provisions necessary fully to comply with Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5), the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty, the Court (Third Chamber), composed of: F. Macken, President of the Chamber, J.-P. Puissochet (Rapporteur) and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; R. Grass, Registrar has given a judgment on 19 February 2002, in which it:

1. *Declares that, by failing to bring into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the first subparagraph of Article 3(1) of that directive and under the EC Treaty;*

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

([1]) OJ C 316 of 4.11.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

5 March 2002

in Case C-386/00 (Reference for a preliminary ruling from the Cour d'Appel de Bruxelles): Axa Royale Belge SA v Georges Ochoa Stratégie Finance SPRL ([1])

(Directive 92/96/EEC — Direct life assurance — Information for policy-holders)

(2002/C 109/21)

(Language of the case: French)

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

In Case C-386/00: Reference to the Court under Article 234 EC by the Cour d'Appel de Bruxelles (Belgium) for a preliminary ruling in the proceedings pending before that court between Axa Royale Belge SA and Georges Ochoa Stratégie Finance SPRL, on the interpretation of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance

and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1) the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues (Rapporteur), Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 5 March 2002, in which it has ruled:

Article 31(3) of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) precludes national legislation which provides that a life-assurance proposal, or in the absence of a proposal, a life-assurance policy must inform the policy-holder that cancellation, reduction or surrender of an existing life-assurance contract for the purpose of subscribing to another life-assurance policy is generally detrimental to the policy-holder.

([1]) OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

27 February 2002

in Case C-46/01: Commission of the European Communities v Italian Republic ([1])

(Failure by a Member State to fulfil its obligations — Waste management — Directive 96/59/EC — Disposal of polychlorinated biphenyls and polychlorinated terphenyls)

(2002/C 109/22)

(Language of the case: Italian)

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

In Case C-46/01, 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 draw up and communicate to the Commission by 16 September 1999 the appropriate plans, outlines and summaries of inventories provided for in Articles 11 and 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31), the Italian Republic has failed to fulfil its obligations under those provisions, the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, D.A.O. Edward and C.W.A. Timmermans (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 27 February 2002, in which it:

1. *Declares that, by failing to draw up and communicate to the Commission of the European Communities, by 16 September 1999 at the latest, the summaries of inventories provided for in Article 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) and the plans and outlines provided for in Article 11 of the same directive, the Italian Republic has failed to fulfil its obligations under those provisions.*

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

([1]) OJ C 108 of 7.4.2001.

JUDGMENT OF THE COURT

(Second Chamber)

27 February 2002

in Case C-140/01: Commission of the European Communities v Kingdom of Belgium ([1])

(Failure by a Member State to fulfil its obligations — Directive 98/18/EC — Transport by sea — Safety rules and standards for passenger ships)

(2002/C 109/23)

(Language of the case: French)

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

In Case C-140/01, Commission of the European Communities (Agent: B. Mongin) v Kingdom of Belgium (Agent: A. Snoecx): Application for a declaration that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (OJ 1998 L 144, p. 1), or to adopt the measures necessary to comply therewith, the Kingdom of Belgium has failed to fulfil its obligations under that directive and under the EC

Treaty, the Court (Second Chamber), composed of: N. Colneric (Rapporteur), President of the Chamber, R. Schintgen and V. Skouris, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 27 February 2002, in which it:

1. *Declares that, by failing to adopt all the measures necessary to comply with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships, 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 161 of 2.6.2001.

ORDER OF THE COURT

(Fourth Chamber)

of 24 January 2002

in Case C-45/00 (reference for a preliminary ruling from the Supremo Tribunal Administrativo): Sonae Turismo, SGPS, SA, against Fazenda Pública (1)

(Article 104(3) of the Rules of Procedure — Directive 69/335/EEC — Mandatory recordal in a commercial register of the act relating to amendments to company statutes — Duties paid by way of fees or dues)

(2002/C 109/24)

(Language of the case: Portuguese)

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

In Case C-45/00: reference to the Court under Article 234 EC from the Supremo Tribunal Administrativo (Portugal) for a preliminary ruling in the proceedings pending before that court between Sonae Turismo, SGPS, SA, and Fazenda Pública, Ministério Público, intervener — on the interpretation of Articles 4, 10 and 12(1)(e) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ English Special Edition, 1969(II) p. 412), as amended by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23) — the Court (Fourth Chamber), composed of: D.A.O. Edward (Rapporteur), acting as President of the Fourth Chamber, and A. La Pergola and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has made an order on 24 January 2002, in which it has ruled:

1. *Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985, must be interpreted as meaning that charges collected in respect of the recordal in a national commercial register of an increase in the capital of a capital company or of any other transaction falling within the scope of that directive constitute a tax within the meaning of that directive.*

2. *The charges payable in respect of recordal in a national commercial register of an increase in the capital of a capital company or of any other transaction covered by Directive 69/335, as amended by Directive 85/303, are, inasmuch as they constitute a tax within the meaning of the directive, prohibited in principle by Article 10(c) of that directive.*

3. *Charges levied in respect of the recordal in a national commercial register of an increase in the capital of a capital company or of any other transaction covered by Directive 69/335, as amended by Directive 85/303, the amount of which increases directly and without restriction in proportion to the paid-up capital of the company are not duties paid by way of fees or dues.*

4. *Charges paid by way of fees or dues, within the meaning of Article 12(1)(e) of Directive 69/335, as amended by Directive 85/303, include only those fees paid the amount of which is calculated on the basis of the cost of the service provided.*

5. *In order to calculate the amount of such charges, a Member State is entitled to take into account not only the costs in materials and salary terms which are directly linked to the registration operations in consideration of which they are paid, but also the portion of the relevant general administrative costs which are attributable to those operations. It is permissible for a Member State to levy a charge only in respect of major registration operations and for it to pass on to them the cost of minor operations carried out free of charge.*

6. *The cost of registration in the commercial registration may be assessed at a flat rate and must be established by reasonable means taking into account, in particular, the number and the type of agents, the time employed by those agents and the various materials necessary to the completion of that operation. However, a Member State is entitled to fix in advance, on the basis of the average foreseeable registration costs, standard charges for the completion of the formalities for registering capital companies. There is nothing to prevent the amount of those charges being established for an indeterminate period provided that the Member State satisfies itself, at regular intervals, for instance every year, that they continue not to exceed its registration costs.*

7. *Article 10 of Directive 69/335, as amended by Directive 85/303, gives rise to rights on which individuals may rely before national courts.*

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(1) OJ 2000 C 122.

ORDER OF THE COURT

(First Chamber)

of 15 January 2002

in Case C-49/01 P: Royal Olympic Cruises Ltd and Others v Council of the European Union and Commission of the European Communities (1)

(Appeal — Non-contractual liability of the Community — Harm caused by armed intervention in the Federal Republic of Yugoslavia — Appeal manifestly unfounded)

(2002/C 109/25)

(Language of the case: Greek)

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

In Case C-49/01 P: Royal Olympic Cruises Ltd, established in Monrovia (Liberia), Valentine Oceanic Trading Inc., established in Monrovia, Caroline Shipping Inc., established in Monrovia, Simpson Navigation Ltd, established in Monrovia, Solar Navigation Corporation, established in Monrovia, Ocean Quest Sea Carriers Ltd, established in Monrovia, Athena 2004 SA, established in Monrovia, Freewind Shipping Co., established in Monrovia, and Elliniki Etaireia Diipeirotikon Grammon AE, established in Pireus (Greece), represented by N. Skandamis and A. Potamianos, dikigoroi — appeal against the order of the Court of First Instance of the European Communities (Second Chamber) of 12 December 2000 in Case T-201/99 Royal Olympic Cruises and Others v Council and Commission [2000] ECR II-4005, seeking to have that order set aside, the other parties to the proceedings being Council of the European Union (Agents: M. Vitsentzatos and S. Kyriakopolou) and Commission of the European Communities (Agents: T. Christoforou and A. van Solinge) — 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 15 January 2002, in which it:

1. *Dismisses the appeal;*

2. *Orders Royal Olympic Cruises Ltd, Valentine Oceanic Trading Inc., Caroline Shipping Inc., Simpson Navigation Ltd, Solar Navigation Corporation, Ocean Quest Sea Carriers Ltd, Athena 2004 SA, Freewind Shipping Co. and Elliniki Etaireia Diipeirotikon Grammon AE to pay the costs.*

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(1) OJ C 108 of 7.4.2002.

ORDER OF THE COURT

(Fifth Chamber)

of 31 January 2002

in Case C-161/01 P: Franco Campoli v Commission of the European Communities (1)

(Appeal — Application for annulment of a decision transferring an official and appointing a different official to the vacant post — Disguised disciplinary measure — Rights of defence — Appeal manifestly inadmissible)

(2002/C 109/26)

(Language of the case: French)

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

In Case C-161/01 P: Franco Campoli, residing in Brussels (Belgium), represented by S. Diana, avocat, — appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 6 March 2001 in Case T-100/00 Campoli v Commission [2001] ECR FP I-A-71 and II-347, seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities (Agents: J. Currall and D. Waelbroeck) — 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; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has made an order on 31 January 2002, in which it:

1. *Dismisses the appeal;*

2. *Orders Mr. Campoli to pay the costs.*

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(1) OJ C 200 of 14.7.2001.

ORDER OF THE COURT

(Third Chamber)

of 6 December 2001

in Case C-219/01 P: Javier Reyna González del Valle v Commission of the European Communities [1]

(Appeal — Officials — Grading — Application brought out of time — Appeal manifestly unfounded)

(2002/C 109/27)

(Language of the case: Spanish)

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

In Case C-219/01 P: Javier Reyna González del Valle (Agent: J.M. Valoria de Arana) — appeal against the order of the Court of First Instance of the European Communities (First Chamber) of 28 March 2001 in Case T-130/00 Reyna González del Valle v Commission [2001] not published, seeking to have that order set aside and the applicant's claims at first instance upheld, the other party to the proceedings being Commission of the European Communities (Agents: J. Curral and J. Gutiérrez Gisbert) — the Court (Third Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann and J.N. Cunha Rodrigues (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has made an order on 6 December 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Mr Javier Reyna González del Valle to pay the costs.*

(1) OJ C 212 of 28.7.2001.

ORDER OF THE COURT

(First Chamber)

of 13 December 2001

in Case C-263/01 P: Carla Giulietti v Commission of the European Communities [1]

(Officials — Competitions — Actions for annulment — Pre-selection procedure — Conduct of tests — Rights of the defence — Principle of equal treatment)

(2002/C 109/28)

(Language of the case: French)

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

In Case C-263/01 P: Carla Giulietti, residing in Brussels (Belgium), represented by S. Diana, avocat — appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 2 May 2001 in Case T-167/99 and T-174/99 Giulietti and Others v Commission [2001] ECR FP I-A-93 and II-441, seeking to have that judgment set aside, the other parties to the proceedings being Commission of the European Communities (Agents: J. Currall and C. Berardis-Kayser, assisted by D. Waelbroeck), Ana Caprile, residing in Brussels, Farbizio Dell'Olio, residing in Bari (Italy), Konrad Fuhrmann, residing in Brussels, and Olivier Radelet, residing in Brussels — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, L. Sevón and M. Wathelet, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 13 December 2001, in which it:

1. *Dismisses the appeal;*

2. *Orders Ms. Giulietti to pay the costs.*

(1) OJ C 245 of 1.9.2001.

Appeal brought on 6 June 2001 by G. Ojha against the judgment delivered on 6 arch 2001 by the First Chamber of the Court of First Instance of the European Communities in Case T-77/99 Ojha v Commission of the European Communities

(Case C-284/01 P)

(2002/C 109/29)

An appeal against the judgment delivered on 6 March 2001 by the First Chamber of the Court of First Instance of the European Communities in Case T-77/99 [1]Ojha v Commission of the European Communities was brought before the Court of Justice of the European Communities on 6 June 2001 by G. Ojha. By order of 22 November 2001 the Court of Justice (First Chamber) dismissed the appeal and ordered Mr Ojha to bear his own costs.

([1]) OJ C 161 of 2.6.2002, p. 16.

Appeal brought on 23 July 2001 by Smanor SA and Monique and Hubert Ségaud against the order made on 4 July 2001 by the First Chamber of the Court of First Instance of the European Communities in Case T-123/01 between the parties bringing the present appeal and the Commission of the European Communities

(Case C-291/01 P)

(2002/C 109/30)

An appeal against the order made on 4 July 2001 by the First Chamber of the Court of First Instance of the European Communities in Case T-123/01 between the parties bringing the present appeal and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 23 July 2001 by Smanor SA and Monique and Hubert Ségaud. By order of 22 November 2001 the Court of Justice (First Chamber) dismissed the appeal and ordered each of the applicants to bear their own costs.

Reference for a preliminary ruling by the Landesgericht für Zivilrechtsachen Vienna by order of that court of 12 October 2001 in the case of Prof. Monika Herbstrith v Republic of Austria

(Case C-430/01)

(2002/C 109/31)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht für Zivilrechtssachen Wien (Vienna Higher Civil Court) of 12 October 2001 which was received at the Court Registry on 6 November 2001, for a preliminary ruling in the case of Prof. Monika Herbstrith v Republic of Austria on the following questions:

1. Did the conduct described above, viz. the failure to appoint a candidate despite her professional qualifications, infringe a provision of directly applicable Community law and if so, which provision?

2. If the answer to question 1 is in the affirmative:

   Does the infringed provision of directly applicable Community law give the plaintiff in the original proceedings a legal right?

3. If the answer to question 2 is in the affirmative:

   Does the request for a preliminary ruling provide the European Court of Justice with all the information it needs to determine whether in the circumstances described as to the original proceedings the national body clearly and significantly exceeded its discretionary powers, or does it leave it to the Austrian court requesting the preliminary ruling to answer this question?

Reference for a preliminary ruling by the Verwaltungsgericht Frankfurt am Main by order of 12 November 2001 in the case of Hilde Schönheit against the City of Frankfurt am Main

(Case C-4/02)

(2002/C 109/32)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht (Administrative Court) Frankfurt am Main of 12 November 2001, received at the Court Registry on 9 January 2002, for a preliminary ruling in the case of Hilde Schönheit against the City of Frankfurt am Main on the following questions:

1. Is the grant of an old-age pension under the provisions of the German law on pensions for civil servants subject to Article 119 of the EC Treaty, now superseded by Article 141(1) and (2) EC, in conjunction with Directive 86/378/EEC [1], or to the provisions of Directive 79/7/EEC [2]?

2. Do benefits under the law on pensions for civil servants constitute a scheme under Article 6(1)(h) of Directive 86/378/EEC with the consequence that, irrespective of financing by budgetary resources, it is legitimate to take into account actuarial factors or analogous matters in order to differentiate levels of benefit?

3. Are the matters required to justify the indirect discrimination on the ground of sex initially established under Article 2(2) of Directive 97/80/EC [3] applicable in the case of Article 119 of the EC Treaty (now Article 141(1) and (2) EC, irrespective of whether a question arises in judicial proceedings as to relaxation of the burden of proof or whether that question is of no significance under the principle applicable to judicial proceedings of official establishment of facts?

4. Is an apparently neutral criterion in a legal provision to be judged as to its necessity solely on the basis of the motives and grounds for enactment which are apparent from the legislative process, in particular where the existence of such grounds is documented in the procedure leading to adoption of the legislation and demonstrably constituted the relevant reason for the enactment?

5. In so far as regard may in addition (Q.4) also be had to other legitimate aims of the legislation as justificatory grounds within the meaning of Article 2(2) of Directive 97/80/EC, or under the case law of the Court of Justice on the establishment of indirect discrimination on the ground of sex, can a national court in that connection of its own motion establish legitimate aims for a provision of law and in a proper case use them to justify a distinguishing criterion, in particular where its reasoning in that regard is founded on considerations inherent in the legal system? Can it also do so, where such considerations are not discernibly reflected in the grounds for the enactment documented in the course of the legislative procedure?

6. Can the discrimination which may initially be established in regard to calculation of the pensions of older part-time civil servants as a proportion of final salary be justified in the nature of a legitimate aim as necessary where that discrimination is intended, as it were, to offset a minimum pension acquired during the first ten years of service with no account being taken of the reduction in working time, although the benefits of civil servants' pensions are met solely from general budgetary resources without any contribution by female officials? As justification for necessity, if appropriate on an ancillary basis, can reference be made to the fact that pension benefits are in the nature of maintenance support and to their characteristic as a traditional principle of the professional civil service under Article 33(5) of the Basic Law (Grundgesetz)?

7. If such discrimination is deemed to be necessary as determined under Question 6, can a reduction in the rate of pension for older female and male officials with entitlement to benefits far above the minimum pension in respect of at least 10 reckonable years of service be still regarded as reasonable (proportionate), if the amount of such reduction is calculated on a linear basis by reference not only to the extent of reduced working time but also to the duration of full-time employment in relation to that of part-time employment although, for older female and male civil servants, the possibly disproportionately favourable grant of a minimum pension acquired without account being taken of the reduction of their working time is no longer possible? Would it not in this context be (more) reasonable to abandon the disproportionate reduction in the rate of pension for lifelong and more senior female and male officials and instead for there merely to be a proportionate reduction in the minimum pension?

8. Where the numbers of budgetary and established posts remain unchanged, can additional personnel costs incurred in the recruitment of additional persons by an expansion of part-time employment, in contrast to the hitherto predominant full-time employment, justify the necessity of imposing these costs on part-time employees by way of a disproportionate reduction in their rate of pension, as occurred under the second and third clauses of the first sentence of Paragraph 14(1) of the BeamtenVG in the version thereof applicable until 31 December 1991?

9. Is it reasonable for such costs to be taken into account as a matter of necessity (Q. 8) if the burden of additional staff-administration costs is imposed solely on earlier part-time employees, hence predominantly women, even though the expansion of part-time employment opportunities at the time of the legislative amendment in that regard as a matter of priority pursued the objective of reducing general unemployment by the partial absorption of surplus male and female applicants to the public service?

(1) OJ L 225, p. 40.
(2) OJ L 6, p. 24.
(3) OJ L 14, p. 6.

Reference for a preliminary ruling by the Verwaltungsgericht Frankfurt am Main by order of 12 November 2001 in the case of Silvia Becker against Land Hessen

(Case C-5/02)

(2002/C 109/33)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht (Administrative Court) Frankfurt am Main of 12 November 2001, received at the Court Registry on 10 January 2002, for a preliminary ruling in the case of Silvia Becker against Land Hessen on the following questions:

1. Is the grant of an old-age pension under the provisions of the German law on pensions for civil servants subject to Article 119 of the EC Treaty, now superseded by Article 141(1) and (2) EC, in conjunction with Directive 86/378/EEC (1), or to the provisions of Directive 79/7/EEC (2)?

