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(Information)

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JUDGMENT OF THE COURT

(Sixth Chamber)

12 March 2002

in Case C-160/98 (Reference for a preliminary ruling from the Giudice di pace di Genova): Eridania SpA v Azienda Agricola San Luca di Rumagnoli Viannj [1]

(Sugar — Price regime — Marketing year 1997/98 — Regionalisation — Deficit areas — Classification of Italy — Validity of Regulation (EC) No 1188/97 and Regulation (EEC) No 1785/81)

(2002/C 118/01)

(Language of the case: Italian)

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

In Case C-160/98: Reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Giudice di Pace di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between Eridania SpA and Azienda Agricola San Luca di Rumagnoli Viannj, on the validity of Article 1(f) of Council Regulation (EC) No 1188/97 of 25 June 1997 fixing, for the 1997/98 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs (OJ 1997 L 170, p. 3) and Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1971 L 177, p. 4), as amended by Council Regulation (EC) No 1101/95 of 24 April 1995 (OJ 1995 L 110, p. 1), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric (Rapporteur), C. Gulmann, J.-P. Puissochet and V. Skouris, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 12 March 2002, in which it has ruled:

Consideration of the questions submitted has disclosed no factor of such a kind as to affect the validity of Council Regulation (EC) No 1188/97 of 25 June 1997 fixing, for the 1997/98 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs or of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector, as amended by Council Regulation (EC) No 1101/95 of 24 April 1995.

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[1] OJ C 209, 4.7.1998.

JUDGEMENT OF THE COURT

(Sixth Chamber)

14 March 2002

in Case C-340/98: Italian Republic v Council of the European Union [1]

(Sugar — Price regime — Marketing year 1998/1999 — Regionalisation — Non-deficit areas — Classification of Italy — Validity of Regulations (EC) Nos 1360/98 and 1361/98)

(2002/C 118/02)

(Language of the case: Italian)

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

In Case C-340/98, Italian Republic (Agent: U. Leanza, assisted by I. M. Braguglia) v Council of the European Union (Agents: J. Carbery, I. Díez Parra and A. Tanca), supported by Commission of the European Communities (Agent: F. P. Ruggeri): Application for annulment of Article 1 of Council Regulation (EC) No 1361/98 of 26 June 1998 fixing, for the 1998/1999 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs (OJ 1998 L 185, p. 3), in so far as it omits to fix the derived intervention price for white sugar for all areas of Italy and thus renders applicable in Italy the intervention price for white sugar fixed by Article 1(2) of Council Regulation (EC) No 1360/98 of 26 June 1998 fixing, for the 1998/1999 marketing year, certain sugar prices and the standard quality of beet (OJ 1998 L 185, p. 1), and, if necessary, annulment of Article 1(2) of Regulation No 1360/98, in so far as it also fixes the intervention price for white sugar for Italy, the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric (Rapporteur), C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 14 March 2002, in which it:

1. *Dismisses the application;*

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

3. *Orders the Commission of the European Communities to bear its own costs.*

[1] OJ C 340 of 7.11.1998.

JUDGEMENT OF THE COURT

(Sixth Chamber)

19 March 2002

in Case C-426/98: Commission of the European Communities v Hellenic Republic [1]

(Failure by a Member State to fulfil its obligations — Directive 69/335/EEC — Indirect taxes on the raising of capital — Special charges imposed on the formation of public and private limited liability companies, on the publication and alteration of their statutes and on the increase in their capital)

(2002/C 118/03)

(Language of the case: Greek)

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

In Case C-426/98, Commission of the European Communities (Agent: D. Gouloussis) v Hellenic Republic (Agent: P. Mylonopoulos): Application for a declaration that, by imposing, in addition to capital duty, other special charges on the capital of public and private limited liability companies on their formation, on the publication and alteration of their statutes and on the increase in their capital, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and, more specifically, under Articles 7 and 10 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 (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 19 March 2002, in which it:

1. *Declares that, by imposing, in addition to capital duty, other special charges on the capital of public and private limited liability companies on their formation, on the publication and alteration of their statutes and on the increase in their capital, the Hellenic Republic has failed to fulfil its obligations under Articles 7 and 10 of 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;*

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

(1) OJ C 20 of 23.1.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

21 March 2002

in Case C-130/99: Kingdom of Spain v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — Financial years 1995 and 1996)

(2002/C 118/04)

(Language of the case: Spanish)

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

In Case C-130/99, Kingdom of Spain (Agent: M. López-Monís Gallego) v Commission of the European Communities (Agent: J. Guerra Fernández): Application for partial annulment of Commission Decision 1999/186/EC of 3 February 1999 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 61, p. 34) and Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 61, p. 37), in so far as it concerns the Kingdom of Spain, the Court (Sixth Chamber), composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 21 March 2002, in which it:

1. *Annuls Commission Decision 1999/186/EC of 3 February 1999 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it excludes from Community financing the expenditure incurred by the Kingdom of Spain before 12 March 1996 in respect of production aid for olive oil;*

2. *Annuls Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund in so far as it excludes from Community financing ESP 1 355 544 657, representing the interest payable in the context of the additional levy on milk and milk-related products;*

3. *Dismisses the remainder of the application;*

4. *Orders the Kingdom of Spain to pay the costs.*

(1) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

14 March 2002

in Case C-132/99: Kingdom of the Netherlands v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — 1995 financial year — Aid to hemp production)

(2002/C 118/05)

(Language of the case: Dutch)

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

In Case C-132/99, Kingdom of the Netherlands (Agents: M. A. Fierstra and J. van Bakel), supported by Kingdom of Spain (Agent: M. López-Monís Gallego) v Commission of the European Communities (Agents: T. van Rijn and C. van der Hauwaert): Application for partial annulment of Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1999 L 61, p. 37), in so far as it requires a correction of 50 % of the expenditure declared by the Kingdom of the Netherlands in respect of hemp production aid, namely a correction of NLG 117 277, the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet and C.W.A. Timmermans, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 14 March 2002, in which it:

1. *Dismisses the application;*

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

3. *Orders the Kingdom of Spain to bear its own costs.*

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(1) OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

21 March 2002

in Case C-298/99: Commission of the European Communities v Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Directive 85/384/EEC — Mutual recognition of formal qualifications in architecture — Access to the profession of architect — Article 59 of the EC Treaty (now, afteramendment, Article 49 EC))

(2002/C 118/06)

(Language of the case: Italian)

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

In Case C-298/99, Commission of the European Communities (Agents: E. Traversa and E. Montaguti) v Italian Republic (Agent: U. Leanza, assisted by G. Aiello): Application for a declaration that:

(1) by failing to adopt all the measures necessary to implement Articles 4(1), second subparagraph, 4(2), 7, 11 and 14 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15), as amended by Council Directive 86/17/EEC of 27 January 1986 amending, on account of the accession of Portugal, Directive 85/384 (OJ 1986 L 27, p. 71, and — corrigendum — L 87, p. 36);

(2) by adopting

— Article 4(2)(a) of Legislative Decree No 129 of the President of the Republic of 27 January 1992 (GURI No 41 of 19 February 1992, p. 18) and Article 4(1)(a) of Decree No 776 of the Minister for Universities and Scientific and Technological Research of 10 June 1994 (GURI No 234 of 6 October 1995, p. 3), which impose a general obligation to produce the original diploma or a certified copy thereof,

— Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776/94, which impose a general obligation to produce a certificate of nationality,

— Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94, which require as a matter of course an official translation of documents,

— Article 11(1)(c) and (d) of Decree No 129/92, which extends the validity of certificates beyond 5 August 1987;