2. Do benefits under the law on pensions for civil servants constitute a scheme under Article 6(1)(h) of Directive 86/378/EEC with the consequence that, irrespective of financing by budgetary resources, it is legitimate to take into account actuarial factors or analogous matters in order to differentiate levels of benefit?

3. Are the matters required to justify the indirect discrimination on the ground of sex initially established under Article 2(2) of Directive 97/80/EC (3) applicable in the case of Article 119 of the EC Treaty (now Article 141(1) and (2) EC, irrespective of whether a question arises in judicial proceedings as to relaxation of the burden of proof or whether that question is of no significance under the principle applicable to judicial proceedings of official establishment of facts?

4. Is an apparently neutral criterion in a legal provision to be judged as to its necessity solely on the basis of the motives and grounds for enactment which are apparent from the legislative process, in particular where the existence of such grounds is documented in the procedure leading to adoption of the legislation and demonstrably constituted the relevant reason for the enactment?

5. In so far as regard may in addition (Q.4) also be had to other legitimate aims of the legislation as justificatory grounds within the meaning of Article 2(2) of Directive 97/80/EC, or under the case law of the Court of Justice on the establishment of indirect discrimination on the ground of sex, can a national court in that connection of its own motion establish legitimate aims for a provision of law and in a proper case use them to justify a distinguishing criterion, in particular where its reasoning in that regard is founded on considerations inherent in the legal system? Can it also do so, where such considerations are not discernibly reflected in the grounds for the enactment documented in the course of the legislative procedure?

6. Can the discrimination which may initially be established in regard to calculation of the pensions of older part-time civil servants as a proportion of final salary be justified in the nature of a legitimate aim as necessary where that discrimination is intended, as it were, to offset a minimum pension acquired during the first ten years of service with no account being taken of the reduction in working time, although the benefits of civil servants' pensions are met solely from general budgetary resources without any contribution by female officials? As justification for necessity, if appropriate on an ancillary basis, can reference be made to the fact that pension benefits are in the nature of maintenance support and to their characteristic as a traditional principle of the professional civil service under Article 33(5) of the Basic Law (Grundgesetz)?

7. If such discrimination is deemed to be necessary as determined under Question 6, can a reduction in the rate of pension for older female and male officials with entitlement to benefits far above the minimum pension in respect of at least 10 reckonable years of service be still regarded as reasonable (proportionate), if the amount of such reduction is calculated on a linear basis by reference not only to the extent of reduced working time but also to the duration of full-time employment in relation to that of part-time employment although, for older female and male civil servants, the possibly disproportionately favourable grant of a minimum pension acquired without account being taken of the reduction of their working time is no longer possible? Would it not in this context be (more) reasonable to abandon the disproportionate reduction in the rate of pension for lifelong and more senior female and male officials and instead for there merely to be a proportionate reduction in the minimum pension?

8. Where the numbers of budgetary and established posts remain unchanged, can additional personnel costs incurred in the recruitment of additional persons by an expansion of part-time employment, in contrast to the hitherto predominant full-time employment, justify the necessity of imposing these costs on part-time employees by way of a disproportionate reduction in their rate of pension, as occurred under the second and third clauses of the first sentence of Paragraph 14(1) of the BeamtenVG in the version thereof applicable until 31 December 1991?

9. Is it reasonable for such costs to be taken into account as a matter of necessity (Q. 8) if the burden of additional staff-administration costs is imposed solely on earlier part-time employees, hence predominantly women, even though the expansion of part-time employment opportunities at the time of the legislative amendment in that regard as a matter of priority pursued the objective of reducing general unemployment by the partial absorption of surplus male and female applicants to the public service?

10. Does the Protocol concerning Article 119 of the EC Treaty as part of the Treaty on European Union of 1992 (OJ 1992 C 191, p. 68) absolutely preclude the detailed rules for the inclusion of periods of employment prior to 17 May 1990 from being examined under Article 141(1) and (2) EC (ex Article 119 of the EC Treaty)? Does the prohibition on such examination also apply where after 17 May 1990 the provisions relevant to the inclusion of periods of employment completed before the relevant date of 17 May 1990 have been amended but those amendments effect only a partial adjustment in line with the requirements of Article 119 of the EC Treaty and for certain categories effect no such favourable adjustment?

11. In determining adherence to the relevant date of 17 May 1990 in the enactment of laws is the date of publication in the official gazette decisive, or is the matter determined by the conclusion of deliberations in the legislative bodies and indeed even if the law requires the assent of the Federal Government?

(1) OJ 1986 L 225, p. 40.
(2) OJ 1979 L 6, p. 24.
(3) OJ 1997 L 14, p. 6.

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that Court of 21 December 2001 in the case of Holin Groep B.V. c.s. against Staatssecretaris van Financiën

(Case C-7/02)

(2002/C 109/34)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 21 December 2001, received at the Court Registry on 11 January 2002, for a preliminary ruling in the case of Holin Groep B.V. c.s. against Staatssecretaris van Financiën (State Secretary for Finance) on the following question:

1. Do Articles 5(7)(a) and 17 of the Sixth Directive (1). or the European law principles of the protection of legitimate expectations and of legal certainty preclude — in a case not involving fraud or abuse or any question of a change in planned use, as mentioned in paragraphs 50 and 51 of the judgment of the Court of Justice in Schloßstraße (2) — the charging of tax on the basis of the abovementioned Article 5(7)(a) when a taxable person has deducted VAT which he has paid for goods delivered, or services provided, to him with a view to the planned leasing, subject to VAT, of a particular immovable property, on the simple ground that, as a result of a legislative amendment, the taxable person no longer has the right to waive the exemption for that lease?

2. Would an affirmative response to the first question also apply to a right to deduct arising in the period between notification of the legislative amendment mentioned in Question 1 and its entry into force? In other words, in the event of an affirmative response to Question 1, can tax still be charged, on the basis of Article 5(7)(a), on the elements of the cost price referred to in Article 11 A(1)(b) of the Sixth Directive which were incurred after that notification date?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977, L 145, p. 1).
(2) Judgement of 8.6.2000 in case C-396/98.

Reference for a preliminary ruling by the Arbejdsret by order of 25 January 2002 in the case of Danmarks Rederiforening acting on behalf of DFDS Torline A/S against LO Landsorganisation i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation

(Case C-18/02)

(2002/C 109/35)

Reference has been made to the Court of Justice of the European Communities by order of the Arbejdsret (Labour Court) of 25 January 2002, received at the Court Registry on 29 January 2002, for a preliminary ruling in the case of Danmarks Rederiforening (Danish Association of Shipping Companies), acting on behalf of DFDS Torline A/S against LO Landsorganisation i Sverige (Swedish Congress of Trade Unions), acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation (union representing maritime workers in service and communications sectors) on the following questions:

Question 1

a) Must Article 5(3) of the Convention [1] be construed as covering cases concerning the legality of collective industrial action for the purpose of securing an agreement in a case where any harm which may result from the illegality of such collective action gives rise to liability to pay compensation under the rules on tort, delict or quasi-delict, such that a case concerning the legality of notified collective industrial action can be brought before the courts of the place where proceedings may be instituted for compensation in respect of any harm resulting from that industrial action?

b) Is it necessary, as the case may be, that any harm incurred must be a certain or probable consequence of the industrial action concerned in itself, or is it sufficient that that industrial action is a necessary condition governing, and may constitute the basis for, sympathy actions which will result in harm?

c) Does it make any difference that implementation of notified collective industrial action was, after the proceedings had been brought, suspended by the notifying party until the court's ruling on the issue of its legality?

Question 2

Must Article 5(3) of the Convention be construed as meaning that damage resulting from collective industrial action implemented by a trade union in a country to which a vessel registered in another country (the flag State) sails for the purpose of securing an agreement covering the work of seamen on board that vessel can be regarded by the vessel's owners as having occurred in the flag State, with the result that the vessel's owners can, pursuant to Article 5(3), bring an action for damages against the trade union in the flag State?

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[1] 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 204, 1975, p. 28) modified by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic with the adjustments made to them by the Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland and the adjustments made to them by the Convention on the accession of the Hellenic Republic (OJ L 285, 1989, p. 1).

Reference for a preliminary ruling by the Oberster Gerichtshof by order of that Court of 20 December 2001 in the case of Dr Viktor Hlozek against Roche Diagnostics Gesellschaft mbH

(Case C-19/02)

(2002/C 109/36)

Reference has been made to the Court of Justice of the European Communities by order of the Oberster Gerichtshof (Supreme Court) of 20 December 2001, received at the Court Registry on 29 January 2002, for a preliminary ruling in the case of Dr Viktor Hlozek against Roche Diagnostics Gesellschaft mbH on the following questions:

1.a) Are Article 141 EC and Article 1 of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19) to be interpreted

where an employer which dismisses a large group of employees as a result of a merger with another company is required, on account of its social obligation towards the entire workforce, to agree with the works council a social plan, which is binding in relation to the employees, in order to alleviate the effects of dismissal, in particular the risk of age-related unemployment,

as precluding a social plan under which all female employees aged 50 and over at the time of their dismissal and all male employees aged 55 and over at the time of their dismissal are entitled, irrespective of the period of employment, that is to say with no account being had to any 'qualification periods' and solely on the basis of age — or to the fact that the risk of long-term unemployment for men and for women generally differs according to their age &mdash, to a 'bridging allowance' amounting to 75 % of their final gross monthly salary for five years, but at most until they become entitled to a statutory pension?

1.b) In particular, is the concept of pay in Article 141 EC and Article 1 of the directive to be construed as including, in the case of benefits which are related not to work performed but solely to membership of a workforce and the social obligation on the employer, allowance for the risk of long-term unemployment so that pay must regarded as equal where — overall — it covers the same degree of risk even though this risk normally occurs in different age groups in the case of men and women?

1.c) Or can, if the concept of 'pay' in these provisions after all covers only the cash benefit as such, the varying risk thus construed justify different treatment of men and women?

2. Is the concept of 'occupational social security schemes' within the meaning of Article 2(1) of Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1986 L 225, p. 40), as amended by Council Directive 96/97/EC of 20 December 1996 (OJ 1996 L 46, p. 20), to be construed as including bridging allowances in the above sense?

Is the concept of the risk of 'old age, including early retirement' in Article 4 of the directive to be construed as including such 'bridging allowances'?

Does the concept of 'scheme' in Article 6(1)(c) of the directive cover only the question of fulfilment of the requirements for entitlement to the bridging allowance or also membership of the workforce as a whole?

3.a) Is 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) to be interpreted to the effect that the 'bridging allowance' described above constitutes a condition governing dismissal within the meaning of Article 5 of this directive?

3.b) Is this directive to be interpreted as precluding a social plan under which all female employees aged 50 and over at the time of their dismissal and all male employees aged 55 and over at the time of their dismissal are entitled, irrespective of the period of employment, that is to say with no account being had to any 'qualification periods' and solely on the basis of age — or to the fact that the risk of long-term unemployment for men and for women generally differs according to their age —, to a 'bridging allowance' amounting to 75 % of their final gross monthly salary for five years, but at most until they become entitled to a statutory pension?

Reference for a preliminary ruling by the Oberlandesgericht Innsbruck by order of that Court of 14 January 2002 in the case of Petra Engler against Janus Versand Gesellschaft m.b.H.

(Case C-27/02)

(2002/C 109/37)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht (Higher Regional Court) Innsbruck of 14 January 2002, received at the Court Registry on 31 January 2002, for a preliminary ruling in the case of Petra Engler against Janus Versand Gesellschaft m.b.H. on the following questions:

For the purposes of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 ('the Convention'), does the provision in Paragraph 5j of the Austrian Konsumentenschutzgesetz (Consumer Protection Law) ('KSchG'), BGBl. 1979/140, in the version of Paragraph 1(2), of the Austrian Fernabsatz-Gesetz (Distance Selling Law), BGBl. I 1999/185, which entitles consumers to claim from undertakings in the courts prizes ostensibly won by them where the undertakings send (or have sent) them prize notifications or other similar communications worded so as to give the impression that they have won a particular prize, also constitute:

1. a contractual claim under Article 13(3); or

2. a contractual claim under Article 5(1); or

3. a claim in respect of a tort, delict or quasi-delict under Article 5(3)

where on the basis of the documents sent to him a sensible consumer could have thought that all he had to do to claim the amount held for him was to return an enclosed payment notice, so that the payment of the prize did not depend on an order for and delivery of goods from the undertaking promising the prize, but where a catalogue and a voucher for a trial offer without obligation are sent to the consumer with the prize notification?

If the first question is answered in the affirmative, there is no need to answer the other two questions.

Reference for a preliminary ruling by the Socialgericht Aachen by order of 18 January 2002 in the case of Maria Barth against Landesversicherungsanstalt Rheinprovinz, additional parties (1) PAX Familienfürsorge Krankenversicherung and (2) Landesamt für Besoldung und Versorgung Nordrhein-Westfalen

(Case C-31/02)

(2002/C 109/38)

Reference has been made to the Court of Justice of the European Communities by order of the Socialgericht Aachen (Social Court, Aachen) of 18 January 2002, received at the Court Registry on 4 February 2002, for a preliminary ruling in the case of Maria Barth against Landesversicherungsanstalt Rheinprovinz, additonal parties (1) PAX Familienfürsorge Krankenversicherung and (2) Landesamt für Besoldung und Versorgung Nordrhein-Westfalen on the following questions:

1. Are the provisions of Regulation EEC No 1408/71 [1] of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community also applicable to the German care insurance regime if cover for the risk of becoming reliant on care under Paragraph 23, in conjunction with Paragraph 110, of Volume XI of the Sozialgesetzbuch (German Code of Social Law, hereinafter 'the SGB'), which relates to Social Care Insurance, is based in whole or in part on a private care insurance policy?

2. Do the contributions payable to the statutory pension insurance scheme by care insurance institutions on behalf of carers not acting in the course of employment pursuant to Paragraph 44 of Volume XI of the SGB, in conjunction with Paragraphs 3(1)(1)(a) and 166(2) of Volume VI of the SGB, which relates to Statutory Pension Insurance, constitute 'sickness benefits' within the meaning of Article 4(1)(a) of Regulation No EEC No 1408/71? If so, may such benefits be payable on behalf of carers who provide care in the country of the competent institution but live in a different Member State?

3. Are carers within the meaning of Paragraph 19 of Volume XI of the SGB workers within the meaning of Article 39 EC? If so, does that preclude denying them the right to have 'pension insurance contributions' paid on their behalf on the basis that they do not have their residence or habitual place of stay in the relevant country?

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

Reference for a preliminary ruling by the Bundesverwaltungsgericht by order of that Court of 8 November 2001 in the case of Landeszahnärztekammer Hessen against Dr Markus Vogel

(Case C-35/02)

(2002/C 109/39)

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 12 February 2002, for a preliminary ruling in the case of Landeszahnärztekammer Hessen against Dr Markus Vogel on the following question:

Is it compatible with Article 1 of Council Directive 78/687/EEC [1] 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) for national legislation to permit doctors in general to practise dentistry on a permanent basis without having the dental training required by the directive and certified by an appropriate diploma?

Does the answer to this question turn on whether the activity is pursued under the title 'dental practitioner'?

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[1] OJ L 233 of 24.8.1978, p. 10.

Reference for a preliminary ruling by the Bundesverwaltungsgericht by order of that Court of 24 October 2001 in the case of OMEGA Spielhallen- und Automatenaufstellungs-GmbH against Oberbürgermeisterin der Bundesstadt Bonn

(Case C-36/02)

(2002/C 109/40)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesverwaltungsgericht (Federal Administrative Court) of 24 October 2001, received at the Court Registry on 12 February 2002, for a preliminary ruling in the case of OMEGA Spielhallen- und Automatenaufstellungs-GmbH against Oberbürgermeisterin der Bundesstadt Bonn on the following question:

Is it compatible with the provisions on freedom to provide services and the free movement of goods contained in the Treaty establishing the European Community for a particular commercial activity — in this case the operation of a so-called 'laserdrome' involving simulated killing action — to be prohibited under national law because it offends against the values enshrined in the Basic (Constitutional) Law?

Reference for a preliminary ruling by the Højesterets Anke- og Kæremålsudvalg by order of 8 February 2002 in the case of Mærsk Olie & Gas A/S against M. de Haan en W. de Boer, in the person of its owners Martinus de Haan and Willem de Boer

(Case C-39/02)

(2002/C 109/41)

Reference has been made to the Court of Justice of the European Communities by order of the Højesterets Anke- og Kæremålsudvalg (Appeals and Objections Committee of the Supreme Court) of 8 February 2002, received at the Court Registry on 13 February 2002, for a preliminary ruling in the case of Mærsk Olie & Gas A/S against M. de Haan en W. de Boer, in the person of its owners Martinus de Haan and Willem de Boer on the following questions:

1. Does a procedure to constitute a liability limitation fund pursuant to an application by a shipowner under the Brussels Convention of 10 October 1957 constitute proceedings within the meaning of Article 21 of the 1968 Brussels Convention [1] where it is evident from the application, where the relevant names are stated, who might be affected thereby as a potential injured party?

2. Is an order to constitute a liability limitation fund under the Netherlands procedural rules in force in 1986 a judgment within the meaning of Article 25 of the 1968 Brussels Convention?

3. Can a limitation fund which was constituted on 27 May 1987 by a Netherlands court pursuant to Netherlands procedural rules then in force without prior service on an affected creditor now be denied recognition in another Member State in relation to the creditor concerned pursuant to Article 27(2) of the 1968 Brussels Convention?

4. If Question 3 is answered in the affirmative, is the creditor concerned deprived of its right to rely on Article 27(2) by virtue of the fact that in the Member State which constituted the limitation fund it raised the matter of jurisdiction before a higher court without having previously objected to default of service?

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[1] 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 204, 1975, p. 28) modified by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic with the adjustments made to them by the Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland and the adjustments made to them by the Convention on the accession of the Hellenic Republic (OJ L 285, 1989, p. 1).

Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat im Land Niederösterreich, Aussenstelle Mistelbach by order of that Court of 29 January 2002 in the case of an appeal by Margareta Scherndl

(Case C-40/02)

(2002/C 109/42)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängiger Verwaltungssenat im Land Niederösterreich, Aussenstelle Mistelbach of 29 January 2002, received at the Court Registry on 14 February 2002, for a preliminary ruling in the case of an appeal by Margareta Scherndl on the following questions:

1. In the case of indications of vitamin content, it is possible to speak of an 'average value' within the meaning of Article 1(k) of Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs (OJ 1990 L 276, p. 40, as amended in OJ 1991 L 140; 'the nutrition labelling directive') where the figure given, based on the manufacturer's analysis of the food within the meaning of Article 6(8)(a) of that directive, is the value which the product has at the end of the minimum conservation period?

2. Does the definition of average value under Article 6(8) of the nutrition labelling directive leave a free choice in relation to the reference date and the size of permissible deviations?

3. Is the nutrition labelling directive, in so far as it contains indications of the nutritional value based on vitamin content, to be disapplied on the ground that:

   (a) it is too vague in relation to the definition (Article 1(k) of the nutrition labelling directive) and calculation (Article 6(8) of that directive) of average value, or because of the lack of reference dates or information as to permitted deviations; or

   (b) it contains provisions that are disproportionate to the objective sought?

Action brought on 14 February 2002 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-41/02)

(2002/C 109/43)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 14 February 2002 by the Commission of the European Communities, represented by H. Van Lier and H.M.H. Speyart, acting as Agents.

The applicant claims that the Court should:

1. Declare that the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 30 and 36 of the EC Treaty, first, by enacting and applying Article 10(1) of the Decree on Preparation and Processing of Foodstuffs and, subsequently, also Articles 2(1) and 5 of the Decree on the addition of micro-foodstuffs to food, and by applying derogations in such a way as to take no account of the substitutive nature of enriched food or drink products, with the consequence that such products enriched with Vitamin A (in the form of retinoYden), vitamin D, folic acid, selenium, copper or zinc, cannot be marketed in the Netherlands since they are not substitute products or reconstituted food or drink products within the meaning of the abovementioned decree on the addition of micro-foodstuffs to food, unless the addition in question presents no risk to public health and at the same time meets an actual need in connection with food.

2. Order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The system at issue concerns food in general and is therefore not affected by Directive 89/398/EEC [1]. Nor may the ingredients prohibited by that system be regarded as technically defined additives (Directives 89/107/EEC, 94/36/EC, and 95/2/EC) [2]. European Parliament and Council Directive No 95/2/EC on food additives other than colours and sweeteners (OJ 1995 L 61, p. 1, as amended) and European Parliament and Council Directive No 94/36/EC on colours for use in foodstuffs (OJ 1994 L 237, p. 13) The matters at issue in the present case fall therefore to be determined solely in accordance with Articles 30 and 36 of the EC Treaty, as they applied at the time of expiry of the most recent deadline contained in the reasoned opinions in the present Treaty — infringement proceedings (21 February 1999).

The system at issue, under which certain enriched food and drink products are banned unless a derogation is obtained from the Minister of Food plainly constitutes a measure having equivalent effect under Article 30 of the EC Treaty. The requirements that 'an actual food requirement must be met' and that there be 'no risk to public health' entail an infringement of the scheme of Articles 30 and 36 of the EC Treaty since the result of those requirements is to impose on the person applying for a derogation a disproportionate burden of proof in regard to the possible danger to public health which means in practice that the derogations at issue in this case are never granted. Moreover, the systematically applied requirement of the existence of an actual food-related requirement reinforces existing national dietary patterns which in itself constitutes a disguised and therefore unlawful restriction on the free movement of goods. Nor does the Netherlands policy take

account of the substitutive nature of certain food and drink products (such as, in particular, breakfast cereals enriched with vitamin D).

(1) Council Directive 89/398 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (OJ 1989 L 186, p. 27, as amended).
(2) Council Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption (OJ 1989 L 40, p. 27, as amended).

Reference for a preliminary ruling by the Ålands Förvaltningsdomstol by judgment of that Court of 5 February 2002 in the proceedings, brought by Diana Elisabeth Lindman

(Case C-42/02)

(2002/C 109/44)

Reference has been made to the Court of Justice of the European Communities by judgment of the Ålands Förvaltningsdomstol (Administrative Court, Åland, Finland) of 5 February 2002, received at the Court Registry on 15 February 2002, for a preliminary ruling in the proceeding, brought by Diana Elisabeth Lindman on the following question:

Does Article 49 of the Treaty establishing the European Communities preclude a Member State from applying rules under which lottery winnings from lotteries held in other Member States are included in the taxable income of the winner on assessment to income tax, whereas lottery winnings from lotteries held in the Member State in question are exempt from tax.

Reference for a preliminary ruling by the Landgericht Stuttgart by order of that Court of 8 February 2002 in the case of Landesbausparkasse Baden-Württemberg against Elisabeth Huttenlocher

(Case C-43/02)

(2002/C 109/45)

Reference has been made to the Court of Justice of the European Communities by order of the Landgericht Stuttgart (Regional Court, Stuttgart) of 11 February 2002, received at the Court Registry on 15 February 2002, for a preliminary ruling in the case of Landesbausparkasse Baden-Württemberg against Elisabeth Huttenlocher on the following question:

Is the second part of Article 2 of Directive 85/577/EEC (1) to be interpreted as meaning that a close dependant (in this case an unmarried partner) is also acting 'in the name or on behalf of a trader' where that person as a consumer takes out a loan with a trader, the trader makes the loan subject to a security (assumption of joint liability), makes the requisite form available to that person and the borrower presents the form for signature to his close dependant in the residence which they share?

(1) OJ L 372 of 31.12.1985, p. 31.

Reference for a preliminary ruling by the Vantaan Käräjäoikeus by order of that Court of 1 February 2002 in the case of Fixtures Marketing Ltd against Oy Veikkaus Ab

(Case C-46/02)

(2002/C 109/46)

Reference has been made to the Court of Justice of the European Communities by order of the Vantaan Käräjäoikeus (District Court, Vantaa) of 1 February 2002, received at the Court Registry on 18 February 2002, for a preliminary ruling in the case of Fixtures Marketing Ltd against Oy Veikkaus Ab on the following questions:

1) May the requirement in Article 7(1) of the directive (1) for a link between the investment and the making of the database be interpreted in the sense that the 'obtaining' referred to in Article 7(1) and the investment directed at it refers, in the present case, to investment which is directed at the determination of the dates of the matches and the match pairings themselves and, when the criteria for granting protection are appraised, does the drawing up of the fixture list include investment which is not relevant?

2) Is the object of the directive to provide protection in such a way that persons other than the authors of the fixture list may not, without authorisation, use the data in that fixture list for betting or other commercial purposes?

3) For the purposes of the directive, does the use by Veikkaus relate to a substantial part, evaluated qualitatively and/or quantitatively, of the database, having regard to the fact that, of the data in the fixture list, on each occasion only data necessary for one week is used in the weekly pools coupons, and the fact that the data relating to the matches is obtained and verified from sources other than the maker of the database continuously throughout the season?

(1) Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, p. 20).

Reference for a preliminary ruling by the Schleswig-Holsteinen Oberverwaltungsgericht by order of that Court of 31 January 2002 in the administrative-law case of 1. Albert Anker, 2. Klaas Ras, and 3. Albertus Snoek against Federal Republic of Germany

(Case C-47/02)

(2002/C 109/47)

Reference has been made to the Court of Justice of the European Communities by order of the Schleswig-Holsteinen Oberverwaltungsgericht (Higher Administrative Court, Schleswig-Holstein) of 31 January 2002, received at the Court Registry on 19 February 2002, for a preliminary ruling in the administrative-law case of 1. Albert Anker, 2. Klaas Ras, and 3. Albertus Snoek against Federal Republic of Germany on the following question:

Are provisions of national law which require the nationality of the flag State — in this instance German nationality — for the exercise of the activity of master (captain) of a vessel used in small-scale maritime shipping and flying the flag of that Member State compatible with Article 39 of the Treaty establishing the European Community?

Reference for a preliminary ruling by the Conseil d'Etat (Belgium) Section d'administration, by judgment of 8 February 2002 in the case of Commune de Braine-le-Château against Région Wallonne — Interveners: BIFFA Waste Services SA, Philippe Feron and Philippe De Codt

(Case C-53/02)

(2002/C 109/48)

Reference has been made to the Court of Justice of the European Communities by judgment of the Conseil d'Etat (Council of State), Belgium (Administrative Section) of 8 February 2002, received at the Court Registry on 21 February 2002, for a preliminary ruling in the case of Commune de Braine-le-Château against Région Wallonne — Interveners: BIFFA Waste Services SA, Philippe Feron and Philippe De Codt, on the following question:

1. Does the obligation imposed on Member States by Article 7 of Directive 75/442/EEC of 15 July 1975 on waste (1), as amended by Directive 91/156/EEC of 18 March 1991 (2), to draw up one or more waste management plans relating in particular to 'suitable disposal sites or installations' mean that the States to which the Directive is addressed are required to mark on a geographical map the precise locations of the planned waste disposal sites or to determine location criteria which are sufficiently precise to enable the competent authority responsible for issuing a permit under Article 9 of the Directive to ascertain whether the site or installation is covered by the management prescribed by the plan?

2. Do Articles 4,5 and 7 of Directive 75/442, as amended by Directive 91/156, whether or not read in conjunction with Article 9 of Directive 75/442, preclude a Member State which has not adopted within the period prescribed one or more waste management plans relating to 'suitable disposal sites or installations' from issuing individual permits to operate waste disposal installations, such as landfills?

(1) OJ L 194 of 25.7.1975, p. 39.
(2) OJ L 78 of 26.3.1991, p. 32.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 22 January 2002 in the case of IHW Rebmann GmbH against Hauptzollamt Weiden

(Case C-56/02)

(2002/C 109/49)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 22 January 2002, received at the Court Registry on 22 February 2002, for a preliminary ruling in the case of IHW Rebmann GmbH against Hauptzollamt (Principal Customs Office) Weiden on the following question:

Is Article 187, second paragraph, of Council Regulation (EEC) No 2913/92 [1] of 12 October 1992 establishing the Community Customs Code ('the Customs Code') (OJ 1992 L 302, p. 1) to be interpreted as meaning that, where compensating products that are declared as returned goods are released for free circulation, the factual particulars required to calculate the import duties legally owed on those compensating products must also be declared and proved, or is it for the endorsing customs office, so far as possible, to ascertain those factual particulars from the supervising office using an INF 1 sheet, pursuant to the procedure established in Article 613 of Commission Regulation (EEC) No 2454/93 [2] of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1), in the version in force until 30 June 2001?

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[1] OJ L 302 of 19.10.1992, p. 1.
[2] OJ L 253 of 11.10.1993, p. 1.

Appeal brought on 22 February 2002 by Compañía Española para la Fabricación de Aceros S.A. (Acerinox) against the judgment delivered on 13 December 2001 by the First Chamber of the Court of First Instance of the European Communities in case T-48/98 between Compañía Española para la Fabricación de Aceros S.A. (Acerinox) and the Commission of the European Communities

(Case C-57/02 P)

(2002/C 109/50)

An appeal against the judgment delivered on 13 December 2001 by the First Chamber of the Court of First Instance of the European Communities in case T-48/98 [1] between Compañía Española para la Fabricación de Aceros S.A. (Acerinox) and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 22 February 2002 by Compañía Española para la Fabricación de Aceros S.A. (Acerinox), established in Madrid, Spain, represented by Alexandre Vandencasteele and Denis Waelbroeck, lawyers.

The Appellant claims that the Court should:

— annul the contested judgment of the Court of First Instance of 13 December 2001 in case T-48/98; as well as

— annul the Commission's decision of 21 January 1998 fining the Appellant or at the very least substantially reduce the amount of the fine, or alternatively refer the case back to the Court of First Instance;

— order the Commission to pay the costs.

Pleas in law and main arguments

The Appellant submits that the judgment of the Court of First Instance is flawed for the following reasons:

— the Court of First Instance based its findings with regard to Acerinox's participation in the alleged cartel in Spain on a manifestly erroneous construction of the Appellant's pleadings and therefore failed to properly motivate its judgment on this point;

— the Court of First Instance failed to adequately motivate its rejection of the Appellant's argument that its implementation of the alloy surcharge outside Spain, which did not follow the pattern allegedly agreed in December 1993, reflected mere parallelism of conduct;

— the Court of First Instance has applied an erroneous legal test in assessing the duration of the alleged infringement;

— even if an infringement could be said to continue for as long as its consequences are felt (rather than for as long as some concertation continues to exist between undertakings), the Court of First Instance failed to motivate its rejection as irrelevant of the Appellant's argument that, in July 1994, the price of nickel reached its original level;

— the Court of First Instance failed to properly motivate its rejection of the Appellant's argument concerning the disproportionate level of its fine when its position on the market is compared to that of other addressees of the decision;

— in refusing to grant the Appellant the same reduction of fine as that granted to other participants because the Appellant denied its participation in an infringement, the Court of First Instance has violated fundamental principles of law (right of defence) recognised by the Court of Justice in its case-law.

(1) OJ C 137, 02.05.98, p. 20.

Action brought on 25 February 2002 by the Commission of European Communities against Kingdom of Spain

(Case C-58/02)

(2002/C 109/51)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 25 February 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Michael Shotter, acting as Agents, with an address for service in Luxembourg at the office of Luis Escobar, Wagner Centre, C 254.

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 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access (1), the Kingdom of Spain has failed to fulfil its obligations under that directive;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The 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 28 May 2000.

(1) OJ 1998 L 320, p. 54.
(2) OJ C 97, 20.4.2002, p. 4.

Action brought on 26 February 2002 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-62/02)

(2002/C 109/52)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 26 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:

— declare that by failing to adopt the laws, regulations and administrative provisions necessary 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 CO2 emissions in respect of the marketing of new passenger cars (1) 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 12(1) and 12(2) of this Directive;

— 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 18 January 2001 without the United Kingdom having informed the Commission of the provisions adopted to comply with the directive referred to in the conclusions of the Commission.

Since the Commission is in possession of no other information enabling it to conclude that the United Kingdom has adopted the necessary provision, it is compelled to assume that the United Kingdom has failed to fulfil its obligations under the Directive.

(1) OJ L 12, 18.1.2000, p. 16.

Action brought on 26 February 2002 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-63/02)

(2002/C 109/53)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 26 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:

— declare that by failing to adopt for Northern Ireland and Wales all the laws, regulations and administrative provisions necessary to comply with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption [1] 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 17(1) and 17(2) of this directive;

— 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 25 December 2000 without the United Kingdom having informed the Commission of the provisions adopted to comply with the directive referred to in the conclusions of the Commission as regards Wales and Northern Ireland.

Since the Commission is in possession of no other information enabling it to conclude that the United Kingdom has adopted the necessary provisions, it is compelled to assume that the UK has failed to fulfil its obligations under the directive.

[1] OJ L 330, 05.12.1998, p. 32.

Appeal brought on 27 February 2002 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment delivered on 11 December 2001 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-138/00 between Erpo Möbelwerke GmbH and the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-64/02 P)

(2002/C 109/54)

An appeal against the judgment delivered on 11 December 2001 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-138/00 between Erpo Möbelwerke GmbH and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) [1] was brought before the Court of Justice of the European Communities on 27 February 2002 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs), represented by Alexander von Mühlendahl, Vice-President of the Office, and Gregor Schneider, member of the Legal Services and Court Proceedings Unit of the Legal Department.

The appellant claims that the Court should:

— set aside the contested judgment;

— dismiss the action against the decision of the Third Board of Appeal of 23 March 2000 in Case R 392/1999-3, or alternatively refer the proceedings back to the Court of First Instance;

— order the other party to the proceedings to pay the costs both of the proceedings at first instance and of the appeal proceedings.

Pleas in law and main arguments

Infringement of Article 7(1)(b) of Council Regulation No 40/94 [2]: the Court of First Instance applied a new examination criterion in the contested judgment. The Office considers that to limit the possibility of refusing a trade mark application to cases in which general use amongst the class of persons concerned is proved constitutes a legally erroneous interpretation of Article 7(1)(b). If it were possible to refuse an application for a trade mark only if that mark, or at all events signs portrayed in the same way, were shown to be already

customary in business circles, Article 7(1)(b) would be robbed of its central meaning for the purposes of examination of trade mark applications and, moreover, the examination would overlap with Article 7(1)(d).

(1) Not yet published in the European Court Reports.
(2) Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 11 of 14.1.1994, p. 1).

Appeal brought on 28 February 2002 by ThyssenKrupp Stainless GmbH (formerly doing business as KruppThyssen Stainless GmbH) against the judgment delivered on 13 December 2001 by the First Chamber of the Court of First Instance of the European Communities in Joined Cases T-45/98 and T-47/98 between KruppThyssen Stainless GmbH and Acciai speciali Terni SpA and the Commission of the European Communities

(Case C-65/02 P)

(2002/C 109/55)

An appeal against the judgment delivered on 13 December 2001 by the First Chamber of the Court of First Instance of the European Communities in Joined Cases T-45/98 and T-47/98 between KruppThyssen Stainless GmbH and Acciai speciali Terni SpA and the Commission of the European Communities (1) was brought before the Court of Justice of the European Communities on 28 February 2002 by ThyssenKrupp Stainless GmbH, represented by Dr Martin Klusmann, Rechtsanwalt, of Freshfields Bruckhaus Deringer, Düsseldorf.

The appellant claims that the Court should:

(1) partially set aside the judgment of the Court of First Instance of the European Communities, in so far as it dismisses the action brought against the Commission Decision 98/247/ECSC of 21 January 1998;

(2) correct, in so far as it concerns the appellant, the finding in Article 1 of Decision 98/247/ECSC regarding the duration of the infringement;

(3) reduce the fine imposed on the appellant in Article 2 of Decision 98/247/ECSC appropriately,

or, alternatively in respect of claims (1) and (2),

refer the case back to the Court of First Instance for a new judgment which complies with the Court's interpretation of the law;

(4) order the Commission to pay the full costs of the proceedings.

Pleas in law and main arguments:

— Errors of law in the determination of, and the regard had to, the duration of the infringement for which the fine was imposed: the Court of First Instance erroneously rejected the contention that the infringement was only sporadic, although it is undisputed that, from as early as February 1994 onwards, the appellant has repeatedly independently fixed its prices for stainless steel flat products. The defendant and the Court of First Instance would have been entitled to assume that prices continued to be influenced by the concerted practices within the meaning of Article 65 of the ECSC Treaty after the next time the prices were independently fixed, in March 1994, only if there had been actual evidence of such continued influence or of continued practices.