(3) by prohibiting architects providing services in Italy from having an infrastructure in Italy (Article 9(1) of Decree No 129/92);

(4) by requiring architects providing services to register with the local provincial council of the professional body for architects (Article 9(3) of Decree No 129/92 and Articles 7 and 8 of Decree No 776/94) in a manner contrary to Article 22 of Directive 85/384, and

(5) by applying Article 4(6) to 4(8) of Decree No 129/92 in a manner contrary to Article 20(1) of Directive 85/384, the Italian Republic has failed to fulfil its obligations under Articles 12, 20, 22, 27 and 31 of Directive 85/384 and, in respect of point 3 above, under Article 59 of the EC Treaty (now, after amendment, Article 49 EC),

the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr, D.A.O. Edward (Rapporteur), A. La Pergola and C.W.A. Timmermans, Judges; S. Alber, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 March 2002, in which it:

1. *Declares that:*

— *by failing to adopt all the measures necessary to implement Articles 4(1), second subparagraph, 4(2), 11(k), seventh indent, and 14 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, as amended by Council Directive 86/17/EEC of 27 January 1986 amending, on account of the accession of Portugal, Directive 85/384,*

— *by failing to adopt all the measures necessary to implement the automatic recognition of diplomas, certificates and other evidence of formal qualifications in accordance with Articles 2, 3, 7, 8 and 9 of Directive 85/384,*

— *by adopting Article 4(2)(a) of Legislative Decree No 129 of the President of the Republic of 27 January 1992 which, in breach of Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC), lays down a general requirement that the application for recognition of a qualification be accompanied by the original diploma or a certified copy thereof,*

— *by adopting Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776 of the Minister for Universities and Scientific and Technological Research of 10 June 1994 which, in breach of Article 52 of the Treaty, lay down a general requirement that the application for recognition of a qualification be accompanied by a certificate of nationality,*

— *by adopting Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94 which, in breach of Article 52 of the Treaty, require as a matter of course an official translation of all documents attached to an application for recognition of a qualification,*

— *by adopting Article 11(1)(c) and (d) of Decree No 129/92 which, in breach of Article 12 of Directive 85/384, provides for the recognition of qualifications acquired after 5 August 1987,*

— *by retaining Article 9(1) of Decree No 129/92 which, in breach of Article 59 of the Treaty, imposes a general prohibition on architects established in other Member States who wish to provide services in Italy from creating on Italian territory a principal or secondary place of business,*

— *by requiring, under Article 9(3) of Decree No 129/92 and Articles 7 and 8 of Decree No 776/94, architects established in other Member States who wish to provide services in Italy to register with the local provincial council of the professional body for architects and by delaying, by that formality, in breach of Article 22 of Directive 85/384, the provision by architects of their first services in Italy,*

the Italian Republic has failed to fulfil its obligations under Articles 12, 22, 27 and 31 of Directive 85/384 and, in respect of the prohibition under Article 9(1) of Decree No 129/92, under Article 59 of the Treaty;

2. *Dismisses the application as to the remainder;*

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

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(1) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

19 March 2002

in Joined Cases C-393/99 and C-394/99 (Reference for a preliminary ruling from the Tribunal du travail de Tournai): Institut national d'assurances sociales pour travailleurs indépendants (Inasti) v Claude Hervein, Hervillier SA (C-393/99), Guy Lorthiois, Comtexbel SA (C-394/99) (1)

(Freedom of movement for workers and freedom of establishment — Social security — Determination of the legislation applicable — Persons who are simultaneously employed and self-employed in the territory of different Member States — Cover by the social security legislation of each of those States — Validity of Article 14c(1)(b), now Article 14c(b), of and Annex VII to Regulation (EEC) No 1408/71)

(2002/C 118/07)

(Language of the case: French)

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

In Joined Cases C-393/99 and C-394/99: Reference to the Court under Article 234 EC by the Tribunal du travail, Tournai (Belgium), for a preliminary ruling in the proceedings pending before that court between Institut national d'assurances sociales pour travailleurs indépendants (Inasti) and Claude Hervein, Hervillier SA (C-393/99), Guy Lorthiois, Comtexbel SA (C-394/99), on the validity of Article 14c(1)b, now Article 14c(b), of and Annex VII to Regulation (EEC)

No 1408/71 of the Council 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), and as amended by Council Regulation (EEC) No 3811/86 of 11 December 1986 (OJ 1986 L 355, p. 5), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken and N. Colneric (Presidents of Chambers), C. Gulmann, D.A.O. Edward, J.-P. Puissochet (Rapporteur), M. Wathelet and V. Skouris, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 19 March 2002, in which it has ruled:

Examination of the questions referred has not disclosed any factor of such a kind as to affect the validity:

— *of Article 14c(1)(b) of and Annex VII to Regulation No 1408/71 of the Council 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.*

— *of Article 14(b) of and Annex VII to that regulation, as amended by Council Regulation (EEC) No 3811/86 of 11 December 1986.*

However, it is, where appropriate, for the national court hearing disputes in the context of the application of that provision, first, to ascertain that the legislation of the States concerned applied in that context is applied in accordance with Articles 48 and 52 of the Treaty (now, after amendment, Articles 39 EC and 43 EC), and in particular that the national legislation whose conditions for application are at issue does afford social security cover for the person concerned, and, second, to determine whether that provision should, exceptionally, be disapplied at the request of the worker concerned where it would cause him to lose a social security advantage which he originally enjoyed under a social security convention in force between two or more Member States.

(1) OJ C 366 of 18.12.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

21 March 2002

in Case C-451/99 (Reference for a preliminary ruling from the Handelsgericht Wien): Cura Anlagen GmbH v Auto Service Leasing GmbH (ASL) (1)

(Vehicle leasing — Prohibition on using in a Member State for longer than a certain time a vehicle registered in another Member State — Obligations to register the vehicle and to pay a consumption tax in the Member State of use — Obligation to insure with an insurer authorised in the Member State of use — Obligation to undergo roadworthiness testing — Restrictions on the freedom to provide services — Justifications)

(2002/C 118/08)

(Language of the case: German)

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

In Case C-451/99: Reference to the Court under Article 234 EC by the Handelsgericht Wien (Austria) for a preliminary ruling in the proceedings pending before that court between Cura Anlagen GmbH and Auto Service Leasing GmbH (ASL), on the interpretation of Articles 49 EC to 55 EC and Article 28 EC,the Court (Fifth Chamber), composed of: S. von Bahr, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 21 March 2002, in which it has ruled:

The provisions of the EC Treaty on the freedom to provide services (Articles 49 EC to 55 EC) preclude legislation of a Member State, such as that at issue in the main proceedings, requiring an undertaking established in that Member State which takes a lease of a vehicle registered in another Member State to register it in the first Member State in order to be able to use it there beyond a period that is so short, in this case three days, that it makes it impossible or excessively difficult to comply with the requirements imposed. The same provisions of the Treaty preclude legislation of a Member State, such as that at issue in the main proceedings, requiring an undertaking established in that Member State which takes a lease of

a vehicle registered in another Member State to register in the first Member State and imposing on it one or more of the following conditions:

— *a requirement that the person in whose name the vehicle is registered in the Member State of use reside or have a place of business there, in so far as it obliges a leasing undertaking either to have a principal place of business in that Member State or to accept registration of the vehicle in the name of the lessee and the consequent limitation of its rights over the vehicle;*

— *a requirement to insure the vehicle with an authorised insurer in the Member State of use, if that requirement implies that the insurer must have its principal place of business in that Member State, as the home State within the meaning of the non-life insurance directives, and have 'official authorisation' there;*

— *a requirement of a roadworthiness test when the vehicle has already undergone such testing in the Member State where the leasing company is established, save where that requirement is aimed at verifying that the vehicle satisfies the conditions imposed on vehicles registered in the Member State of use that are not covered by the tests carried out in the Member State where the leasing company is established and/or, if the vehicle has in the meantime been used on the public highway, that its condition has not deteriorated since it was tested in that latter Member State, provided similar testing is imposed where a vehicle previously tested in the Member State of use is presented for registration in that State;*

— *payment, in the Member State of use, of a consumption tax the amount of which is not proportionate to the duration of the registration of the vehicle in that State.*

(1) OJ C 34 of 5.2.2000.