Even if it could not be assumed that the infringement was only sporadic, the Court of First Instance failed to recognise that the protracted length of the administrative procedure worked — unfairly — to the disadvantage of the appellant, since the Commission did not make clear that it was acting on the presumption of an ongoing infringement.

— Error of law in so far as the initial fixed sum was taken into account more than once in the calculation of the fine: the Court of First Instance wrongly failed to address the applicant's contention that, when applying the principle of fixed-sum fines in respect of the applicant's legal relationships, the Commission was entitled to impose only a single fine. Instead, the Commission recognised the corporate structure of the group in the non-operative part of its decision, but failed to take it into account in the calculation of the fine imposed of the applicant, thereby breaching the principle of equal treatment.

— Error of law in the appraisal of the applicant's cooperation in the investigation: finally, the Court of First Instance erroneously held that the Commission was entitled to grant those undertakings involved in the procedure which co-operated in the investigation to exactly the same extent as the applicant, but which additionally admitted that, in legal terms, the facts notified to the applicant constituted an infringement of Article 65 ECSC, a specific additional 30 % reduction in the fine in respect of that admission. In addition to the principle of protection of sources which emerges from the Commission's notice (2), it is an axiomatic principle of the rule of law that an admission of illegality cannot and must not be rewarded.

(1) Not yet published in the European Court Reports.
(2) OJ 1996 C 207, p. 4.

Action brought on 28 February 2002 by the Italian Republic against the Commission of the European Communities

(Case C-66/02)

(2002/C 109/56)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 28 February 2002 by the Italian Republic, represented by U. Leanza, acting as Agent, and M. Fiorilli, avvocato dello Stato.

The applicant claims that the Court should:

— Annul the Commission's Decision of 11 December 2001 in proceeding no C-54/A/2000/EC against the Italian Republic, notified on 13 January 2002, in that there are insufficient grounds for holding that the fiscal measures accompanying the reform of the Italian banking system constitute 'State aid';

— Order the Commission to pay the costs.

Pleas in law and main arguments

The Italian Government claims that the contested decision is unlawful for the following reasons:

(a) The Commission failed to comply with the obligation to state the reasons upon which the adopted decision was based.

(b) The law, which has been called in question with regard to the effect on competition of the accompanying fiscal measure, must be regarded as the final part of a process of reform of the Italian system of credit and, therefore, as part of an economic reform which should be assessed in its general and Community law context. The relevance of that law cannot be appreciated unless the state of the sector prior to the reform is taken into account. The contested decision wholly fails to consider those aspects.

(c) In addressing the Italian Government's counter-arguments the Commission does not distinguish between those concerned with the issue whether the fiscal measures under investigation may be characterised as 'State aid' and those concerned with the alternative issue whether, if those measures are found to be 'State aid', they qualify for exemption. The Commission possessed all the information required to assess whether the law in question constituted a prohibited 'State aid' within the meaning of Article 87(1) of the Treaty, or whether it may be considered to be compatible with the common market under Article 87(3) of the Treaty. That constitutes not only a methodological error but also a failure to state reasons.

(d) Specifically as regards the reference to Article 87(3)(b) of the Treaty, reconstruction of the origins of the Ciampi law and of Legislative Decree No 153/99 clearly shows how the Italian legislature sought, by means of the various measures adopted, to bring about a significant structural change in the Italian market for banking services: the full and final privatisation of all Italian banks. In order to achieve that objective it was necessary for the banks to divest themselves of any controlling interests still held in savings banks and local banks. The elimination or reduction of the Italian banks' substantial and persistent holdings of public funds, or at least of funds that are not attractive to private investors did not, contrary to the Commission's clear finding, distort competition by favouring the recipient undertakings over others but, as in the case of the southern Italian public banks, resulted in the reduction of distortions existing prior to the reform in question between genuinely private banks and those which are private in form only, but not as regards the control of capital. In the opinion of the Italian Government, the full and final privatisation of the Italian banks constitutes a 'project of common European interest' which, under Article 87(3)(b), justifies a system of aid to promote its implementation.

Action brought on 28 February 2002 by the Commission of the European Communities against Ireland

(Case C-67/02)

(2002/C 109/57)

An action against Ireland was brought before the Court of Justice of the European Communities on 28 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:

— declare that Ireland has failed to fulfill its obligations under Council Directive 79/923/EEC [1] on the quality required of shellfish waters by reason of its failure to adopt programmes for all of its designated shellfish waters in accordance with Article 5 of the Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The adoption by Ireland of the Quality of Shellfish Waters (Amendment) Regulations 2001 brought its legislation into conformity with Article 5 of Directive 79/923/EEC by requiring programmes in respect of all designated waters. The Commission is not, however, in possession of any information indicating that Ireland has similarly rectified its position with regard to its failure to adopt all the programmes required by Article 5 of the directive. It is not sufficient merely to introduce the requirement into national law — the programmes must be established in practice in accordance with Article 5.

The Commission is in possession of official confirmation by the Irish authorities that no pollution prevention programme for designated shellfish waters had been adopted as of 14 December 2000. Subsequently, the Commission has not been informed of any change to this position, whereas, pursuant to Article 5 of the directive, programmes should have been in place for all designated waters within six years of the designation.

The Commission is, therefore, of the opinion that Ireland has failed to fulfill its obligations under the directive.

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(1) OJ L 281, 10.11.1979, p. 47.

Action brought on 28 February 2002 by the Commission of the European Communities against the Republic of Austria

(Case C-68/02)

(2002/C 109/58)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 28 February 2002 by the Commission of the European Communities, represented by Claudia Schmidt, of the Commission's Legal Service, and Marie Wolfcarius, Legal Adviser, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, Legal Adviser, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary in order to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (1), or at any rate to communicate the same to the Commission, the Republic of Austria has failed to fulfil its obligations under that directive;

(2) order the defendant to pay the costs.

Pleas in law and main arguments

The third paragraph of Article 249 EC provides that a directive is to be binding, as to the result to be achieved, on each Member State to which it is addressed. According to the first paragraph of Article 10 EC, Member States are to take all appropriate measures, whether general or specific, to ensure fulfilment of the obligations arising out of the Treaty or resulting from actions taken by the institutions of the Community.

The Member States are obliged to transpose the directive into national law by the due date, in such a way that the transposition process is completed before the expiry of the time-limit fixed for transposition. That time-limit expired on 8 April 1999, but Austria has not adopted the necessary measures.

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(1) OJ 1996 L 235, p. 6.

Action brought on 1 March 2002 by the Commission of the European Communities against the Italian Republic

(Case C-70/02)

(2002/C 109/59)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 1 March 2002 by the Commission of the European Communities, represented by A. Aresu and M. Shotter, acting as Agents.

The applicant claims that the Court should:

— Declare that, by not having adopted all the measures necessary to implement Articles 8(6) and 9(b) of Directive 97/66/EC of the European Parliament and of the Council (1) of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, the Italian Republic has failed to fulfil its obligations under that directive;

— Order the Commission to pay the costs.

Pleas in law and main arguments

(a) Failure to implement Article 8(6) of Directive 97/66.

Article 6(6) of Decree No 171/98 only partially implements Article 8(6) of the directive in question, since it makes no reference to the obligation to inform the public of the possibilities set out in Articles 8(1), (2), (3) and (4) of that directive to prevent the presentation of CLI ('calling line identification') of incoming calls if CLI has been eliminated, and of the possibility of eliminating the presentation of connected line identification to the calling user.

(b) Failure to implement Article 9(b) of Directive 97/66.

Article 9(b) of the directive places an obligation on the Member States to ensure that there are procedures governing the elimination of the presentation of calling line identification on a per-line basis for organisations dealing with emergency calls and recognised as such by a Member State, for the purpose of answering such calls. The Italian legislation does not appear to have implemented that provision.

([1]) OJ L 24 of 30.1.1998, p. 1.

Appeal brought on 28 February 2002 by Thyssenkrupp Acciai Speciali Terni SpA against the judgment delivered on 13 December 2001 by the First Chamber of the Court of First Instance of the European Communities in Joined Cases T-45/98 and T-47/98 between Krupp Thyssen Stainless GmbH and Acciai Speciali Terni SpA and Commission of the European Communities

(Case C-73/02 P)

(2002/C 109/60)

An appeal against the judgment delivered on 13 December 2002 by the First Chamber of the Court of First Instance of the European Communities in Joined Cases T-45/98 and T-47/98 between Krupp Thyssen Stainless GmbH and Acciai Speciali Terni SpA and Commission of the European Communities was brought before the Court of Justice of the European Communities on 8 February 2002 by Thyssenkrupp Acciai Speciali Terni SpA, represented by Giulia Di Tommaso and Andrea Giardina, with an address for service in Luxembourg.

The appellant claims that the Court should:

I. set aside the judgment, on the ground that it applied Community law wrongly and inconsistently, in so far as it confirms the decision of the Commission of 21 January 1998 No 98/247/ECSC to impose a fine on the appellant despite the fact that it belonged to the KTS Group;

In the alternative:

II. set aside the judgment, on the ground that it misapplied Community law, in so far as it confirms Article 1 of the decision of the Commission of 21 January 1998 No 98/247/ECSC, according to which the infringement of the rules of competition imputed to AST is held to have continued until the date of the decision itself;

III. set aside the judgment, on the ground that it infringed the principle of equal treatment and non-discrimination, in so far as it does not uphold the appellant's request that the fine be reduced by 40 % in view of the appellant's cooperation in the course of the procedure;

in any event,

IV. order the Commission to pay the costs.

Pleas and main arguments

The appellant claims that the contested judgment should be set aside on the following grounds:

— erroneous and inconsistent application of Community law by imposing a fine on AST despite the fact that AST belongs to the KTS group, which was subject to a fixed-sum fine;

— misapplication of Community law in finding that the infringement of the competition rules by AST was continuous;

— breach of the principle of equaltreatment and non-discrimination in the reduction applied to the fine in consideration of the appellant's cooperation during the procedure.

Appeal brought on 6 March 2002 by Territorio Histórico de Alava — Diputación Foral de Alava and Others against the order delivered on 11 January 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-77/01 between Territorio Histórico de Alava — Diputación Foral de Alava and Others and Commission of the European Communities

(Case C-75/02 P)

(2002/C 109/61)

An appeal against the order delivered on 11 January 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-77/01 between Territorio Histórico de Alava — Diputación Foral de Alava and Others and Commission of the European Communities was brought before the Court of Justice of the European Communities on 6 March 2002 by (1) Territorio Histórico de Alava — Diputación Foral de Alava, (2) Territorio Histórico de Bizcaia — Diputación Foral de Bizcaia, (3) Territorio Histórico de Gipuzkoa — Diputación Foral de Gipuzkoa and Juntas Generales de Gipuzkoa and (4) Comunidad Autónoma del País Vasco — Gobierno Vasco, represented by Ramón Falcón y Tella, abogado, with an address for service in Luxembourg.

The appellants claim that the Court should:

1. set aside the order;

2. declare admissible the action brought before the Court of First Instance (Case T-77/01) and order the Court of First Instance to give a judgment on the substance, without prejudice to the possibility of staying proceedings pending judgment by the Court of Justice in C-501/00 Spain v Commission;

3. order the Commission to pay the costs of proceedings in the appeal and at first instance.

Pleas and main arguments

— The order under appeal should have held admissible the action brought under Article 230 EC, even if in order to do so it first had to examine provisionally some of the matters of substance: locus standi cannot be ruled out for the mere fact that the Commission erroneously based on the ECSC Treaty a decision which should have been based on the EC Treaty (or on both simultaneously). It is true that the question whether, in the present case, the decision should have been based on the EC Treaty or on the ECSC Treaty is a matter of substance. However, that does not justify that, on the raising of an objection of inadmissibility, locus standi based on the EC Treaty should be ruled out and the action dismissed as inadmissible.

— The order under appeal places a literal, restrictive and incorrect construction on the second paragraph of Article 33 CA: the reason the second paragraph of Article 33 CA refers to undertakings and associations of undertakings is that the authors of the Treaty assumed that acts based on the ECSC Treaty could only affect coal or steel producers or associations thereof, without that implying a desire to exclude other persons finding themselves in a situation similar to that of an undertaking to which aid is granted under a Commission decision. Regional or territorial authorities which adopt a measure classified as aid by a Commission decision are in a situation similar to that of the recipient of aid.

— The finding of inadmissibility runs counter to the principle of effective legal protection, a defect which cannot be remedied by granting an application for leave to intervene in a parallel action before the Court of Justice: the standing of the Member State, in broad terms, as institutional or privileged party, does not suffice to afford effective legal protection of the interests of regional or territorial authorities which adopt a measure classified as aid, since those interests are different from the interests of the State. The appellants do not seek to equate the position of territorial authorities with tax-raising powers with the position of the Member States, as privileged or institutional parties; however, they do seek to obtain recognition of the possibility that such territorial authorities may have a remedy, at least as effective as that afforded to undertakings, where the tax-raising powers are affected by a Commission decision. In the present case, although the Court of Justice granted the application for leave to intervene submitted by the Basque Diputaciones Forales in the action brought by the State (C-501/00), the fact remains that the State might not have brought proceedings, or might have brought proceedings for a different purpose or based on different arguments to those which the present appellants consider appropriate. Moreover, the State could yet withdraw from Case C-501/00, which would leave the present appellants defenceless.

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

(Case C-76/02)

(2002/C 109/62)

An action against the Republic of Austria 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, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of the Commission's legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary in order to comply with Commission Directive 2000/71/EC of 7 November 2000 to adapt the measuring methods as laid down in Annexes I, II, III and IV to Directive 98/70/EC of the European Parliament and of the Council to technical progress as foreseen in Article 10 of that Directive [1], or at any rate to communicate the same to the Commission, the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that directive;

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

Pleas in law and main arguments

The binding nature of 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 such directives into national law so as to give full effect to them before the expiry of the time-limit for transposition. The time-limit prescribed in Article 2(1) of Directive 2000/71 expired on 1 January 2000 but the Republic of Austria has not adopted the requisite provisions.

[1] OJ 2000 L 287, p. 46.

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

(Case C-87/02)

(2002/C 109/63)

An action against the Italian 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 Michel Van Beek and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— Declare that, by the failure of the Abruzzo regional authority to check whether the plans for the construction of a road to by-pass the city of Teramo (the 'Lotto Zero' project — an alternative to the SS 80 trunk road between Termano and Giulianova), which fell within the scope of Annex II to Directive 85/337/EEC [1], required to be assessed for its effects on the environment, in accordance with Articles 5 to 10 of the directive, the Italian Republic has failed to fulfil its obligations under Article 4(2) of Directive 85/337/EEC;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 4(1) of the directive provides that projects of the classes listed in Annex I are to be made subject to an assessment in accordance with Articles 5 to 10. According to Article 4(2), projects of the classes listed in Annex II are to be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require. To that end, the Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.

The 'Lotto Zero' project is a project covered by Annex II to the directive. The Commission takes the view that, by failing to ascertain whether that project required to be assessed for its environmental effects in accordance with Articles 5 to 10 of the directive, Italy has failed to fulfil its obligations under Article 4(2).

(1) OJ 1985 L 175, p. 40.

Appeal brought on 16 March 2002 by Biret International SA against the judgment delivered on 11 January 2002 by the First Chamber of the Court of First Instance of the European Communities in Case T-174/00 between Biret International SA and Council of the European Union, supported by the Commission of the European Communities

(Case C-93/02 P)

(2002/C 109/64)

An appeal against the judgment delivered on 11 January 2002 by the First Chamber of the Court of First Instance of the European Communities in Case T-174/00 between Biret International and Council of the European Union, supported by Commission of the European Communities, was brought before the Court of Justice of the European Communities on 16 March 2002 by Biret International SA, represented by M. de Thoré and S. Rodrigues, with an address for service in Luxembourg.

The appellant claims that the Court should:

— set aside the contested judgment delivered by the Court of First Instance of the European Communities on 11 January 2002 in Case T-174/00;

— uphold the form of order sought by it at first instance; and

— order the defendant to pay the entire costs.

Pleas and main arguments

— Infringement of Article 300(7) EC: should the question as to whether the WTO Agreements have direct effect, quod non, be regarded by the Court of Justice as continuing to condition the liability of the Community for infringement of those Agreements, contrary to the requirements and scope of Article 300(7) EC, the appellant requests the Court of Justice, after having failed to persuade the Court of First Instance and relying on its role of maintaining the unity of the interpretation of Community law, to develop its case-law and acknowledge that all or part of the WTO Agreements have direct effect.

— Infringement of Article 48 of the Rules of Procedure of the Court of First Instance: it is hardly possible to claim that the matter of direct liability of the Community was totally absent from the application initiating proceedings and that it only appeared as a new plea in law in the reply.

Appeal brought on 16 March 2002 by Etablissements Biret et Cie SA against the judgment delivered on 11 January 2002 by the First Chamber of the Court of First Instance of the European Communities in Case T-210/00 between Etablissements Biret et Cie SA and Council of the European Union, supported by the Commission of the European Communities

(Case C-94/02 P)

(2002/C 109/65)

An appeal against the judgment delivered on 11 January 2002 by the First Chamber of the Court of First Instance of the European Communities in Case T-210/00 between Etablissements Biret et Cie SA and Council of the European Union, supported by Commission of the European Communities, was brought before the Court of Justice of the European Communities on 16 March 2002 by Etablissements Biret et Cie SA, represented by S. Rodrigues, with an address for service in Luxembourg.

The appellant claims that the Court should:

— set aside the contested judgment delivered by the Court of First Instance of the European Communities on 11 January 2002 in Case T-210/00;

— uphold the form of order sought by it at first instance; and

— order the defendant to pay the entire costs.

Pleas and main arguments

The pleas and main arguments are similar to those put forward in Case C-93/02 P (1).

(1) See p. 38 of this Official Journal.

Removal from the register of Case C-105/98 P [1]

(2002/C 109/66)

By order of 27 November 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-105/98 P: Günther Bühring v Council of the European Union and Commission of the European Communities

[1] OJ C 209 of 4.7.1998.

Removal from the register of Case C-24/99 [1]

(2002/C 109/67)

By order of 18 February 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-24/99: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 86 of 27.3.1999.

Removal from the register of Case C-140/99 [1]

(2002/C 109/68)

By order of 6 December 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-140/99: Commission of the European Communities v French Republic.

[1] OJ C 174 of 19.6.1999.

Removal from the register of Case C-295/99 [1]

(2002/C 109/69)

By order of 12 October 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-295/99: Kingdom of Belgium v Commission of the European Communities.

[1] OJ C 299 of 16.10.1999.

Removal from the register of Case C-461/99 [1]

(2002/C 109/70)

By order of 1 February 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-461/99: Commission of the European Communities v Ireland.

[1] OJ C 47 of 19.2.2000.

Removal from the register of Case C-77/00 [1]

(2002/C 109/71)

By order of 6 December 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-77/00 (Referral for a preliminary ruling by the Arbeitsgericht Wiesbaden (Germany)): Urlaubs — und Lohnausgleichskasse der Bauwirtschaft v Viscondense Construçoes, Lda.

[1] OJ C 135 of 13.5.2000.

Removal from the register of Case C-234/00 [1]

(2002/C 109/72)

By order of 22 January 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-234/00 (Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office)): The Queen v Minister of Agriculture, Fisheries and Food, ex parte: F. Machin & Sons Ltd.

[1] OJ C 247 of 26.8.2000.

Removal from the register of Case C-239/00 P [1]

(2002/C 109/73)

By order of 7 February 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-239/00 P: Aldo Kuijer v Council of the European Union.

[1] OJ C 247 of 26.8.2000.

Removal from the register of Case C-449/00 [1]

(2002/C 109/74)

By order of 7 December 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-449/00: Commission of the European Communities v French Republic.

[1] OJ C 45 of 10.2.2001.

Removal from the register of Case C-31/01 [1]

(2002/C 109/75)

By order of 15 January 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-31/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

[1] OJ C 79 of 10.3.2001.

Removal from the register of Case C-41/01 [1]

(2002/C 109/76)

By order of 23 November 2001 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-41/01: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 79 of 10.3.2001.

Removal from the register of Case C-85/01 [1]

(2002/C 109/77)

By order of 5 February 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-85/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

[1] OJ C 134 of 5.5.2001.

Removal from the register of Case C-115/01 [1]

(2002/C 109/78)

By order of 17 January 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-115/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

[1] OJ C 150 of 19.5.2001.

Removal from the register of Case C-127/01 [1]

(2002/C 109/79)

By order of 30 January 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-127/01: Commission of the European Communities v Hellenic Republic.

[1] OJ C 150 of 19.5.2001.

Removal from the register of Case C-137/01 [1]

(2002/C 109/80)

By order of 16 January 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-137/01 (Reference for a preliminary ruling by the Employment Tribunal, Leeds (United Kingdom)): P. Breckon and M. Barrett v Secretary of State for Employment.

[1] OJ C 173 of 16.6.2001.

Removal from the register of Case C-183/01 [1]

(2002/C 109/81)

By order of 8 January 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-183/01: Commission of the European Communities v Hellenic Republic.

[1] OJ C 200 of 14.7.2001.

Removal from the register of Case C-382/01 [1]

(2002/C 109/82)

By order of 6 February 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-382/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

[1] OJ C 331 of 24.11.2001.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 December 2001

in Case T-43/98: Emesa Sugar (Free Zone) NV v Council of the European Union [1]

(Association arrangements for overseas countries and territories — Decision 97/803/EC — Sugar imports — Action for annulment — Action for compensation — Admissibility — Irreversible nature of the experience acquired — Principle of proportionality — Legal certainty)

(2002/C 109/83)

(Language of the case: Dutch)

In Case T-43/98: Emesa Sugar (Free Zone) NV, established in Oranjestad (Aruba), represented by G. van der Wal, lawyer, with an address for service in Luxembourg, against Council of the European Union (Agents: J. Huber and G. Houttuin), supported by Commission of the European Communities (Agent: T. van Rijn), Kingdom of Spain (Agents: M. López-Monis Gallego and R. Silva de Lapuerta) and French Republic (Agent: K. Rispal-Bellanger) — application for annulment of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1997 L 329, p. 50), and an application for compensation — the Court of First Instance (Third Chamber), composed of J. Azizi, President, K. Lenaerts and M. Jaeger, Judges; J. Plingers, Administrator, gave a judgment on 6 December 2001, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs and in addition to pay the costs incurred by the Council, including those relating to the proceedings for interim relief;*

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

(1) OJ C 151 of 16. 5. 1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

29 January 2002

in Cases T-160/98: Firma Léon Van Parys NV and Pacific Fruit Company NV v Commission of the European Communities [1]

(Bananas — Common organisation of the markets — Action for annulment — Admissibility — Reduction in reference quantities)

(2002/C 109/84)

(Language of the case: Dutch)

In Case T-160/98, Firma Léon Van Parys NV, established in Antwerp (Belgium), Pacific Fruit Company NV, established in Antwerp, represented by P. Vlaemminck, L. Van den Hende and J. Holmens, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (agents: H. van Vliet and L. Visaggio): Application for the annulment of a decision allegedly taken by the Commission between 12 March 1998 and 5 August 1998 reducing the quantity of bananas marketed by the applicants in 1996 and taken into account in determining their reference quantity for 1998, Court of First Instance of the European Communities (Fifth Chamber), composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; H. Jung, Registrar, has given a judgment on 29 January 2002, in which it:

1. *Declares the action inadmissible;*

2. *Orders the applicants to bear their own costs and those of the Commission.*

(1) OJ C 378 of 5.12.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

30 January 2002

in Cases T-54/99: max.mobil Telekommunikation Service GmbH v Commission of the European Communities [1]

(Article 90(3) of the EC Treaty (now Article 86(3) EC) — Amount of fees charged by the Republic of Austria to operators of GSM networks — Complaint — Partial rejection of the complaint — Admissibility — Infringement of Article 86 of the EC Treaty (now Article 82 EC) and Article 90 of the EC Treaty — Statement of reasons)

(2002/C 109/85)

(Language of the case: German)

In Case T-54/99, max.mobil Telekommunikation Service GmbH, established in Vienna (Austria), represented by S. Köck, M. Pflügl, M. Esser-Wellié and M. Oder, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (agents: W. Mölls and K. Wiedner), supported by Kingdom of the Netherlands (agents: M. A Fierstra and J. van Bakel and H.G. Sevenster): Application for partial annulment of Commission Decision No IV-C1/ROK D(98) of 11 December 1998 in so far as it rejects the applicant's complaint alleging that the Republic of Austria infringed Articles 86 and 90(1) of the EC Treaty (now Articles 82 EC and 86(1) EC) when determining the amount of the fee payable for the grant of a GSM concession, Court of First Instance of the European Communities (Second Chamber, Extended Composition), composed of: A.W.H. Meij, President, K. Lenaerts, M. Jaeger, J. Pirrung and N.J. Forwood, Judges; H. Jung, Registrar, has given a judgment on 30 January 2002, in which it:

1. *Dismisses the application;*

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

3. *Orders the Kingdom of the Netherlands to pay its own costs.*

[1] OJ C 100 of 10.4.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

17 January 2002

in Case T-47/00: Rica Foods (Free Zone) NV v Commission of the European Communities [1]

(Association arrangements for the overseas countries and territories — Imports of sugar and mixtures of sugar and cocoa — Regulation (EC) No 2423/99 — Safeguard measures — Application for annulment — Admissibility)

(2002/C 109/86)

(Language of the case: Dutch)

In Case T-47/00, Rica Foods (Free Zone) NV, established in Oranjestad (Aruba), represented by G. van der Wal, advocaat, with an address for service in Luxembourg, supported by Kingdom of the Netherlands (agent: H. Sevenster), v Commission of the European Communities (agents: T. van Rijn and C. van der Hauwaert), supported by Kingdom of Spain (agent: N. Díaz Abad): Application for annulment of Commission Regulation (EC) No 2423/1999 of 15 November 1999 introducing safeguard measures in respect of sugar falling within CN code 1701 and mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the overseas countries and territories (OJ 1999 L 294, p. 11), Court of First Instance of the European Communities (Third Chamber), composed of: J. Azizi, President, K. Lenaerts and M. Jaeger, Judges; J. Plingers, Administrator, Registrar, has given a judgment on 17 January 2002, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs and also those incurred by the Commission;*

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

[1] OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

7 February 2002

in Case T-88/00: Mag Instrument Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Torch shape — Three-dimensional mark — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2002/C 109/87)

(Language of the case: German)

In Case T-88/00, Mag Instrument Inc., established in Ontario (United States of America), represented by A. Nette, W. von der Osten-Sacken, H. Stratmann, G. Rahn and U. Hocke, lawyers, with an address for service in Luxembourg v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (agents: A. von Mühlendahl, E. Joly and S. Bonne): Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 February 2000 (Cases R-237/1999-2 to R-241/1999-2) refusing registration of five three-dimensional trade marks consisting of torch shapes, Court of First Instance (Fourth Chamber), composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; D. Christensen, Administrator, Registrar, has given a judgment on 7 February 2002, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 January 2002

in Case T-206/00: Merja Hult v the Commission of the European Communities [1]

(Officials — Classification — Statement of reasons — Article 32 of the Staff Regulations — Commission decision on the criteria applicable to appointment to grade and classification in step on recruitment — Additional seniority in grade — Conditions — Principle of legal certainty)

(2002/C 109/88)

(Language of the case: French)

In Case T-206/00: Merja Hult, an official of the Commission of the European Communities, residing in Howald (Luxembourg), represented by J.-N. Louis and V. Peere, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall) — application for annulment of the decision of the Commission of 8 October 1999 fixing, with effect from 16 January 1999, the applicant's definitive classification in Grade A 7, step 1 — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President, V. Tiili and P. Lindh, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 31 January 2002, in which it:

1. *annuls the decision of the Commission of 8 October 1999 fixing, with effect from 16 January 1999, the applicant's definitive classification in Grade A 7, step 1.*

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

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[1] OJ 2000 C 285.

JUDGMENT OF THE COURT OF FIRST INSTANCE

7 February 2002

in Case T-211/00: Aldo Kuijer v Council of the European Union [1]

(Transparency — Council Decision 93/731/EC on public access to Council documents — Refusal of an application for access — Protection of the public interest — International relations — Manifest error — Partial (access)

(2002/C 109/89)

(Language of the case: English)

In Case T-211/00, Aldo Kuijer, residing in Utrecht (Netherlands), represented by O.W. Brouwer and T. Janssens, lawyers, with an address for service in Luxembourg, v Council of the European Union (agents: M. Bauer and M. Bishop): Application for annulment of the Council's decision notified to the applicant by letter of 7 June 2000 refusing him access to certain documents from the Centre for Information, Discussion and Exchange on Asylum ('CIREA') which were requested under Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ 1993 L 340, p. 43), Court of First Instance (Fourth Chamber), composed of:

P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; J. Plingers, Administrator, Registrar, has given a judgment on 7 February 2002, in which it:

1. *Annuls the Council's decision of 5 June 2000 refusing the applicant access to certain reports drawn up by the Centre for Information, Discussion and Exchange on Asylum, to certain reports of joint missions or reports of missions undertaken by Member States sent to the Centre, and to information contained in the list of persons responsible in the Member States for asylum applications to which access is permitted in certain Member States, with the exception of those persons' telephone and fax numbers;*

2. *Orders the Council to pay the applicant's costs and to bear its own costs.*

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(1) OJ C 316 of 4.11.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 January 2002

in Case T-237/00 Patrick Reynolds v European Parliament (1)

(Officials — Secondment in the interests of the service — Article 38 of the Staff Regulations Po — litical group — Early termination of secondment — Rights of the defence — Non-contractual liability of the Community)

(2002/C 109/90)

(Language of the case: French)

In Case T-237/00: Patrick Reynolds, an official of the European Parliament, residing in Brussels, represented by P. Legros and S. Rodrigues, lawyers, with an address for service in Luxembourg, against European Parliament (Agents: H. von Hertzen and D. Moore) — application for, first, annulment of the decision of 18 July 2000 of the Secretary-General of the Parliament terminating the applicant's secondment in the interests of the service to the political group 'Europe of Democracies and Diversities' and reinstating him in the directorate-General for Information and public Relations and, second, damages in respect of the harm sustained by the applicant as a result of the adoption of that decision by the defendant and of the acts of the political group and certain of its members — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; J. Plingers, administrator, for the Registrar, gave a judgment on 23 January 2002, in which it:

1. *Annuls the decision of 18 July 2000 of the Secretary-General of the Parliament terminating the applicant's secondment in the interests of the service to the political group EDD and reinstating him in the Directorate-General for Information and Public relations with effect from 15 July 2000;*

2. *Orders the Parliament to pay the applicant a sum corresponding to the difference between the remuneration which he should have received as an official on secondment in Grade A2, Step 1, and that which he received following his reinstatement in Grade LA5, Step 3, for the period 15 July 2000 to 30 November 2000, plus default interest at the rate of 5,25 % from the date on which the amounts making up the sum referred to in paragraph 149 were payable until the date of actual payment;*

3. *Declares the action for damages inadmissible in so far as the applicant seeks compensation for the harm caused by the conduct, not involving the taking of decisions, of the EDD group and certain of its members;*

4. *Orders the Parliament to pay the applicant the sum of 1 euro by way of symbolic damages for the non-pecuniary harm sustained as a result of the adoption of the contested decision;*

5. *Orders the Parliament to pay all the costs of the main proceedings;*

6. *Orders the parties to bear their own costs in the interlocutory proceedings.*

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(1) OJ C 302, 21.10.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 11 December 2001

in Case T-99/97: Willem Stols v Council of the European Union (1)

(Officials — Application for reclassification in grade — Objection of inadmissibility — Material new fact — Admissibility)

(2002/C 109/91)

(Language of the case: French)

In Case T-99/97: Willem Stols, an official of the Council of the European Union, residing at SE Halsteren (Netherlands),

represented by N. Lhoëst, lawyer, with an address for service in Luxembourg, v Council of the European Union (Agents: T. Blanchet and G. Ramos Ruano) — application for annulment of the Council's decision of 13 August 1996 rejecting the applicant's request for a review of his classification in grade — the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President; N.J. Forwood and H. Legal, Judges; H. Jung, Registrar, made an order on 11 December 2001, the operative part of which is as follows:

1. *The application is dismissed as inadmissible;*

2. *The parties are ordered to bear their own costs.*

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(1) OJ C 181 of 14.6.97.

ORDER OF THE COURT OF FIRST INSTANCE

of 11 December 2001

in Case T-20/01 Maria Concetta Cerafogli and Others v European Central Bank [1]

(Amendment of the Staff Rules of the European Central Bank — Action for annulment — Inadmissibility)

(2002/C 109/92)

(Language of the case: German)

In Case T-20/01, Maria Concetta Cerafogli, residing in Frankfurt (Federal Republic of Germany), Monika Esch-Leonhardt, residing in Frankfurt, Marco Luigi Fassetta, residing in Wiesbaden (Federal Republic of Germany), Tillmann Frommhold, residing in Karben (Federal Republic of Germany), Johannes Priesemann, residing in Frankfurt and Marc van de Velde, residing in Usingen (Federal Republic of Germany), represented by N. Pflüger, R. Steiner and S. Mittländer, lawyers, with an address for service in Luxembourg, supported by the Organisation of Employees in European and International Institutions in the Federal Republic of Germany (IPSO), represented by B. Karthaus, M. Roth and C. Roth, lawyers, with an address for service in Luxembourg, against European Central Bank (Agents: C. Ziliolo, M. López Torres and B. Wägenbaur) — application for the annulment and/or a declaration of inapplicability of Articles 7.2.0 and 8.1.0 of the Staff Rules, Administrative Circular 01/2000 concerning Travel Expenses, the gateway clause inserted into the applicants' employment contracts and the decision of the President of the ECB of 27 November 2000 rejecting the applicants' complaint, and for a declaration that the ECB was required to consult the personnel committee before adopting Administrative Circular No 01/2000 and that the defendant is not empowered unilaterally to introduce amendments to the terms and conditions of employment or Staff Rules into the contracts between the applicants and itself, nor to enforce such amendments, — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; Registrar: H. Jung, made an order on 11 December 2001, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

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

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(1) OJ 2001 C 108.

Action brought on 18 December 2001 by Huntstown Air Park Limited and Omega Aviation Services Limited against the Commission of the European Communities

(Case T-331/01)

(2002/C 109/93)

(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 18 December 2001 by Huntstown Air Park Limited and Omega Aviation Services Limited, represented by Mr James O'Reilly, SC and Mr Charles A Kelly, Solicitor of Douglas Kelly & Son, Swinford (Ireland).

The applicant claims that the Court should:

— annul the second indent of Part 6 of the Commission's Decision no C(2001)2967 of 5 October 2001 concerning State Aid NN 86/2001 — AER RIANTA — IRELAND;

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

Pleas in law and main arguments

The applicants are both part of the Omega group, which has a substantial interest in aviation and the provision of such services both within and without the European Community. The Omega group has the intention of constructing and operating a second terminal at Dublin airport which will provide direct competition to the present terminal operated by Aer Rianta, the Irish state-owned company that owns and operates Dublin, Cork and Shannon airports.

By letter dated 4 December 1998, the applicants lodged a complaint with the Commission concerning alleged State aid in favour of Aer Rianta. It was alleged that aid had been granted, in particular, by a transfer of assets from the Minister of Finance to Aer Rianta at a significant undervalue. On 5 October 2001, the Commission took a decision on the complaint. In the second indent of Part 6 of this decision, the Commission stated that the contested transfer of assets was not a grant of aid.

The applicants challenge the legality of this decision on three grounds:

— the Commission should have proceeded to open the formal investigation procedure pursuant to Article 4(4) of Regulation (EC) No 659/1999;

— the Commission misdirected itself as a matter of law in determining that the transfer of assets at an undervalue did not constitute State aid within the meaning of Article 87(1) EC Treaty;

— the Commission gave an inadequate statement of reasons contrary to the requirements of Article 253 EC Treaty.

Action brought on 14 January 2002 by Zapf Creation AG against the Office for Harmonisation in the Internal Market

(Case T-7/02)

(2002/C 109/94)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 14 January 2002 by Zapf Creation AG, represented by Mr Axel Kockläuner of Meissner, Bolte & Partner, Munich (Germany).