JUDGMENT OF THE COURT

19 March 2002

in Case C-476/99 (Reference for a preliminary ruling from the Centrale Raad van Beroep): H. Lommers v Minister van Landbouw, Natuurbeheer en Visserij (1)

(Social policy — Equal treatment of men and women — Derogations — Measures to promote equality of opportunity between men and women — Subsidised nursery places made available by a Ministry to its staff — Places reserved only for children of female officials, save in cases of emergency, to be determined by the employer)

(2002/C 118/09)

(Language of the case: Dutch)

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

In Case C-476/99: Reference to the Court under Article 234 EC by the Centrale Raad van Beroep (Netherlands) for a preliminary ruling in the proceedings pending before that court between H. Lommers and Minister van Landbouw, Natuurbeheer en Visserij, on the interpretation of Article 2(1) and (4) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken and N. Colneric (Presidents of Chambers), C. Gulmann, A. La Pergola (Rapporteur), J.-P. Puissochet, R. Schintgen and V. Skouris, Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 19 March 2002, in which it has ruled:

Article 2(1) and (4) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions does not preclude a scheme set up by a Minister to tackle extensive under-representation of women within his Ministry under which, in a context characterised by a proven insufficiency of proper, affordable care facilities, a limited number of subsidised nursery places made available by the Ministry to its staff is reserved for female officials alone whilst male officials may have access to them only in cases of emergency, to be determined

by the employer. That is so, however, only in so far, in particular, as the said exception in favour of male officials is construed as allowing those of them who take care of their children by themselves to have access to that nursery places scheme on the same conditions as female officials.

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(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

7 March 2002

in Case C-10/00: Commission of the European Communities v Italian Republic (1)

(Failure by a Member State to fulfil its obligations — Community own resources — Import from third countries of goods destined for San Marino)

(2002/C 118/10)

(Language of the case: Italian)

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

In Case C-10/00, Commission of the European Communities (Agents: E. Traversa and H. P. Hartvig) v Italian Republic (Agent: U. Leanza, assisted by I. M. Braguglia): Application for a declaration that, by not making available to the Commission the sum of ITL 29 223 322 226 and by not paying default interest on that amount from 1 January 1996, the Italian Republic has failed to fulfil its obligations under the Community provisions relating to the Communities' own resources, the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola and C.W.A. Timmermans (Rapporteur), Judges; F.G. Jacobs, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 7 March 2002, in which it:

1. *Dismisses the application;*

2. *Orders the Commission of the European Communities to bear two thirds of the costs and the Italian Republic to bear one third of the costs.*

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(1) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

19 March 2002

in Case C-13/00: Commission of the European Communities v Republic of Ireland (1)

(Failure by a Member State to fulfil its obligations — Failure to adhere within the prescribed period to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971) — Failure to fulfil obligations under Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) in conjunction with Article 5 of Protocol 28 to the EEA Agreement)

(2002/C 118/11)

(Language of the case: English)

In Case C-13/00, Commission of the European Communities, represented by K. Banks and M. Desantes, acting as Agents, with an address for service in Luxembourg, v Republic of Ireland (Agent: initially M.A. Buckley, and, subsequently, D.J. O'Hagan), supported by United Kingdom of Great Britain and Northern Ireland (Agent: G. Amodeo, assisted by M. Hoskins, barrister): Application for a declaration that, by failing to obtain its adherence before 1 January 1995 to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971), Ireland has failed to fulfil its obligations under Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) in conjunction with Article 5 of Protocol 28 to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3), 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, J.-P. Puissochet (Rapporteur), M. Wathelet, R. Schintgen, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges;J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 19 March 2002, in which it:

1. *Dismisses the submissions of the United Kingdom of Great Britain and Northern Ireland as intervener;*

2. *Declares that, by failing to obtain its adherence before 1 January 1995 to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971), Ireland has failed to fulfil its obligations under Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) in conjunction with Article 5 of Protocol 28 to the Agreement on the European Economic Area of 2 May 1992;*

3. *Orders Ireland to pay the costs;*

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

([1]) OJ C 63 of 4.3.2000.

JUDGMENT OF THE COURT

12 March 2002

in Joined Cases C-27/00 and C-122/00 (Reference for a preliminary ruling from the — High Court of Justice (England & Wales), Queen's Bench Division (Crown Office) (C-27/00), and — High Court (C-122/00)): The Queen v Secretary of State for the Environment, Transport and the Regions, ex parte Omega Air Ltd (C-27/00) ([1])

(Regulation (EC) No 925/1999 — Noise emissions of aeroplanes — Prohibition of re-engined aeroplanes with engines with a by-pass ratio of less than 3 — Validity)

(2002/C 118/12)

(Language of the case: English)

In Joined Cases C-27/00 and C-122/00: Reference to the Court under Article 234 EC by the High Court of Justice of England and Wales (Queen's Bench Division, Crown Office) (Case C-27/00) and the High Court (Ireland) (Case C-122/00) for preliminary rulings in the proceedings pending before those courts between The Queen and Secretary of State for the Environment, Transport and the Regions, ex parte Omega Air Ltd (C-27/00), on the validity of Article 2(2) of Council Regulation (EC) No 925/1999 of 29 April 1999 on the registration and operation within the Community of certain types of civil subsonic jet aeroplanes which have been modified and recertificated as meeting the standards of volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993) (OJ 1999 L 115, p. 1, and L 120, p. 47), 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, J.-P. Puissochet, M. Wathelet (Rapporteur), J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 12 March 2002, in which it has ruled:

Consideration of the questions submitted has disclosed no factor such as to affect the validity of Article 2(2) of Council Regulation (EC) No 925/1999 of 29 April 1999 on the registration and operation within the Community of certain types of civil subsonic jet aeroplanes which have been modified and recertificated as meeting the standards of volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993).

([1]) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

21 March 2002

in Case C-36/00: Kingdom of Spain v Commission of the European Communities [1]

(State aid — Regulation (EC) No 1013/97 — Aid to publicly-owned shipyards — Declaration of compatibility of aid to the publicly-owned shipyards in Spain — Failure to comply with conditions — Recovery)

(2002/C 118/13)

(Language of the case: Spanish)

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

In Case C-36/00, Kingdom of Spain (Agent: S. Ortiz Vaamonde) v Commission of the European Communities (Agents: J. Guerra Fernández and K.-D. Borchardt): Application for annulment of Commission Decision 2000/131/EC of 26 October 1999 on the State aid implemented by Spain in favour of the publicly-owned shipyards (OJ 2000 L 37, p. 22), the Court (Sixth Chamber), composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 21 March 2002, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 147 of 27.5.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

14 March 2002

in Case C-161/00: Commission of the European Communities v Federal Republic of Germany [1]

(Failure by a Member State to fulfil its obligations — Directive 91/676/EEC — Pollution — Protection of waters — Nitrates)

(2002/C 118/14)

(Language of the case: German)

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

In Case C-161/00, Commission of the European Communities (Agent: G. zur Hausen) v Federal Republic of Germany (Agents: W.-D. Plessing and B. Muttelsee-Schön), supported by Kingdom of Spain (Agent: S. Ortiz Vaamonde), and by Kingdom of the Netherlands (Agents: V. Koningsberger and H. van den Oosterkamp): Application for a declaration that, by failing to adopt all the measures necessary in order to comply with the obligations laid down in Article 5(4)(a) and point 2 of Annex III to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under that directive, the Court (Sixth Chamber), composed of: F. Macken (Rapporteur), President of the Chamber, N. Colneric, C. Gulmann, R. Schintgen and V. Skouris, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 14 March 2002, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary in order to comply with the obligations laid down in Article 5(4)(a) and point 2 of Annex III to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, the Federal Republic of Germany has failed to fulfil its obligations under that Directive;*

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

3. *Orders the Kingdom of Spain and the Kingdom of the Netherlands to bear their own costs.*

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[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

12 March 2002

in Case C-168/00 (Reference for a preliminary ruling from the Landesgericht Linz): Simone Leitner v TUI Deutschland GmbH & Co. KG [1]

(Directive 90/314/EEC — Package travel, package holidays and package tours — Compensation for non-material damage)

(2002/C 118/15)

(Language of the case: German)

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

In Case C-168/00: Reference to the Court under Article 234 EC by the Landesgericht Linz (Austria) for a preliminary ruling in the proceedings pending before that court between Simone Leitner and TUI Deutschland GmbH & Co. KG, on the interpretation of Article 5 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59), the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, V. Skouris and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 12 March 2002, in which it has ruled:

Article 5 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours is to be interpreted as conferring, in principle, on consumers a right to compensation for non-material damage resulting from the non-performance or improper performance of the services constituting a package holiday.

(1) OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 January 2002

in Case C-171/00 P: Alain Libéros v Commission of the European Communities [1]

(Appeal — Possibility for the Judge-Rapporteur in the Court of First Instance to hear and determine a case sitting as a single Judge — Member of the temporary staff — Classification in grade — Professional experience)

(2002/C 118/16)

(Language of the case: French)

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

In Case C-171/00 P: Alain Libéros (avocat: M.-A. Lucas) — appeal against the judgment of the Court of First Instance of the European Communities (single judge) of 9 March 2000 in Case T-29/97 Libéros v Commission[2000] ECR SC I-A-43 and II-185, seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities (Agent: J. Currall, assisted by B. Wägenbaur), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola, L. Sevón, M. Wathelet and C.W.A. Timmermans (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 15 January 2002, in which it:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 9 March 2000 in Case T-29/97 Libéros v Commission;*

2. *Annuls the decisions of the Commission of the European Communities of 15 March 1996, definitively classifying Mr Libéros in Grade A 7, and of 5 November 1996, rejecting his complaint against that classification decision;*

3. *Orders the Commission of the European Communities to pay all the costs of the proceedings before the Court of First Instance and the Court of Justice.*

(1) OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

21 March 2002

in Case C-174/00 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Kennemer Golf & Country Club v Staatssecretaris van Financiën [1]

(Sixth VAT Directive — Article 13A(1)(m) — Exempt transactions — Services connected with the practice of sport — Non-profit-making organisation)

(2002/C 118/17)

(Language of the case: Dutch)

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

In Case C-174/00: Reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between Kennemer Golf & Country Club and Staatssecretaris van Financiën, on the interpretation of Article 13A(1)(m) of the Sixth Council Directive 77/388/EC 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 (Rapporteur), President of the Chamber, S. von Bahr and C.W.A. Timmermans, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 March 2002, in which it has ruled:

1. *Article 13A(1)(m) 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 is to be interpreted as meaning that the categorisation of an organisation as 'non-profit-making' must be based on all the organisation's activities.*

2. *Article 13A(1)(m) of Directive 77/388 is to be interpreted as meaning that an organisation may be categorised as 'non-profit-making' even if it systematically seeks to achieve surpluses which it then uses for the purposes of the provision of its services. The first part of the optional condition set out in the first indent of Article 13A(2)(a) of Directive 77/388 is to be interpreted in the same way.*

3. *Article 2(1) of Directive 77/388 is to be interpreted as meaning that the annual subscription fees of the members of a sports association such as that concerned in the main proceedings can constitute the consideration for the services provided by the association, even though members who do not use or do not regularly use the association's facilities must still pay their annual subscription fees.*

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[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

19 March 2002

in Case C-224/00: Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil its obligations — Article 6 of the EC Treaty (now, after amendment, Article 12 EC) — Difference in treatment of persons contravening the highway code according to the place of registration of their vehicle — Proportionality)

(2002/C 118/18)

(Language of the case: Italian)

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

In Case C-224/00, Commission of the European Communities (Agents: C. O'Reilly and G. Bisogni) v Italian Republic (Agent: U. Leanza, assisted by O. Fiumara): Application for a declaration that, by maintaining in force a legislative rule (Article 207 of the Italian highway code) providing for different and disproportionate treatment of offenders according to the place of registration of their vehicle, the Italian Republic has failed to fulfil its obligations under Article 6 of the EC Treaty (now, after amendment, Article 12 EC), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, R. Schintgen, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 19 March 2002, in which it:

1. *Declares that, by maintaining in force, in Article 207 of the Italian highway code, a disproportionate difference in treatment between offenders based on the place of registration of their vehicles, the Italian Republic has failed to fulfil its obligations under Article 6 of the EC Treaty (now, after amendment, Article 12 EC);*

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

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(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

19 February 2002

in Case C-256/00 (Reference for a preliminary ruling from the Cour d'appel de Bruxelles): Besix SA v Wasserreinigungsbau Alfred Kretzschmar GmbH & Co. KG (WABAG), Planungs- und Forschungsgesellschaft Dipl. Ing. W. Kretzschmar GmbH & Co. KG (Plafog) (1)

(Brussels Convention — Article 5(1) — Jurisdiction in matters relating to a contract — Place of performance of the obligation in question — Obligation not to do something, applicable without geographical limit — Undertakings given by two companies not to bind themselves to other partners when tendering for a public contract — Application of Article 2)

(2002/C 118/19)

(Language of the case: French)

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

In Case C-256/00: 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 Cour d'Appel de Bruxelles (Belgium) for a preliminary ruling in the proceedings pending before that court between Besix SA and Wasserreinigungsbau Alfred Kretzschmar GmbH & Co. KG (WABAG), Planungs- und Forschungsgesellschaft Dipl. Ing. W. Kretzschmar GmbH & Co. KG (Plafog), on the interpretation of Article 5(1) of the aforementioned Convention of 27 September 1968 (OJ 1972 L 299, p. 32), 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), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken and N. Colneric (Presidents of Chambers), A. La Pergola, J.P. Puissochet, M. Wathelet, R. Schintgen (Rapporteur) and V. Skouris, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 19 February 2002, in which it has ruled:

The special jurisdictional rule in matters relating to a contract, laid down in 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, is not applicable where, as in the present case, the place of performance of the obligation in question cannot be determined because it consists in an undertaking not to do something which is not subject to any geographical limit and is therefore characterised by a multiplicity of places for its performance. In such a case, jurisdiction can be determined only by application of the general criterion laid down in the first paragraph of Article 2 of that Convention.