A further party to the proceedings before the Board of appeal was Jesmar S.A.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 17 October 2001 in Case R 1123/2000-1 relating to Opposition Proceedings no. B 68587 and Community trade mark application no. 50252 'Colette Zapf Creation'

Pleas in law and main arguments

Applicant for the Community trade mark:	Zapf Creation AG
The Community trade mark concerned:	The figurative mark 'Colette Zapf Creation' for certain goods in class 28
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Jesmar S.A.
Trade mark or sign asserted by way of opposition in the opposition proceedings:	The Spanish word mark 'Colette' for certain goods in class 28
Decision of the Opposition Division:	Rejection of the opposition by Jesmar S.A.
Decision of the Board of Appeal:	Admission of the appeal lodged by Jesmar S.A.
Grounds of claim:	Violation of Article 43, section 2, of Regulation 40/94 [1] since there was no satisfactory proof of the genuine use of the opposing trademark and violation of Article 8, Section 1 b) of Regulation 40/94 since there is no danger of confusion.

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

Action brought on 14 January 2002 by Zapf Creation AG against the Office for Harmonisation in the Internal Market

(Case T-8/02)

(2002/C 109/95)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 14 January 2002 by Zapf Creation AG, represented by Mr Axel Kockläuner of Meissner Bolte & Partner, Munich (Germany).

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 29 October 2001 in case R 418/2001-1 relating to Opposition Proceedings no. B 97230 and Community trade mark application no. 50229 'Colette Zapf Creation Kombi Collection'

Pleas in law and main arguments

Applicant for the Community trade mark:	Zapf Creation AG
The Community trade mark concerned:	The figurative mark 'Colette Zapf Creation Kombi Collection' for certain goods in class 28
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Jesmar S.A.
Trade mark or sign asserted by way of opposition in the opposition proceedings:	The Spanish word mark 'Colette' for certain goods in class 28
Decision of the Opposition Division:	Rejection of the opposition by Jesmar S.A.
Decision of the Board of Appeal:	Admission of the appeal lodged by Jesmar S.A.
Grounds of claim:	Violation of Article 43, Section 2 of Regulation 40/94 [1] since there was no satisfactory proof of the genuine use of the opposing trademark and violation of Article 8, Section 1 b) of Regulation 40/94 since there is no danger of confusion.

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

Action brought on 30 January 2002 by Agrofair Benelux BV, Volta River Estates Limited, SH Pratt & Co (Bananas) Ltd and M W Mack Limited against the Commission of the European Communities

(Case T-14/02)

(2002/C 109/96)

(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 30 January 2002 by Agrofair Benelux BV, Volta River Estates Limited, SH Pratt & Co (Bananas) Ltd and M W Mack Limited, represented by Mr Philippe Vlaemminck and Mr Pieter De Wael of Vlaemminck & Partners, Ghent (Belgium).

The applicant claims that the Court should:

— annul Article 1, third indent and Article 2(4) of Commission Regulation (EC) No 2294/2001 of 26 November 2001 fixing certain indicative quantities and individual ceilings for the issue of licences for imports of bananas into the Community for the first quarter of 2002 under the tariff quotas to the extent that the applicants can only import a maximum of 8 % of their annual allocation during the first quarter of 2002;

— order the Commission to pay the costs of the applicant companies in the present proceedings including the costs of the interim proceedings.

Pleas in law and main arguments

The applicants import organic, fair-trade and conventionally grown bananas into the European Union. They are all non-traditional importers of bananas who have requested and received a C quota for 2002. Because of Commission Regulation 2294/2001, the applicants are allowed to import during the first quarter of 2002 only 8 % of their quota, while the traditional C operators can import 26 % of their quota, and the traditional and non-traditional A and B operators 27 %.

According to the applicants, the Commission has misused its powers in that the Commission, by the contested Regulation, favours the traditional C operators. Following the agreement reached between the European Union and the United States, and the agreement with Ecuador to resolve the respective disputes over bananas, the banana regime in the European Union will be reformed in two stages. The second stage includes a reduction of the C quota by 100 000 tonnes. As a consequence of the contested Regulation, the burden of the decrease of the C quota will be imposed, according to the applicant, solely on the non-traditional importers. The applicant points out that if this limitation of 8 % is taken through the whole year, this leads to a reduction of the import under the C quota of approximately 100 000 tonnes.

Furthermore, the contested Regulation violates the principles of proportionality and non-discrimination. The non-traditional C operators are the only operators who can import only 8 % of their quota in the first quarter. This limitation discriminates, according to the applicant, between the traditional and non-traditional C operators in particular. The contested measure is also disproportionate, since the Commission places the burden of the decrease of the C quota solely on the non-traditional C operators. Instead the Commission could have spread this burden between the traditional and non-traditiona C operators. According to the applicant, it is also unlikely that the Commission will divide the remaining 92 % of the quota over the remainder of the year.

Finally, the applicants claim that there has been a violation of the principle of legitimate expectations and legal certainty. According to the applicants, the current 8 % allocation is a complete departure from the Commission's earlier practices where allocations of 26 to 28 % were given to the non-traditional C operators for the first quarter of the year. The applicants also claim that they could legitimately rely on the fact that the decrease of the C quota would be divided between the different traditional and non-traditional operators in a proportionate manner.

Action brought on 31 January 2002 by BASF AG against the Commission of the European Communities

(Case T-15/02)

(2002/C 109/97)

(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 31 January 2002 by BASF AG, represented by Mr Nicholas Levy, Dr John Temple Lang, Mr Robert O'Donoghue and Dr Christoph Feddersen of Cleary, Gottlieb, Steen & Hamilton, Brussels (Belgium).

The applicant claims that the Court should:

— annul or substantially reduce the fine imposed on BASF pursuant to Article 3(b) of the Decision;

— order the Commission to pay BASF's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

The present application concerns a Decision of the European Commission rendered on 21 November 2001, in case No. COMP/E-1/37.512-Vitamins. This Decision finds that a number of companies infringed Article 81 EC and Article 53 EEA by participating in a cartel that affected the global markets for vitamins A, E, B2, B5, C, D3 and Beta-carotene and carotinoids. The fines imposed on the companies involved were the highest ever in a competition law case.

In support of its claims, the applicant relies on and submits the following grounds and main arguments:

— Whilst the statements of objections stated that there was a single cartel, comprising collusive arrangements with regard to various vitamins, the contested Decision, in contrast, stated for the first time that the arrangements with regard to each vitamin constituted 'distinct' infringements of Community competition law. The Commission has thus breached the principle according to which a Decision cannot rely on legal or factual objections that are materially different from those contained in a statement of objections.

— The Commission's failure clearly to articulate in the statement of objections the basis upon which it proposed to fine BASF represents a legal error that prejudiced BASF's rights of defence. This statement of objections is general and vague as regards the elements relating to the calculation of the fine. On this point, the applicant also observes that the 'starting point' of its fine was arbitrary, disproportionate and contrary to the principle of equal treatment, and that the 100 % increase imposed upon it as a deterrent is unexplained, excessive and could not reasonably have been foreseen.

— The Commission erred in attributing to BASF the joint role of leader and instigator of the alleged cartel.

— The applicant satisfied all the conditions for an award of a greater reduction of its fine under Section B of the Leniency Notice. In any case, irrespective of this Leniency Notice, BASF's co-operation merits a greater reduction of its fine.

— The Commission's disclosure of BASF's fine to the media prior to the adoption of the contested Decision constitutes a material legal error.

Action brought on 5 February 2002 by Anita Jannice Österholm against the Commission of the European Communities

(Case T-18/02)

(2002/C 109/98)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 5 February 2002 by Anita Jannice Österholm, residing in Stockholm, represented by Juan Ramón Iturriagagoitia, lawyer.

The applicant claims that the Court should:

— annul the decision given by the Directorate-General for Personnel and Administration of the European Commission on 13 July 2001 concerning family allowances;

— annul the decision concerning family allowances taken in the form of Notice of Amendment No 3 on 13 July 2001 by the Directorate-General for Personnel and Administration of the European Commission;

— declare that the applicant and her stepdaughters are entitled to receive the family allowances suspended by the Commission's decision of 13 July 2001 together with default interest, pursuant to Article 67 of the Staff Regulations;

— order the European Commission to pay the sum of EUR 35 935 together with statutory interest by way of compensation for the material damage caused by its failure to give an express decision upholding the complaint lodged on 14 September 2001;

— order the European Commission to pay the sum of EUR 25 000 or such other amount, including any higher amount, as may be determined by the Court of First Instance by way of compensation for the non-material damage suffered, first, as a result of the failure to respond to the complaint lodged on 14 September 2001 and, second, the incorrect and fallacious information provided to the European School by the defendant;

— order the defendant to pay all the costs, including lawyers' fees, incurred as a result of the action brought pursuant to Article 90(1) of the Staff Regulations;

in the alternative:

— order the European Commission to pay the sum of EUR 235 340 together with statutory interest by way of compensation for the material damage caused by the invoicing of the school fees relating to the attendance at the European School of the applicant's stepdaughters.

Pleas in law and main arguments

The contested decision suspends the applicant's household allowance, dependent child allowance and education allowance. In support of her claim, the applicant pleads, first, an error of assessment of the facts and misuse of powers by the Commission. In the applicant's view, she fulfils all the conditions for entitlement to the household allowance, dependent child allowance and education allowance as laid down in Article 67 of the Staff Regulations and Annex VII thereto, and has also provided the Commission with all the evidence necessary for the grant of those allowances.

In addition, the applicant pleads a failure to provide a statement of reasons and infringement of the rights of defence, as well as non-compliance with the principles of sound administration and with the duty to have regard for the welfare and interests of officials. Lastly, according to the applicant, there has been an infringement of the Charter of Fundamental Rights, inasmuch as the Commission did not adopt a decision within a reasonable time.

Action brought on 25 January 2002 by Albert Albrecht GmbH + Co. KG and 17 others against the Commission of the European Communities and the European Agency for the Evaluation of Medicinal Products

(Case T-19/02)

(2002/C 109/99)

(Language of the case: English)

An action against the Commission of the European Communities and the European Agency for the Evaluation of Medicinal Products was brought before the Court of First Instance of the European Communities on 25 January 2002 by Albert Albrecht GmbH + Co. KG and 17 others, represented by Mr Dirk Brinckman and Mr Denis Waelbroeck of Liedekerke Siméon Wessing Houthoff, Brussels (Belgium).

The applicant claims that the Court should:

— annul the contested Decisions requesting the applicants to submit data under the referral procedure of Article 20 of Directive 81/851 and requesting them each to pay the sum of 10 000 Euro;

— alternatively, declare the contested Decisions null and void;

— declare the Notice to Applicants illegal in so far as any of its provisions could be read as implying that the referral procedure under Article 20 is applicable to marketing authorisations issued under national law;

— order the defendants to bear the costs.

Pleas in law and main arguments

The applicants in the present case are all companies holding a national marketing authorisation issued by national competent authorities for a veterinary medicinal product containing the pharmacologically active substance benzathine penicillin. That substance is a general antibiotic used in veterinary injectable medicinal products for food producing animals.

The application is lodged against the decisions of the European Agency for the Evaluation of Medicinal Products (EMEA) of 15 November 2001, requesting the applicants, on the basis of Article 20 of the Directive 81/851 [1], to reply to questions put by the Committee for Veterinary Medicinal Products (CVMP) regarding medicinal products containing benzathine penicillin by 25 March 2002 in the framework of a referral procedure initiated by the Irish authorities and each to pay a fee of 10 000 Euro to the EMEA.

In support of their conclusions, the applicants submit that:

— The contested decision infringes Article 20 of Directive 81/851, which is only applicable in the framework of the mutual recognition procedure and not to strictly national marketing authorisations.

— As the Directives are addressed only to Member States and are therefore not able to impose obligations directly on individuals, the Decision in question should be annulled, as Article 20 of the Directive 81/851 cannot constitute a legal basis upon which to oblige the Applicants to comply. The EMEA cannot therefore oblige the applicants to pay an arbitration fee of 10 000 Euro.

— Even if were to be accepted that the arbitration procedure under Article 20 could be applied to veterinary medicinal products authorised under purely national authorisation procedures, which is not the case, the procedure can in any event only affect on the marketing authorisation that is directly affected by the referral. Moreover, it should follow from the very wording of Article 20 that it is only the person responsible for placing the veterinary medicinal product concerned on the market who is bound to forward to the CVMP all available information relating to the matter in question. The procedure under Article 20 should not permit holders of national authorisations of different medicinal products to be compelled to submit data.

— The arbitration procedure could apply in the absence of a mutual recognition procedure, which is not the case: at most it allows information to be requested from the holder of the national marketing authorisation whose product is directly concerned by the referral procedure.

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[1] Council Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products (OJ L 317, 6.11.1981, p. 1).

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

(Case T-20/02)

(2002/C 109/100)

(Language of the case: to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application has been drafted: 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 Interquell GmbH, of Wehringen (Germany), represented by G.J. Hodapp, lawyer. A further party to the proceedings before the Board of Appeal was SCA Nutrition Ltd, of Lichfield (United Kingdom).

The applicant claims that the Court should:

— annul Decision R 264/2002-2 adopted on 27 November 2001 by the Second Board of Appeal of the Office for Harmonisation in the Internal Market;

— order the Office to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	the applicant
The Community trade mark applied for:	the pictorial mark 'HAPPY DOG' for goods in Class 31 (feedingstuffs for dogs) — application No 290577
Proprietor of the trade-mark right opposed in the opposition proceedings:	SCA Nutrition Ltd
Trade-mark right opposed:	the United Kingdom verbal and pictorial marks 'HAPPIDOG' for goods in Class 31 (feedingstuffs for dogs)
Decision of the Opposition Division:	rejection of the trade mark application
Decision of the Board of Appeal:	rejection of the applicant's appeal
Grounds of claim:	— incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 [1];
	— infringement of Regulation (EC) No 40/94 on account of failure to comply with Article 12 thereof.

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

Action brought on 7 February 2002 by Sumitomo Chemical Co., Ltd against the Commission of the European Communities

(Case T-22/02)

(2002/C 109/101)

(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 7 February 2002 by Sumitomo Chemical Co., Ltd, represented by Mr Martin Klusmann and Ms Vanessa Turner of Freshfields Bruckhaus Deringer, Düsseldorf (Germany).

The applicant claims that the Court should:

— annul the defendant's Decision C(2001)3695-final of 21 November 2001 in Case No. COMP/E-1/37.512 — Vitamins as far as Sumitomo Chemical Company is concerned

— order the defendant to pay the costs.

Pleas in law and main arguments

The contested Decision in the present case is the same as in case T-15/02 BASF/Commission [1].

In support of its conclusions, the applicant submits that:

— The Commission was time-barred from taking the prohibition Decision. Contrary to the defendant's view that the rules on limitation periods have no bearing on the

entitlement of the defendant to investigate cartel cases and to adopt prohibition Decisions, the rules on limitation in Regulation No. 2988/74 [2] should be considered applicable to declaratory prohibition decisions.

— The adoption of a prohibition decision is time-barred under general principles of Community Law. It is stated in this regard that where there is no doubt that the alleged conduct was terminated more than five years before an investigation was opened, there is no need and no justification for a declaratory decision, because there is no place for a cease and desist order, as contained in Article 2 of the contested Decision, or any other form of penalty to be imposed on the applicant by the defendant. Alternatively, the rationale for limitation periods in the European Union is that after a certain period of time it is in the interest of the proper functioning of the legal system that infringements of the law should no longer be investigated or lead to any form of 'punishment' of the party concerned.

— The defendant was not competent within the meaning of the second paragraph of Article 230 EC to adopt the contested Decision, as it thereby exceeded its powers under the Treaty and Regulation No. 17/62. The defendant is not empowered by Article 3 of Regulation No. 17, or by any other provision, to adopt a declaratory decision where the infringement has already been terminated outside the limitation period provided for in Article 1 of Regulation No. 2988/74.

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(1) Notice not yet published in the OJ.

(2) Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of actions under the rules of the European Economic Community relating to transport and competition (OJ L 319, 29.11.1974, p. 1).

Action brought on 7 February 2002 by Sumika Fine Chemicals Co. Ltd. against the Commission of the European Communities

(Case T-23/02)

(2002/C 109/102)

(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 7 February 2002 by Sumika Fine Chemicals Co. Ltd., represented by Mr. Martin Klusmann and Ms Vanessa Turner of Freshfields Bruckhaus Deringer, Düsseldorf (Germany).

The applicant claims that the Court should:

— annul the Defendant's Decision C(2001)3695 final of 21 November 2001 in Case No. COMP/E-1/37.512 — Vitamins, so far as Sumika Fine Chemicals Co. Ltd. is concerned;

— order the Defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied upon in Case T-22/02 (Sumitomo Chemical/Commission, not yet published in the OJ).

Action brought on 7 February 2002 by Maddalena Lebedef-Caponi against the Commission of the European Communities

(Case T-24/02)

(2002/C 109/103)

(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 7 February 2002 by Maddalena Lebedef-Caponi, residing at Senningerberg (Grand Duchy of Luxembourg), represented by Gilles Bounéou, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the express decision No 40263 of 6 November 2001 by which the appointing authority replied to the applicant's complaint No 334/01 of 18 July 2001 by fixing the compensation for the non-material damage suffered by her in the sum of 1 500 euros;

— award the applicant the sum of BEF 800 000, assessed as amounting now to the sum of BEF 1 000 000, by way of compensation for the non-material damage suffered as a result of the lateness in drawing up her staff report (placed belatedly in her personal file) for the period 1993-1995 and the lateness in drawing up her staff reports for the periods 1995-1997 and 1997-1999;

— order the defendant to pay the costs, expenses and fees.

Pleas in law and main arguments

The applicant claims that she has suffered non-material damage on account of a breach of the principle of sound administration and failure to act in good faith and to fulfil the duty of cooperation as regards the drawing up of her consecutive staff reports. In addition, according to the applicant, those faults have been repeated time and again and testify to a vexatious attitude.

Action brought on 4 February 2002 by First Data Corporation, FDR Limited and First Data Merchant Services Corporation against the Commission of the European Communities

(Case T-28/02)

(2002/C 109/104)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 February 2002 by First Data Corporation, FDR Limited and First Data Merchant Services Corporation, represented by Mr Pierre Bos and Mr Morten Nissen of Dorsey & Whitney LLP, Brussels (Belgium).

The applicants claim 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) as regards Article 1, fifth indent;

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

Pleas in law and main arguments

The applicants contest the Decision of the Commission that the 'no-acquiring-without-issuing rule' of the Visa Corporation is not an appreciable restriction on trade and therefore falls outside the scope of Article 81(1) of the EC Treaty and Article 53 of the EEA Agreement. This rule requires that a company that wishes to acquire merchants, i.e. process payments made with a credit card by customers at those merchants' businesses, must first issue a certain number of credit cards to customers. The applicants specialise in acquiring activities.