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(1) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

21 March 2002

in Case C-267/00 (Reference for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office)): Commissioners of Customs and Excise v Zoological Society of London (1)

(Sixth VAT Directive — Article 13A(2)(a), second indent — Exempt transactions — Bodies managed and administered on a voluntary basis)

(2002/C 118/20)

(Language of the case: English)

In Case C-267/00: Reference to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's

Bench Division (Crown Office), for a preliminary ruling in the proceedings pending before that court between Commissioners of Customs and Excise and Zoological Society of London, on the interpretation of the second indent of Article 13A(2)(a) 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 (Rapporteur), President of the Chamber, S. von Bahr and C.W.A. Timmermans, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 March 2002, in which it has ruled:

1. *On a proper construction of the second indent of Article 13A(2)(a) 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, the condition requiring a body to be managed and administered on an essentially voluntary basis refers only to members of that body who are designated in accordance with its constitution to direct it at the highest level, as well as other persons who, without being designated by the constitution, do in fact direct it in that they take the decisions of last resort concerning the policy of that body, especially in the financial area, and carry out the higher supervisory tasks.*

2. *On a proper construction of the second indent of Article 13A(2)(a) of the Sixth Directive 77/388, the words 'on an essentially voluntary basis' refer to the members who compose the organs entrusted with the management and administration of a body of the kind referred to in that provision and those persons who, without being designated by the constitution, do in fact direct it, and refer also to the reward which the latter may receive, habitually or exceptionally, from that body.*

(1) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Third Chamber)

19 March 2002

in Case C-268/00: Commission of the European Communities v Kingdom of the Netherlands (1)

(Failure by a Member State to fulfil its obligations — Quality of bathing water — Inadequate implementation of Directive 76/160/EEC)

(2002/C 118/21)

(Language of the case: Dutch)

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

In Case C-268/00, Commission of the European Communities (Agents: G. Valero Jordana and C. van der Hauwaert) v Kingdom of the Netherlands (Agent: M. A. Fierstra): Application for a declaration that, by failing to fulfil its obligations under Articles 4(1) and 6(1) of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1) within the periods prescribed by that directive, the Kingdom of the Netherlands has failed to fulfil its obligations under Community law, the Court (Third Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur) and J.-P. Puissochet, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 19 March 2002, in which it:

1. *Declares that, by failing to fulfil its obligations as regards the quality of bathing water and the frequency of sampling thereof within the periods prescribed by Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 4(1) and 6(1) of that directive;*

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

(1) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Fourth Chamber)

7 March 2002

in Case C-365/00: Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil its obligations — Directive 76/768/EEC — Provision of national law concerning the information that must be given on the packaging of cosmetic products — Natural or artificial origin of perfume essences or fragrances contained in cosmetic products)

(2002/C 118/22)

(Language of the case: Italian)

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

In Case C-365/00, Commission of the European Communities (agents: R. B. Wainwright and R. Amorosi) v Italian Republic (agent: U. Leanza, assisted by I. M. Braguglia): Application for a declaration that, by having enacted and maintained in force Article 28 of Law No 128 of 24 April 1998 making provision for the implementation of obligations resulting from Italy's membership of the European Communities — Community Law 1995-1997, which makes it a requirement that the labels of cosmetic products state whether the perfume essences or fragrances contained in them are of natural or artificial origin, the Italian Republic has failed to fulfil its obligations under Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ 1976 L 262, p. 169), as amended by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32), and, in particular, under the third subparagraph of Article 6(1)(g) thereof, the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 7 March 2002, in which it:

1. *Declares that, by having enacted and maintained in force Article 28 of Law No 128 of 24 April 1998 making provision for the implementation of obligations resulting from Italy's membership of the European Communities — Community Law 1995-1997, which makes it a requirement that the labels of cosmetic products state whether the perfume essences or fragrances contained in them are of natural or artificial origin, the Italian Republic has failed to fulfil its obligations under the third subparagraph of Article 6(1)(g) of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products, as amended by Council Directive 93/35/EEC of 14 June 1993;*

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

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[1] OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

(Second Chamber)

7 March 2002

in Case C-29/01: Commission of the European Communities v Kingdom of Spain [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 96/61/EC)

(2002/C 118/23)

(Language of the case: Spanish)

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

In Case C-29/01, Commission of the European Communities (agent: G. Valero Jordana) v Kingdom of Spain (agent: M. López-Monís Gallego): Application for a declaration that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), or, in any event, by failing to communicate the same to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive, the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 7 March 2002, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

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[1] OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

(Second Chamber)

7 March 2002

in Case C-39/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 96/61/EC)

(2002/C 118/24)

(Language of the case: English)

In Case C-39/01, Commission of the European Communities (Agent: R. B. Wainwright) v United Kingdom of Great Britain and Northern Ireland (Agent: R. Magrill, assisted by R. Anderson, Barrister): Application for a declaration that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), or, in any event, by failing to communicate the same to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive, the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 7 March 2002, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

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

(1) OJ C 79 of 10.3.2001.

JUDGMENT OF THE COURT

(Second Chamber)

7 March 2002

in Case C-64/01: Commission of the European Communities v Hellenic Republic [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 96/61/EC)

(2002/C 118/25)

(Language of the case: Greek)

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

In Case C-64/01, Commission of the European Communities (agents: R. B. Wainwright and P. Panayotopoulos) v Hellenic Republic (agent: N. Dafniou): Application for a declaration that, by failing within the prescribed period to adopt the laws, regulations and administrative measures necessary in order to comply fully with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), or alternatively by failing to communicate the same to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive. the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 7 March 2002, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

(1) OJ C 108 of 7.4.2001.

ORDER OF THE PRESIDENT OF THE COURT

of 14 December 2001

in Case C-404/01 P (R): Commission of the European Communities v Euroalliages and Others [1]

(Appeal — Order of the President of the Court of First Instance given in proceedings for interim measures — Dumping — Decision terminating expiry review — Urgency — Damage of a pecuniary nature - Uncertainty as to its subsequent reparation by means of an action for damages)

(2002/C 118/26)

(Language of the case: French)

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

In Case C-404/01 P (R): Commission of the European Communities (Agents: V. Kreuschitz and S. Meany, assisted by A.P. Bentley, Barrister), supported by TNC Kazchrome, established at Almaty (Kazakhstan), and Alloy 2000 SA, established in Luxembourg (lawyers: J.E. Flynn, Barrister, J. Magnin and S. Mills, Solicitors), — appeal against the order of the President of the Court of First Instance of the European Communities of 1 August 2001 in Case T-132/01 R Euroalliages and Others v Commission, not yet published in European Court Reports, seeking to have that order set aside, the other parties to the proceedings being Euroalliages, established in Brussels (Belgium), Péchiney Electrométallurgie, established in Courbevoie (France), Vargön Alloys AB, established in Vargön (Sweden) and Ferroatlántica, established in Madrid (Spain) (lawyers: D. Voillemot and O. Prost, supported by Kingdom of Spain (Agent: L. Fraguas Gadea) — the President of the Court made an order on 14 December 2001, the operative part of which is as follows:

1. *The order of the President of the Court of First Instance of 1 August 2001 in Case T-132/01 R Euroalliages and Others v Commission is set aside.*

2. *The case is referred back to the Court of First Instance.*

3. *Costs are reserved.*

[1] OJ C 331 of 24.11.2001.

Reference for a preliminary ruling by the Tribunal de Paix, Luxembourg, by judgment of that court of 28 February 2002 in the case of Tilly Reichling against Léon Wampach; intervener: Etablissement d'assurances contre la vieillesse et l'invalidité

(Case C-69/02)

(2002/C 118/27)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Paix, Luxembourg, of 28 February 2002, which was received at the Court Registry on 1 March 2002, for a preliminary ruling in the case of Tilly Reichling against Léon Wampach; intervener: Etablissement d'assurances contre la vieillesse et l'invalidité on the following questions:

1. Must Article 6(3) of the Brussels Convention be interpreted as meaning that an action for enforcement of a judicial decision, necessarily involving in accordance with procedural rules under domestic law the intervention of a court of law, may be regarded as an original claim based on a contract or on facts? May an original claim based on the enforcement of a judgment declaring and fixing entitlement to maintenance be considered to be based on a contract or facts within the meaning of Article 6(3)? May an original claim seeking enforcement of an entitlement to maintenance be considered to be based on a contract or facts within the meaning of Article 6(3)?

2. Must the expression 'arising from the same contract or facts on which the original claim was based' in Article 6(3) of the Brussels Convention be considered to be more restrictive than the expression 'related actions' used in the third paragraph of Article 22 of the Brussels Convention?

3. Where the court which is to hear and determine the original claim has jurisdiction under Article 16(5) of the Brussels Convention without that original claim requiring that court to adjudicate on the substance of the relationship between the parties to the dispute, does Article 6(3) of the Brussels Convention make it possible for a defendant to bring before that court a counter-claim concerning the legal substance, whereas if it had submitted that claim by way of an independent action, it would have fallen, under the terms of the Brussels Convention, within the jurisdiction of the courts of another Contracting State?

Reference for a preliminary ruling by the Verwaltungsgericht Sigmaringen by order of that Court of 10 December 2001 in the case of Ms Erika Steinicke against Bundesanstalt für Arbeit

(Case C-77/02)

(2002/C 118/28)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht Sigmaringen (Administrative Court, Sigmaringen) of 10 December 2001, received at the Court Registry on 7 March 2002, for a preliminary ruling in the case of Ms Erika Steinicke against Bundesanstalt für Arbeit on the following question:

Do Articles 141 of the EC Treaty, Directives 75/117/EEC [1], 76/207/EEC [2] and/or Directive 97/81/EC [3] preclude the rule in Paragraph 72(b)(1)(1)(2) of the Bundesbeamtengesetz (Law on public servants), in the 3 March 1999 version that was in force until 30 June 2000, to the effect that part-time status on grounds of old age may be accorded only to public servants who have worked full-time for a total of at least three of the five years preceding their conversion to such part-time status, if significantly more women than men work part-time, and are consequently excluded under that provision from being accorded part-time status on grounds of old age?

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[1] OJ L 45, p. 19.
[2] OJ L 39, p. 40.
[3] OJ 1998 L 14, p. 9.

Action brought on 12 March 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-83/02)

(2002/C 118/29)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 12 March 2002 by the Commission of the European Communities, represented by Hans Stovlbaek and Minas Konstantinidis, Legal Advisers.

The Commission claims that the Court should:

— declare that, by failing to adopt and to communicate to the Commission within the time-limit laid down (16 September 1999) the plans, outlines and summaries required under Articles 11 and 4(1) of Council Directive 96/59/EC [1] of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

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

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

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

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

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[1] OJ L 243, 24.9.1996, p. 31.

Reference for a preliminary ruling by De Arbeidsrechtbank van het Arrondissement Tongeren by order of that Court of 11 March 2002 in the case of Nina Kristiansen against Rijksdienst voor Arbeidsvoorziening

(Case C-92/02)

(2002/C 118/30)

Reference has been made to the Court of Justice of the European Communities by order of De Arbeidsrechtbank van het Arrondissement Tongeren (Tongeren District Labour Court) of 11 March 2002, received at the Court Registry on 15 March 2002, for a preliminary ruling in the case of Nina Kristiansen against Rijksdienst voor Arbeidsvoorziening on the following questions:

1. In respect of temporary officials of the EEC who, after the end of their period of service with the EEC reside in Belgium and in respect of whom no contributions were deducted in favour of the social security system and who are entitled to unemployment benefits paid by the EEC, do the provisions of Regulation No 1408/71 [1] preclude national legislation from being fully applied to them, including the national rule against the overlapping of benefits under which, in accordance with the conditions governing the award of unemployment benefit the employee must be without work and without salary, the latter terms being deemed to include in particular: remuneration in respect of termination of employment or any compensation payable to the employee in respect of termination of an employment relationship, with the exception of compensation for non-material damage?

2. Does it run counter to Regulation of the Council No 1612/68 [2] (Article 7(4) of Title II) which provides that uniformity in social-security matters must be pursued and that there may be no discrimination that (in the applicant's view) there is inequality in the social-security status of post-doctoral assistants within the EEA, that in various Member States of the EEA a post-doctoral assistant is deemed to carry on an occupational activity, albeit not subject to social security, and in Belgium a post-doctoral assistant (in the applicant's view unjustly) is deemed to be a trainee (stagiaire) and a post-doctoral fellow must arrange for his own social-security cover under the Belgian national system although that is not possible on a voluntary basis (at any rate in regard to unemployment assurance)?

(1) OJ 1971, L 149, p. 2.
(2) OJ 1968, L 257, p. 2.

Action brought on 15 March 2002 by the Commission of the European Communities against the Italian Republic

(Case C-99/02)

(2002/C 118/31)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 15 March 2002 by the Commission of the European Communities, represented by Vittorio Di Bucci, acting as Agent.

The applicant claims that the Court should:

— declare that, by not adopting within the time-limit prescribed all measures necessary for the recovery from the recipients of aid granted unlawfully which is incompatible with the common market pursuant to Commission Decision 2000/128/EC [1] of 11 May 1999 concerning aid granted by Italy to promote employment (notified on 4 June 1999 under document number C(1999) 1364), and therefore by not notifying the Commission of such measures, the Italian Republic has failed to fulfil its obligations under Articles 3 and 4 of that decision and under the EC Treaty;

— order the defendant to pay the costs.

Pleas in law and main arguments

The Commission decision requires Italy to adopt 'all necessary measures to recover from the recipients the aid which does not satisfy the conditions of Articles 1 and 2 and has already been unlawfully paid.' It must also notify the Commission, within two months of the date of notification of that decision, 'of the measures it has taken to comply herewith.'

It must be concluded that upon the expiry of that time-limit the Italian Republic had not yet informed the Commission of the measures taken to recover the aid unlawfully paid.

The only defence a Member State may plead to an action for failure to comply with a decision imposing an obligation to recover aid is that implementation is absolutely impossible. That condition is not satisfied so long as the defendant government confines itself to informing the Commission of legal, political or practical obstacles to the implementation of the decision without taking any steps to ensure that the undertakings concerned pay back the aid, and without suggesting alternative means of implementing the decision so as to overcome those obstacles.

The Italian authorities have never claimed that implementation was absolutely impossible, nor have they ever officially requested an extension of time for the recovery or a suspension of execution of the decision, and nor have they suggested alternative ways of applying the decision which would have enabled them to overcome the obstacles they faced.

(1) OJ L 42 of 15.2.2000, p. 1.

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

(Case C-101/02)

(2002/C 118/32)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 19 March 2002 by the Commission of the European Communities, represented by Maria Patakia and Antonio Aresu, acting as Agents.

The applicant claims that the Court should:

— declare that, by not having implemented the provisions of Council Directive 92/51/EEC [1] of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC [2] in relation to the professional activities of athletes, coaches, technical and sporting directors and athletics trainers, the Italian Republic has failed to comply with its obligations under that directive.

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

It is apparent from an examination of the provisions of Law No 91/81 that the activities of athlete, coach, technical and sporting director and athletics trainer are regulated professions in Italy within the meaning of Directive 92/51. Consequently, when the competent Italian authorities receive an application for recognition of professional education and training in respect of those activities they are required to examine that application in accordance with the rules laid down by that directive.