According to the applicants, the contested decision violates the EC Treaty and the EEA Agreement.

Firstly, the applicants state that the decision lacks adequate reasoning on why the rule in question does not constitute a significant barrier to trade.

The applicants also claim that the Commission erred in law when substituting reasoning under Article 81(3) EC Treaty for reasoning under Article 81(1) EC Treaty. According to the applicants, the pro-competitive and anti-competitive effects of a restriction on competition can only be assessed under Article 81(3) EC Treaty. In the contested Decision, however, the Commission seems to argue that the rule in question falls outside the scope of Article 81(1) EC Treaty since its benefits outweigh the restriction on competition. This type of reasoning can, according to the applicants, only be applied under Article 81(3) EC Treaty.

Finally, the applicants claim that the rule in question does restrict competition. The consequence of the rule is that, in order to start acquiring activities, a company must first build up banking activities to be able to issue cards to customers. This is, according to the applicants, a barrier to entry into the market of acquiring activities. Furthermore, the applicants point out that the application of this rule is unclear, since the number of cards to be issued is dependent on undefined criteria. According to the applicants, the Commission should have conducted an investigation on whether this rule is applied in a uniform and non-discriminatory way.

Action brought on 13 February 2002 by Wolfgang Leonhardt against the European Parliament

(Case T-30/02)

(2002/C 109/105)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 13 February 2002 by Wolfgang Leonhardt, residing in La Hulpe (Belgium), represented by H. Tagaras, avocat.

The applicant claims that the Court of First Instance should:

— Annul the defendant's decision of 11 June 2001 to reset at zero the applicant's tally of promotion points after his promotion in 2000;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant objects to the decision of the European Parliament to reset at zero the applicant's stock of promotion points following his promotion in 2000, thereby preventing the applicant from carrying over to his new grade the promotion points that he acquired over and above the relevant threshold for promotion.

The resetting at zero is the result of a transitional scheme prior to the implementation of a new promotion system in the European Parliament. Under that transitional scheme the tally of promotion points is automatically reset at zero following a promotion, whereas the definitive scheme provides that promotion points acquired over and above the relevant threshold are carried over to the new grade.

According to the applicant, the contested decision infringes Article 45 of the Staff Regulations as well as the principle prohibiting discrimination.

Action brought on 15 February 2002 by Japan Tobacco, Inc. and JT International S.A. against the Commission of the European Communities

(Case T-31/02)

(2002/C 109/106)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 February 2002 by Japan Tobacco, Inc. and JT International S.A., represented by Mr Onno W. Brouwer and Mr Paul Lomas of Freshfields Bruckhaus Deringer, London (United Kingdom).

The applicant claims that the Court should:

— annul the decisions taken by the Commission in relation to commencing proceedings before the United States District Court for the Eastern District of New York, with Docket Number CV-02-0164, on 9 January 2002, in the name of the European Community against the applicants;

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

Pleas in law and main arguments

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

The grounds and arguments are similar to those arising in Case T-260/01 [2].

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[1] The decision to commence the first proceedings is being contested in Case T-379/00 (OJ C 79 of 10..3.2001) and the decision to commence the second proceedings in Cases T-260/01 and T-272/01 (OJ C 3 of 5.1.2002, p. 39 and p. 45).

[2] OJ C 3 of 5.1.2002, p. 39.

Action brought on 14 February 2002 by José Cuenda Guijarro against the Council of the European Union

(Case T-32/02)

(2002/C 109/107)

(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 14 February 2002 by José Cuenda Guijarro, residing in Brussels, represented by Jean-Noël Louis, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Council's decision refusing to allow the applicant access to his medical file;

— order the Council to pay the costs.

Pleas in law and main arguments

According to the applicant, the documents contained in an official's medical file are directly connected with his administrative and legal situation and must therefore be included in his personal file, whilst observing the guarantees provided for in Article 26 of the Staff Regulations, in particular the right of access to those documents. The applicant disputes the assertion that the possibility of consulting his medical file through the intermediary of his doctor constitutes adequate access to the documents or a necessary measure in accordance with the principle of medical confidentiality. He maintains that he must be given the chance to consult in person any document in his medical file.

Action brought on 21 February 2002 by Britannia Alloys and Chemicals Limited against the Commission of the European Communities

(Case T-33/02)

(2002/C 109/108)

(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 February 2002 by Britannia Alloys and Chemicals Limited, represented by Ms Samantha Mobley and Ms Helen Bardell of Baker & McKenzie, London (United Kingdom).

The applicant claims that the Court should:

— annul Article 3 of the Commission Decision of 12 December 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/37.027 — Zinc Phosphate) insofar as it pertains to the applicant;

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

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

Pleas in law and main arguments

The applicant contests the above-mentioned Decision in which the Commission found that the applicant and five other undertakings had infringed the provisions of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by participating in continuing agreement and/or concerted practices in the zinc phosphate sector. A fine of EUR 3.37 million was imposed on the applicant following a reduction of 10 % of the fine pursuant to Section D(2) of the Leniency Notice.

The applicant submits that the Commission infringed Article 15(2) of Regulation No. 17/62 by referring in the Decision to the applicant's turnover for the business year ending 30 June 1996 when applying the limit fixed at 10 % of turnover, instead of referring to its business year preceding the adoption of the Decision, and by thus determining that a fine of EUR 3.75 million did not exceed the upper limit of the fine that could be imposed. By referring to a business year other than the business year preceding the Decision for the mentioned calculation, the Commission departed from its previous practice and thus infringed the general principle of equal treatment.

The applicant alleges that by referring to the last entire year of 'normal economic activity' instead of the business year preceding the Decision, the Decision discriminated between undertakings in essentially the same situation and thus breached the general principle of equal treatment. It also breached the general principle of proportionality by imposing a fine on the applicant which does not reflect the applicant's financial standing at the time of the Decision.

Furthermore, the applicant submits that, insofar as the Decision relates to the applicant, the Commission infringed the general principle of legal certainty by referring to a business year other than the financial year preceding the Decision for the purposes of calculating the limit fixed at 10 % of turnover. Such a way of proceeding makes it impossible for undertakings to predict the way in which penalties might be imposed on them with sufficient certainty. In accordance with the above-mentioned principle, Article 15(2) of Regulation No. 17/62 must be interpreted strictly so that the 10 % limit is always applied to the business year immediately prior to the adoption of the Decision.

Action brought on 20 February 2002 by EURL Le Levant 001 and Others against the Commission of the European Communities

(Case T-34/02)

(2002/C 109/109)

(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 20 February 2002 by the company EURL Le Levant 001 and Others, represented by Pierre Kirch, lawyer, with an address for service in Luxembourg.

The applicants claim that the Court should:

— annul the Commission's decision of 25 July 2001 on the State aid implemented by France in the form of development assistance for the cruise vessel 'Le Levant', built by Alstom Leroux Naval for operation in Saint-Pierre-et-Miquelon (State aid C 74/99 — France), published in OJ L 327 of 12 December 2001, p. 37;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants in this case are one-man undertakings with limited liability and the persons who formed those undertakings. Those persons have invested, through a one-man limited liability undertaking (EURL), in the vessel 'Le Levant'. The investment could be inferred from their taxable income, in accordance with the French 'Loi Pons' ([1]). The applicants are contesting the Commission's decision declaring those companies to be recipients of State aid in consequence of the construction of the vessel 'Le Levant'.

In support of their action, the applicants assert that the Commission has exceeded its powers by adopting a decision the effect of which is to require a Member State to recover from private individuals, and not from undertakings within the meaning of Community law, the amount of the State aid.

The applicants further maintain that the Commission has infringed their rights of defence and their right to a fair hearing, by not allowing them effectively to submit their observations prior to the adoption of the decision.

Next, the applicants deny that they are undertakings within the meaning of Article 87(1) of the EC Treaty. In the applicants' view, they are merely private investors who have made a financial investment exclusively in order to benefit from a tax break. The applicants also maintain that the Commission has infringed Council Directive 90/684/EEC on aid to shipbuilding. They submit that Article 4(7) of that directive can apply only to shipyards or ship operators, and in no circumstances to private investors.

In addition, the applicants plead infringement of the principles of the protection of legitimate expectations and legal certainty and failure to comply with the obligation to provide a statement of reasons. Moreover, by ordering the recovery of the alleged aid when that is contrary to the abovementioned general principles of law, the Commission has infringed Article 14 of Council Regulation No 659/1999 ([2]).

According to the applicants, the contested decision also contains manifest errors of assessment and is based on material inaccuracies.

In addition, the applicants plead infringement of Article 153(2) of the EC Treaty, in that the Commission does not take into account the interests of the applicants, who are consumers of financial services. Lastly, they claim that the Commission has infringed Article 2 of Regulation No 69/2001 ([3]) by failing to apply the *de minimis* rule.

([1]) Rectifying Finance Law No 86-824 of 11 July 1986, published in JORF (Official Journal of the French Republic) of 12 July 1986, p. 8688.

([2]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83 of 27.3.1999, p. 1).

([3]) Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (OJ L 10 of 13.1.2001, p. 30).

Action brought on 13 February 2002 by ALITALIA against the Commission of the European Communities

(Case T-35/02)

(2002/C 109/110)

(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 13 February 2002 by ALITALIA, represented by Guido Alpa, Mario Siragusa, Gian Michele Roberti, Giuseppe Scassellati and Francesca Maria Moretti, lawyers.

The applicant claims that the Court should:

— order the Commission to pay compensation for the damage, to be quantified or in such sum as the Court shall think fit, caused to Alitalia by the first decision and the conditions imposed thereby and by the fact of that measure having been reproduced by means of the second decision;

— order the Commission to pay interest on the amount referred to above for the period up to the date of payment;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, Alitalia, the same applicant as in Cases T-296/97 [1] and T-301/01 [2], is seeking an order requiring the defendant to pay compensation for the damage allegedly caused by Commission Decision 97/789/EC of 15 July 1997 concerning the recapitalisation of the applicant company and by the conditions imposed thereby, which it claims to have been reproduced, following the annulment of that first decision by the judgment of the Court of First Instance of 12 July 2000 in the abovementioned Case T-296/97, by Decision 2001/723/EC of 18 July 2001.

The pleas of illegality are the same as those advanced in the abovementioned cases.

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[1] Judgment of the Court of First Instance of 12 December 2000 in Case T-296/97 Alitalia v Commission [2000] ECR II-3871.

[2] Case T-301/01 Alitalia v Commission (OJ C 44 of 16.2.2002, p. 24).

Action brought on 21 February 2002 by Banca Sanpaolo IMI spa against the Commission of the European Communities

(Case T-37/02)

(2002/C 109/111)

(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 Banca Sanpaolo IMI spa, 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 pleas in law and main arguments are the same as those put forward in Case T-36/02 ABI v Commission.

Action brought on 21 February 2002 by Banca Intesabci Spa against the Commission of the European Communities

(Case T-39/02)

(2002/C 109/112)

(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 Banca Intesabci Spa, represented by Alberto Santa Maria, Claudio Biscaretti di Ruffia, Giuseppe Pizzonia and Marcello Valenti, lawyers.

The applicant claims that the Court should:

(1) 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 88 and with Council Regulation No 659/1999;

(2) 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;

(3) 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, exempt the private beneficiaries of such aid from having to reimburse the same and, in any event, rule that the contested decision of the Commission cannot have any retroactive effect, thus annulling certain parts of the contested decision on the grounds that the Commission failed to exercise its investigatory power in a reasonable way and/or failed to give sufficient reasons, alternatively infringed the principles of the protection of legitimate expectations and/or proportionality and/or legal certainty within the meaning of Article 14 of Regulation No 659/1999.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-36/02 ABI v Commission.

Action brought on 21 February 2002 by Banca di Roma spa against the Commission of the European Communities

(Case T-40/02)

(2002/C 109/113)

(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 Banca di Roma spa, represented by Franco Gallo and Gabriele Escalar, lawyers.

The applicant claims that the Court should:

— primarily, annul the decision of the Commission of the European Communities which is contested in these proceedings;

— alternatively, annul the decision of the Commission of the European Communities which is contested in these proceedings in so far as it requires Italy to 'adopt all necessary measures to recover the aid granted from the recipients thereof';

— order the defendant to pay the costs of these proceedings and all other consequential expenses.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-36/02 ABI v Commission.

Action brought on 21 February 2002 by Mediocredito Centrale spa against the Commission of the European Communities

(Case T-41/02)

(2002/C 109/114)

(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 Mediocredito Centrale spa, represented by Franco Gallo and Gabriele Escalar, lawyers.

The applicant claims that the Court should:

— primarily, annul the decision of the Commission of the European Communities which is contested in these proceedings;

— alternatively, annul the decision of the Commission of the European Communities which is contested in these proceedings in so far as it requires Italy to 'adopt all necessary measures to recover the aid granted from the recipients thereof';

— order the defendant to pay the costs of these proceedings and all other consequential expenses.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-36/02 ABI v Commission.

Action brought on 21 February 2002 by Banca Monte dei Paschi di Siena Spa against the Commission of the European Communities

(Case T-42/02)

(2002/C 109/115)

(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 Banca Monte dei Paschi di Siena Spa, represented by Cristoforo Osti, Giuseppe Pizzonia, Alessandra Prastaro and Marcello Valenti, lawyers.

The applicant claims that the Court should:

— Primarily:

— (1) annul the decision of the Commission of the European Communities of 11 December 2001;

(2) order the Commission to pay the costs.

— Alternatively:

(1) annul Article 1 of the contested decision, inasmuch as it holds Article 24(1) of the 'Legge Ciampi' to be incompatible with the common market;

(2) annul Article 4 of the contested decision, ordering the recovery of the aid granted together with interest from the date on which the aid became available;

— In the further alternative:

annul the contested decision in so far as it provides that, in addition to the amount of the aid to be recovered, interest is to be paid, at least that interest which accrued prior to the demand for reimbursement, and in any event the interest prescribed.

— In any event:

make all further consequential orders or such further orders as it shall consider appropriate or legally necessary.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-36/02 ABI v Commission.

Action brought on 26 February 2002 by Dresdner Bank AG against the Commission of the European Communities

(Case T-44/02)

(2002/C 109/116)

(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 26 February 2002 by Dresdner Bank AG, of Frankfurt am Main (Germany), represented by M. Hirsch and W. Bosch, lawyers.

The applicant claims that the Court should:

— annul the decision of 11 December 2001 in Case COMP/E-1/37.919 — Bank charges for currency exchange within the Euro zone: Germany (Dresdner Bank AG) pursuant to the first paragraph of Article 231 EC, alternatively cancel the fine imposed on Dresdner Bank AG by Article 3 of that decision;

— order the Commission to pay the costs of Dresdner Bank AG pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

By the contested decision, the Commission imposed a fine of EUR 28 million on the applicant for infringement of Article 81(1) EC. In that decision, the Commission found that agreements had been concluded between various German banks, including the applicant, concerning the type and amount of bank charges, the agreements in question having been aimed, during the transitional period, at fixing the way in which charges were to be made for exchanging bank notes in the currencies of the countries taking part in monetary union, in the form of a percentage, together with a target price of around 3 %.

The applicant denies that it took part in an agreement contrary to Article 81(1) EC. It maintains that the evidence produced by the Commission in that regard is insufficient. In addition, the Commission failed to show the effects of the alleged agreement on trade between Member States.

The Commission wrongly assumed that there was an ongoing infringement. The calculation of the fine is wrong, because the Commission did not carry out any assessment of the applicant's individual conduct.

In the course of the procedure, the Commission infringed the applicant's rights of defence, inasmuch as it refused to allow the applicant to have sight of the files relating to the circumstances resulting in the decision to discontinue the procedure against other banks and did not, in the contested decision, examine the statements made by the applicant in its response to the main points raised in the complaint and in the oral hearing.

The imposition of a fine on the applicant exceeds the Commission's discretionary power and discriminates against the applicant by comparison with those entities who were the subject of the complaint and on whom it was decided not to impose a fine. The Commission should likewise have decided to discontinue the procedure as against the applicant.

Action brought on 27 February 2002 by Manfred Danzer and Hannelore Danzer against the Council of the European Union

(Case T-47/02)

(2002/C 109/117)

(Language of the case: German)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 27 February 2002 by Manfred Danzer and Hannelore Danzer, Linz (Austrian Republic), represented by J. Hintermayr, M. Krüger, F. Haunschmidt, G. Minichmayr and P. Burgstaller.

The applicants claim that the Court should:

— order the defendant to pay EUR 1852721 to the applicants' legal representatives within 14 days and declare Article 2(1)(f) of Council Directive 68/151/EEC of 9 March 1968 [1] and Article 47 of Council Directive 78/660/EEC of 25 July 1978 [2]. to be contrary to European Community law;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicants are managing directors of various Austrian companies. They claim that the obligation to disclose the annual accounts of companies limited by shares and equivalent partnerships is incompatible with primary Community law, the fundamental rights guaranteed by the Community and the case-law of the Court of Justice of the European Communities. On those grounds the applicants have to date refused to disclose the annual accounts in the requisite form for the companies for which they are responsible. By the time this action was brought fines of EUR 1 852 721 had been imposed on the applicants.

The applicants submit that the disclosure required by the directives in question entails the disclosure of confidential business information which is contrary to EC competition law and the general principle of the protection of business and trade secrets. The publication of important and confidential business data is also disproportionate and inadmissible in the light of Article 287 EC.

The applicants argue, further, that Article 2(1)(f) of Directive 68/151/EEC and Article 47 of Directive 78/660/EEC have no basis in Article 44(2)(g) EC nor are they the type of provision which is properly covered by a 'directive' within the meaning of Article 249 EC. The provisions do not harmonise existing law but 'create' new law. Moreover, they are contrary to the principle of proportionality and breach the Austrian data protection law, the fundamental right to property, the fundamental right to freedom of economic activity and the protection of private tax matters.

Finally, the applicants submit that the objectives of the Council in the directives cited are not covered by Community law and are therefore a direct cause of the refusal to disclose the accounts, and that the causal link between the objectives of the directive and the damage caused and anticipated is thus clear.

(1) First Council Directive 68/151/EEC of 9 March 1968 on coordination 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).

(2) 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).