Article 13 of Decree-Law No 319/94 lists the authorities responsible for the recognition of professional education and training, providing in particular at subparagraph (a) that the minister responsible for supervising the professions referred to in Article 2(a) is competent to rule on applications for recognition in accordance with annex C of that decree. The relevant annex lists a number of professions and the ministers competent to examine applications for recognition of qualifications concerning those professions. However the only sporting professions listed are those of ski instructor, sailing instructor, mountain guide and potholing guide with no reference to athlete, coach, technical and sporting director and athletics trainer.

The Commission therefore concludes that the Italian Government has failed to implement Directive 92/51 in respect of access to those professions.

(1) OJ L 209 of 24.7.1992, p. 25.
(2) OJ L 19 of 24.1.1989, p. 16.

Action brought on 20 March 2002 by the Commission of the European Communities against the Italian Republic

(Case C-103/02)

(2002/C 118/33)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 20 March 2002 by the Commission of the European Communities, represented by Richard Wainwright and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— declare that, by adopting the decree of 5 February 1998 on the identification of non-hazardous waste covered by the simplified recovery procedures under Articles 31 and 33 of Legislative Decree No 55 of 5 February 1997 which,

  a. contrary to the first and second indents of the first paragraph of Article 11 and Article 10 of Directive 75/442/EEC [1], as amended, exempts establishments and undertakings which recover non-hazardous waste from seeking authorisation, without such exemption being subject to the following requirements: (1) prior setting of a maximum quantity of waste; (2) compliance with the conditions laid down in Article 4 of Directive 75/442/EEC, as amended, regarding the quantity of waste processed by the establishments exempt from authorisation,

  b. contrary to the first indent of Article 11(1) of Directive 75/442/EEC, as amended, does not define precisely the kinds of waste covered by the exemption from authorisation and thus, also contrary to Article 3 of Directive 91/689/EEC [2], in certain cases, as a result of the lack of clarity and precision, allows establishments or undertakings which recover certain kinds of hazardous waste to be exempted from seeking authorisation on the basis of the less stringent requirements provided for in respect of non-hazardous waste,

c. contrary to Articles 9 and 11, which refer to Article 1(e) to (f) of Directive 75/442/EEC, as amended, and to Annex IIA and IIB, as amended by Decision 96/350/EC ([3]), defines some of the disposal operations as 'environmental recovery' operations and thus allows establishments and undertakings which deal with disposal other than disposal of waste on the site where it is produced to be exempt from the obligation to seek authorisation, as if they were carrying out recovery operations, the Italian Republic has failed to fulfil its obligations under Articles 1, 9, 10 and 11 of Directive 75/442/EEC, as amended by Directive 91/156/EEC ([4]), and Article 3 of Directive 91/689/EEC; and

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

A. Specification of the quantities

The Commission's contention is that Article 7 of the decree, in laying down the maximum quantities of waste applicable to recovery operations which may be exempted from the obligation to seek authorisation under Articles 9 and 10 of the directive, does not mention an absolute maximum quantity, by reference to the type of establishment or undertaking, but a relative maximum quantity which varies according to the annual output of the plant at which the operation is carried out.

The failure to specify beforehand the maximum quantity of waste below which disposal or recovery operations may be exempt from seeking authorisation gives rise to the result that any undertaking or establishment, even if it processes enormous quantities of waste, may seek such exemption which not only empties the ordinary procedure of any practical usefulness but also makes it impossible to check whether the conditions laid down in the second indent of Article 11(1), in conjunction with Article 4 thereof, have been complied with.

B. Failure to indicate or erroneous indication of the types of waste covered by the authorisation exemption

So far as concerns the types of waste in respect of which no authorisation for the purposes of the first indent of Article 11(1) is required, some parts of the technical provisions contained in Annexes 1 and 2 to the Italian decree define the types of waste so vaguely that some hazardous types of waste could be classified with non-hazardous waste, thus allowing establishments and undertakings processing it to be exempt from seeking authorisation by relying on the less stringent criteria laid down for non-hazardous waste.

In other cases, the codes of the European Waste Catalogue (EWC), adopted by way of Commission Decision 94/3/EC ([5]), are not cited (for example 5.9) or, where they are cited, they do not correspond to the definition set out in the technical provisions.

C. Environmental recovery operations

The Commission therefore takes the view that the environmental recovery operations described in Article 5 of the decree are in fact disposal operations.

This means that undertakings and establishments which carry out, pursuant to Article 5 of the Italian decree, environmental recovery operations which are in fact waste disposal operations may be exempted from seeking the authorisation provided for at Article 9 of the directive beyond the limits laid down for undertakings and establishments which carry out waste disposal operations, which may be exempted only on condition that they dispose of their own waste on the site where it is produced.

([1]) OJ 1975 L 194, p. 39.
([2]) OJ 1991 L 377, p. 20.
([3]) OJ 1996 L 135, p. 32.
([4]) OJ 1991 L 78, p. 32.
([5]) OJ 1994 L 5, p. 15.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

7 February 2002

in Case T-187/94: Theresia Rudolph v Council of the European Union and Commission of the European Communities [1]

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Regulation (EC) No 2187/93 — Compensation for producers — Interruption of the limitation period)

(2002/C 118/34)

(Language of the case: German)

In Case T-187/94, Theresia Rudolf, residing in Rasdorf-Grüsselbach (Germany), represented by B. Meisterernst, M. Düsing, D. Mannstetten, F. Schulze and C.-H. Husemann, lawyers, with an address for service in Luxembourg, v Council of the European Union (Agent: A.-M. Colaert) and Commission of the European Communities (Agents: D. Booß, M. Niejahr, H.-J. Rabe and M. Núñez-Müller): Application for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by the applicant as a result of her having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11), Court of First Instance (Fourth Chamber), composed of: P. Mengozzi, President, V. Tilli and R. M. Moura Ramos, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 7 February 2002, in which it:

1. *Declares that the defendants are bound to make good the damage sustained by the applicant as a result of the application of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68, in so far as those regulations did not make provision for the allocation of a reference quantity to producers who, pursuant to an undertaking given under Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds, did not deliver milk during the reference year opted for by the Member State concerned;*

2. *Declares that the period in respect of which the applicant must be compensated for the losses sustained as a result of the application of Regulation No 857/84 is that beginning on 5 August 1987 and ending on 28 March 1989;*

3. *Orders the parties to forward to the Court, within six months of this judgment, particulars of the amounts to be paid, established by mutual agreement;*

4. *Orders the parties, in the absence of such agreement, to submit to the Court within the same period their quantified claims;*

5. *Reserves the costs.*

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[1] OJ C 174 of 25.6.1994.

JUDGMENT OF THE COURT OF FIRST INSTANCE

7 February 2002

in Case T-199/94: Hans-Walter Gosch v Commission of the European Communities [1]

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer who has entered into a non-marketing undertaking — Non-resumption of production on expiry of the undertaking)

(2002/C 118/35)

(Language of the case: German)

In Case T-199/94, Hans-Walter Gosch, residing in Högersdorf (Germany), represented by D. Hansen and S. Vieregge, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: D. Booß, M. Niejahr and M. Núñez-Müller): Application for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by the applicant as a result of his having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13),

as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11), Court of First Instance (Fourth Chamber), composed of: P. Mengozzi, President, V. Tilli and R. M. Moura Ramos, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 7 February 2002, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 218 of 6.8.1994.