Action brought on 27 February 2002 by Brouwerij Haacht N.V. against the Commission of the European Communities

(Case T-48/02)

(2002/C 109/118)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 February 2002 by Brouwerij Haacht N.V., established at Boortmeerbeek (Belgium), represented by Yves van Gerven, Frédéric Louis and Hendrik Viane, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Article 4 of the decision in issue, in so far as it concerns Brouwerij Haacht N.V. and, in so far as may be necessary, order that no fine be imposed on Brouwerij Haacht N.V. or substantially reduce the fine;

— order the Commission to pay the costs in any event.

Pleas in law and main arguments

The action is directed against the decision in so far as it imposes a fine on the applicant in consequence of the private label cartel on the Belgian beer market.

The applicant claims that the Commission has failed to comply with the obligation to provide a statement of reasons as prescribed by Article 253 of the EC Treaty, and with the guidelines for the calculation of fines. According to the applicant, the Commission, in determining the actual economic power of the parties concerned, failed to define the relevant market. It maintains that the decision does not make it clear whether the relevant market is the private label market or the beer market in general. Moreover, the Commission over-estimated the economic power of the applicant in the market for private label beer, if and in so far as it is that market which is to be regarded as the relevant market. The applicant further argues that the Commission wrongly characterised the role played by the applicant in the cartel in question as an active role. According to the applicant, its role must be regarded as having been purely passive, or at least as less active.

Lastly, the applicant pleads infringement of the Notice on Cooperation and of the principle of equal treatment. According to the applicant, the Commission failed to take sufficient account of the significance of the applicant's statements proving the infringement of the rules. The Commission consequently treated similar situations in a dissimilar way, by not applying the same reduction in the fine where there was a comparable level of cooperation. Moreover, the Commission treated dissimilar situations in a similar way, by applying the same reduction in the fines imposed on the applicant and on parties who cooperated less, or not at all, in the Commission's investigation.

Action brought on 26 February 2002 by Brasserie Nationale against the Commission of the European Communities

(Case T-49/02)

(2002/C 109/119)

(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 26 February 2002 by Brasserie Nationale, established at Bascharage (Luxembourg), represented by Alexandre Carnelutti and Jean-Louis Schiltz, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Article 1 of the Commission's decision of 5 December 2001 in Case COMP/37800/F3 — Brasseries Luxem-

bourgeoises, in so far as it finds that the applicant has infringed Article 81(1) of the Treaty;

— in any event, annul Article 2 of the decision in so far as it imposes a fine on the applicant, alternatively, reduce that fine substantially;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present application is directed against the Commission's decision establishing the existence of a cartel set up by an agreement signed on 8 October 1985 between five Luxembourg breweries, including the applicant, with a view to ensuring observance of exclusivity clauses, known as 'beer clauses', which are characteristic of contracts concluded between brewers and operators in the hotels/restaurants/cafés (HORECA) sector, both in Luxembourg and throughout the Community. The object of that agreement was allegedly to enable the parties thereto to retain their respective customers in the Luxembourg HORECA sector and to prevent foreign brewers from penetrating that sector.

In support of its claims, the applicant puts forward the following pleas in law:

— The Commission committed an error of law by omitting, and refusing to consider itself obliged, to take account of the economic context of which the agreement formed part when carrying out its assessment of all of the clauses examined by it, and thus of the purpose of the agreement in question.

— The Commission committed an error in its analysis of the scope of the said agreement, by finding that it applied in the absence of a supply contract or beer clause, and thus committed an error of assessment, inasmuch as it based its negative assessment of the agreement on that presumed scope.

— The Commission committed an error of assessment in characterising the agreement as an agreement by the contracting parties to retain their respective customers. In actual fact, its central and sole purpose was to ensure observance of the contractual exclusivity agreed to between retailers and brewers. The agreement in question was therefore intended solely to constitute a legitimate instrument of horizontal cooperation aimed at guaranteeing compliance with a decisive element affecting the economy, development and fair competition in that sector.

— The Commission committed an error of fact in taking the view that the purpose of the agreement was to prevent penetration of the market by foreign brewers and that it significantly affected competition.

The applicant stresses that the agreement was concluded on account of an abnormal risk situation created by a situation under national law in which fair competition was directly threatened. Consequently, limited cooperation between brewers, proportionate to the objective pursued, became the only way of ensuring that the 'beer clauses' were safeguarded.

As regards the amount of the fines, the applicant pleads infringement of Article 15(2) of Regulation No 17 and non-compliance with the obligation to provide a statement of reasons.

Action brought on 26 February 2002 by Brasserie Battin against the Commission of the European Communities

(Case T-51/02)

(2002/C 109/120)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 February 2002 by Brasserie Battin, established at Esch sur Alzette (Luxembourg), represented by Alexandre Carnelutti and Marie Santini, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Article 1 of the Commission's decision of 5 December 2001 in Case COMP/37800/F3 — Brasseries Luxembourgeoises, in so far as it finds that the applicant has infringed Article 81(1) of the Treaty;

— in any event, annul Article 2 of the decision in so far as it imposes a fine on the applicant, or alternatively reduce that fine substantially;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case T-49/02.

Action brought on 27 February 2002 by Société Nouvelle des Couleurs Zinciques S.A. against the Commission of the European Communities

(Case T-52/02)

(2002/C 109/121)

(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 27 February 2002 by Société Nouvelle des Couleurs Zinciques S.A., established at Bouchain (France), represented by Robert Saint-Esteben and Hugues Calvet, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— principally, annul Article 3 of the Commission's decision of 11 December 2001, in so far as that article imposes a fine of 1,53 million euros on the applicant;

— alternatively, reduce the amount of that fine very substantially;

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision contested in the present case is the same as that in Case T-33/02 Britannia Alloys & Chemicals v Commission. The pleas in law and main arguments put forward by the applicant are similar to those advanced in Case T-33/02.

According to the applicant, the arbitrary fixing of a basic amount far in excess of the legal maximum is contrary to Article 15(2) of Regulation No 17/62, inasmuch as it prevents the duration of the infringement and the aggravating and mitigating factors from being taken into account. In addition, the decision forming the subject-matter of the dispute disregards the principle of proportionality, given the allegedly totally disproportionate nature of the fine at issue, especially in relation to that imposed on other undertakings in this and other recent cases, and as regards the taking into account of the legal maximum applicable to the fine itself.

Lastly, the applicant pleads infringement of the principle of non-discrimination.

Action brought on 28 February 2002 by Bayerische Hypo- und Vereinsbank AG against the Commission of the European Communities

(Case T-56/02)

(2002/C 109/122)

(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 Bayerische Hypo- und Vereinsbank AG, of Munich (Germany), represented by W. Knapp, T. Müller-Ibold and B. Bergmann, lawyers.

The applicant claims that the Court should:

— annul the Commission's decision C(2001) 3693 final 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 concerns the applicant;

— alternatively, cancel or, in the further alternative, reduce the fine of 28 000 000 euros imposed on the applicant;

— order the Commission to pay the costs.

Pleas in law and main arguments

The alleged cartel never existed. It is apparent from the information provided by those who attended the meeting of foreign exchange dealers on 15 October 1997 that, during the course of that meeting, the discussions concerned technical aspects of inter-bank trading in foreign currencies and structuring possibilities regarding pricing in retail foreign exchange trading. The meeting did not involve the conclusion of any anti-competitive agreement.

The applicant did not take part in the meeting on 15 October 1997. The employee of the applicant who was sent an invitation to attend that meeting was not granted permission by his superior to take part in it. An employee of the Vereins- und Westbank, in which the applicant has a majority shareholding, had been the only person attending on the applicant's behalf. The Vereins- und Westbank conducts itself in the market quite independently of the applicant, and the links between the two banks from the standpoint of company law cannot therefore constitute the basis for any presumption concerning the attendance by an employee of that bank at the meeting complained of.

In assessing the amount of the fine, the Commission manifestly departed from its own guidelines and infringed the requirement of equal treatment.

Neither in the communication concerning the heads of complaint nor in the context of the hearing before the official nominated to conduct the same was there any suggestion that the applicant itself had taken part in the alleged agreements. The Commission should have indicated the change in its point of view to the applicant prior to adopting its decision.

The applicant's rights of defence were infringed, since the applicant was not given full access to the file. In particular, it was not able to inspect the comments made by the other parties involved or the files in the parallel procedures, despite the fact that the applicant had well-founded reasons to suspect that those files contained material which would have been material to its defence.

The decision is lacking in an adequate statement of reasons, since, in respect of a series of points, it does not contain any considerations capable of being verified. In particular, no reasons were given for the attribution to the conduct of the representative of the Vereins- und Westbank of the failure to apply the rules concerning mitigating factors or for the deviation from the principle that the initiators of a cartel should not enjoy the benefit of the non-imposition of a fine.

The conduct of the Commission in the course of the procedure shows that it did not act with a view to punishing an infringement of the rules on cartels but rather with a view to lowering, for political reasons, the charges for exchanging currencies, which it regarded as too high. Those banks which, faced with that pressure, declared themselves willing to lower the charges had been removed from the procedure, regardless of their role in the alleged infringement of the rules on cartels. The Commission thus misused the provisions of competition law in order to regulate prices, which it was not in its power to do. This constitutes a misuse of discretionary powers.

Action brought on 1 March 2002 by Deutsche Verkehrsbank AG against the Commission of the European Communities

(Case T-60/02)

(2002/C 109/123)

(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 1 March 2002 by Deutsche Verkehrsbank AG, of Frankfurt am Main (Germany), represented by M. Klusmann and F. Wiemer, lawyers.

The applicant claims that the Court should:

— annul the contested decision in so far as it concerns the applicant;

— alternatively, reduce the fine imposed on the applicant by the contested decision to a reasonable amount;

— order the defendant to pay the costs.

Pleas in law and main arguments

The claim is directed against Decision C(2001) 3693 of 11 December 2001, adopted in Case COMP/E-1/37.919 (ex 37 391) — Bank charges for currency exchange within the Euro zone, by which the Commission found that the applicant had participated in an agreement during the period from 1 January 1999 to 31 December 2001 (the period leading up to the change-over to the euro) concerning the charging of a percentage commission targeted at around 3 % as a fee for exchanging bank-notes in the participant currencies, and imposed on the applicant a fine of 14 million euros.

The applicant pleads as follows:

It does not carry on foreign-exchange end transactions of the type concerned in this case; instead, it engages exclusively in inter-bank trading, i.e. wholesale trading in currencies and foreign exchange, and therefore in cashless trading in foreign currencies.

The Commission used evidence on which the applicant was not given a chance to comment at a hearing conducted in accordance with the law. The Commission refused to allow access to exonerating documents. It arbitrarily discriminated against the applicant in the context of the decision concerning an informal cessation of the procedure.

The decision constitutes a misuse of discretionary powers, inasmuch as the Commission pursued extra-legal political objectives, namely the making of a gesture to the public in connection with the introduction of the euro. For as long as applications made in the current administrative proceedings in Case T-216/01 R had not been determined and remained pending, the adoption of a definitive decision was not permissible.

It has not been shown that there has been any tangible adverse effect on trade between Member States.

The applicant participated neither in an agreement on the type of charges to be made nor in any agreement on the amount of a target price. The commission system could not have been the subject of any concerted agreement, if only because, prior to the entry into force of Regulation No 1103/97, there had been no legally permissible alternative to it. The evidence relied on by the defendant is unproductive and self-contradictory. The last piece of evidence produced by the defendant dates from 15 October 1997, i.e. some four and a half years before the conclusion of the alleged agreement. Since then, there has been no contact between the banks concerned. A representative of the German Bundesbank had taken part in the alleged cartel meeting, and the Bundesbank had been officially informed of the results of that meeting.

As to the duration of the alleged agreement, the decision is in itself contradictory, since the operative part of the decision is based on a different duration from that on which the calculation of the fine is based.

The basic amounts used for the calculation of the fine are arbitrary and disproportionate.

Action brought on 1 March 2002 by Commerzbank AG against the Commission of the European Communities

(Case T-61/02)

(2002/C 109/124)

(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 1 March 2002 by Commerzbank AG, of Frankfurt am Main (Germany), represented by H. Satzky and B. Maassen, lawyers.

The applicant claims that the Court should:

— annul the Commission's decision of 11 December 2001, addressed to the applicant and received by it on 20 December 2001, in Case COMP/E-1/37.919 (ex 37.391), concerning the imposition of a fine;

— order the Commission to pay the costs.

Pleas in law and main arguments

The Commission infringed the applicant's rights of defence. It afforded the applicant no opportunity to learn of the criteria according to which it discontinued certain parallel procedures. The Commission did not insist on reductions in charges in every case, and treated various banks differently as regards the amount of the reductions in charges. It should have told the applicant which non-discriminatory criteria it was applying in deciding whether to continue or to discontinue the procedure. Moreover, the Commission's decision contained new incriminating evidence compared to the points raised in the heads of claim served, and the applicant was not given a chance to comment on that new evidence. Lastly, the applicant was refused access to the files in the parallel procedures. The Commission attached greater importance to the rapid imposition of a fine for political reasons than to a fair hearing.

The applicant denies that any anti-competitive agreements were concluded at a meeting held on 15 October 1997 between foreign exchange dealers. The subject-matter of that meeting was market trends and a discussion of matters which were generally known. That discussion formed part of a series of conferences held during the period from 1996 to 1998 for the purposes of preparing for the introduction of the euro, which were also frequently attended by representatives of the central banks and sometimes by representatives of the Commission. As is apparent from internal documents, the applicant had adopted an autonomous decision to charge a percentage fee even before the meeting of 15 October 1997 took place. The Commission's complaint is inconclusive, and the Commission does not describe the content of the alleged agreement. The evidence produced in that regard by the Commission, especially the internal memorandum of an employee of the Netherlands GWK Bank N.V., is inappropriate. The Commission's decision shows a lack of technical knowledge and objectivity. The Commission failed to recognise the difference between dealing in foreign notes and coins and foreign exchange dealing, and did not take account of the legal situation prevailing at the time; moreover, it represents the facts in a one-sided way which is detrimental to the applicant.

Action brought on 4 March 2002 by Michelle Boisset-Chetaud against European Parliament

(Case T-65/02)

(2002/C 109/125)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 4 March 2002 by Michelle Boisset-Chetaud, residing in Nice (France), represented by Laurent Mosar, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul the decision following from the letter of 27 June 2001 by which the European Parliament suspended the application of the weighting for France from 1 June 2001 until the production of documents showing unambiguously that Michelle Boisset-Chetaud's centre of interests is in Nice;

— Annul the decision of the Secretary General of the European Parliament in a letter of 6 December 2001, in response to the applicant's complaint, that following that decision the documents produced by Michelle Boisset-Chetaud did not allow the head of the Social Affairs Division to consider that she had established her centre of interests, and hence the place where she is deemed to incur expenditure, in Nice.

Pleas in law and main arguments

The applicant in this case contests the refusal of the appointing authority to consider that her centre of interests is in Nice and that the weighting for France should therefore be applied to her retirement pension.

In support of her application, she submits that there has been a breach of Article 82 of the Staff Regulations. The applicant asserts that the concept of residence mentioned there has been the subject of judicial interpretation intended to establish that a person sets up a permanent and habitual centre at the place where he resides. In assessing the criteria for residence, the defendant must rely on objective elements such as a certificate of residence. In this respect, the applicant submitted not only a certificate of residence but also numerous other documents, such as the notarial act concerning the purchase of a flat, a notice of change of address, and various bills.

However, by referring to a notice determining rights to an invalidity pension issued by the head of division in Directorate General V — Personnel, the appointing authority took as the sole criterion that of residence.

Action brought on 25 February 2002 by 1. Idiotiko Institouto Epangelmatikis Katartisis, South Avyerinopoulou — Anagnorismenes Technikes Idiotikes Epangelmatikes Skholes; 2. Panellinias Enosis Idiotikon Institouton Epangelmatikis Katartisis; and 3. Idiotikis Teknikis Epangelmatikis Ekpaideusis kai Katartisis, against the Commission of the European Communities

(Case T-66/02)

(2002/C 109/126)

(Language of the case: Greek)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 25 February 2002 by 1. Idiotiko Institouto Epangelmatikis Katartisis (Private institute for occupational training), South Avyerinopoulou — Anagnorismenes Technikes Idiotikes Epangelmatikes Skholes (Accredited private technical training schools); 2. Panellinias Enosis Idiotikon Institouton Epangelmatikis Katartisis (Panhellenic Association of private institutions for occupational training); 3. Idiotikis Teknikis Epangelmatikis Ekpaideusis kai Katartisis (Panhellenic Association of private technical education and training).

The applicants claim that the Court should:

— uphold the application for a declaration of the failure by the Commission of the European Communities to bring to an end the unlawful distinction between private and public bodies engaged in occupational training as regards the exclusive funding of the latter under the 3rd community support network and, in particular, under the operational programme concerning education and initial occupational training (II).

Pleas in law and main arguments

— Infringement of Article 87 EC: the proposed exclusive funding of public occupational-training bodies constitutes State (and Community) aid which does not concern general measures nor is justified by the actual require-

ments of public education. Such one-sided funding distorts competition and affects trade between the Member States.

— Infringement of the principle of equality under Article 12 EC: exclusive funding of public bodies dispensing occupational and technical education introduces unlawful discrimination against the private bodies dispensing occupational training, inasmuch as that discrimination is not necessitated by any overriding public interest.

— Infringement of the principle of subsidiarity.

Action brought on 18 March 2002 by Mara Messina against the Commission of the European Communities

(Case T-76/02)

(2002/C 109/127)

(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 18 March 2002 by Mara Messina, represented by Michele Arcangelo Calabrese.

The applicant claims that the Court should:

— annul the Commission's first refusal of access to documents communicated to the applicant by letter of 19 December 2001, prot. D/55293 COMP/G1/PI/cpbD(01)1704 and the second refusal of access pursuant upon the absence of any reply to the applicant's confirmatory application sent to the Secretary-General of the Commission by letter of 14 January 2002;

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

Pleas in law and main arguments

In this action, the applicant challenges the defendant's refusal to grant access to certain documents relating to the State aid regime which was the subject of the Commission's decision of 2 August 2000 concerning measures to promote investment in less-favoured regions of Italy referred to in Law No 488/1992 (State Aid no N 715/99).

— In support of that claim, the applicant argues infringement of Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents in that:

— no reply was given within the prescribed time-limit to the confirmatory application concerning the application for access;

— disclosure of the documents requested would in no way harm the public interest in protecting inspections and investigations or court proceedings.