JUDGMENT OF THE COURT OF FIRST INSTANCE

7 February 2002

in Case T-201/94: Erwin Kustermann v Council of the European Union and Commission of the European Communities ([1])

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Regulation (EC) No 2187/93 — Compensation for producers — Interruption of the limitation period)

(2002/C 118/36)

(Language of the case: German)

In Case T-201/94, Erwin Kustermann, residing in Eggenthal (Germany), represented by H.-P. Ried, Y. Schur and R. Brukhardt, lawyers, with an address for service in Luxembourg, v Council of the European Union (agent: A.-M. Colaert) and Commission of the European Communities (Agents: D. Booß, M. Niejahr, H.-J. Rabe and M. Núñez-Müller): Application for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by the applicant as a result of his having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11), Court of First Instance (Fourth Chamber), composed of: P. Mengozzi, President, V. Tilli and R. M. Moura Ramos, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 7 February 2002, in which it:

1. *Declares that the defendants are bound to make good the damage sustained by the applicant as a result of the application of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68, in so far as those regulations did not make provision for the allocation of a reference quantity to producers who, pursuant to an undertaking given under Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds, did not deliver milk during the reference year opted for by the Member State concerned;*

2. *Declares that the period in respect of which the applicant must be compensated for the losses sustained as a result of the application of Regulation No 857/84 is that beginning on 5 August 1987 and ending on 28 March 1989;*

3. *Orders the parties to forward to the Court, within six months of this judgment, particulars of the amounts to be paid, established by mutual agreement;*

4. *Orders the parties, in the absence of such agreement, to submit to the Court within the same period their quantified claims;*

5. *Reserves the costs.*

([1]) OJ C 218 of 6.8.1994.

JUDGMENT OF THE COURT OF FIRST INSTANCE

7 February 2002

in Case T-261/94: Bernhard Schulte v Council of the European Union and Commission of the European Communities ([1])

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Regulation (EC) No 2187/93 — Compensation for producers — Act of the national authorities — Limitation)

(2002/C 118/37)

(Language of the case: German)

In Case T-261/94, Bernhard Schulte, residing in Delbrück (Germany), represented by R. Freise, lawyer, v Council of the European Union (agents: A.-M. Colaert and M. Núñez-Müller) and Commission of the European Communities (Agents: D. Booß, M. Niejahr and M. Núñez-Müller): Application for compensation under Article 178 and the second paragraph of

Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by the applicant as a result of his having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11), Court of First Instance (Fourth Chamber), composed of: P. Mengozzi, President, V. Tilli and R. M. Moura Ramos, Judges; D. Christensen, Administrator, for the 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 304 of 29.10.1994.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 February 2002

in Case T-193/00: Bernard Felix v Commission of the European Communities (1)

(Officials — Open competition — Oral test — Non-inclusion in the reserve list — Consistency of the composition of the selection board — Knowledge of languages)

(2002/C 118/38)

(Language of the case: French)

In Case T-193/00: Bernard Felix, an official of the Commission of the European Communities, residing at Arlon (Belgium), represented by J.-N. Louis and V. Peere, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agent: J. Currall) — application for annulment of the decision of the selection board in competition COM/A/12/98 awarding the applicant a lower mark than the minimum required for the oral test and excluding him from the reserve list — the Court of First Instance (Fifth Chamber), composed of: J.D. Cooke, President, and R. Gracía-Valdecasas and P. Lindh, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 7 February 2002, in which it:

1. *Annuls the decision of the selection board in competition COM/A/12/98 in so far as it concerns the mark awarded to the applicant for the oral test;*

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

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(1) OJ C 273 of 23.9.2000.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

19 December 2001

in Joined Cases T-195/01 R and T-207/01 R, Government of Gibraltar v Commission of the European Communities

(Proceedings for interim relief — State aid — Decision to initiate a formal investigation procedure — Admissibility — Prima facie case — Urgency — None — Balancing of interests)

(2002/C 118/39)

(Language of the Case: English)

In Joined Cases T-195/01 R and T-207/01 R, Government of Gibraltar, represented by A. Sutton, M. Llamas, Barristers, and W. Schuster, lawyer, with an address for service in Luxembourg, against Commission of the European Communities, (Agents: V. Di Bucci and R. Lyal): Application for interim measures in respect of the decisions of the Commission of 11 July 2001, notified to the Government of the United Kingdom by letters SG(2001) D/289755 and SG(2001) D/289757, to initiate the procedure provided for by Article 88(2) EC in respect of alleged State aid granted under Gibraltarian legislation to exempt and qualifying companies respectively, the President of the Court of First Instance made the following order on 19 December 2001, the operative part of which is as follows:

1. *The applications for interim measures are dismissed.*

2. *The costs are reserved.*

Action brought on 25 January 2002 by Giuseppe Atzeni and Others against the Commission of the European Communities

(Case T-21/02)

(2002/C 118/40)

(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 25 January 2002 by the applicants specified above, represented by Giovanni Dore and Fabio Ciulli, lawyers.

The applicants claim that the Court should:

— pursuant to Article 230 of the Treaty, declare unlawful, and consequently annul in its entirety, Commission Decision 612/97, alternatively annul the same in so far as it provides for the recovery of the aid granted to the applicants by the Italian State, and order the Commission to pay the costs.

Pleas in law and main arguments

This action is directed against the same decision as that contested in Case T-4/02 Arca Delio eredi and Others v Commission [1]

In support of their claims, the applicants plead:

— lack of competence on the part of the defendant, inasmuch as the competition rules are not in principle applicable in the agriculture sector. As regards the provisions of Regulation No 26/62, the applicants maintain that, in the present case, no aid was granted, either for production or for trade in the agricultural sector; instead, what was intended was merely the re-establishment of the necessary liquidity for agricultural undertakings facing objective difficulties, as expressly identified by the Region of Sardinia. Moreover, that regulation provides that the rules concerning aid are applicable only in relation to the matters covered by Article 88(1) and the first sentence of Article 88(3);

— the aid in question must be regarded as having been in existence ever since 1928. In adopting the contested decision, the Commission omitted the entire procedure provided for by the first paragraph of Article 88;

— infringement of the Community rules concerning improvements in the efficiency of agricultural structure and of the 'Community guidelines on State aid for rescuing and restructuring firms in difficulty'.

The applicants also plead failure to comply with the obligation to provide a statement of reasons.

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[1] OJ C 56 of 2.3.2002, p. 20.

Action brought on 7 February 2002 by Michel Sautelet against the Commission of the European Communities

(Case T-25/02)

(2002/C 118/41)

(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 Michel Sautelet, residing at Kirchberg (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 39090 of 6 November 2001 fixing the compensation for the non-material damage suffered by the applicant in the sum of 1 500euros;

— award the applicant the sum of 12 394,68 euros (representing the sum of LUF 500 000) by way of compensation for the non-material damage suffered as a result of the lateness in drawing up his staff report for the period from 1 July 1997 to 30 June 1999;

— annul the express decision No 44024 of 15 November 2001 declaring inadmissible complaint No 497/01 of 31 October 2001, registered by the General Secretariat of the Commission on 5 November 2001;

— award the applicant the sum of 247 893,52 euros (representing the sum of LUF 1 000 000) by way of compensation for the non-material damage suffered as a result of the lateness in drawing up his staff reports for the periods from 1 July 1993 to 30 June 1995 and from 1 July 1995 to 30 June 1997;

— rule on the costs, expenses and fees which the defendant should be ordered to pay.

Pleas in law and main arguments

The applicant claims that he 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 his consecutive staff reports. In addition, according to the applicant, those faults have been repeated time and again and show that the Commission does not bother to comply with the rules.

Action brought on 4 February 2002 by Kronofrance S.A. against the Commission of the European Communities

(Case T-27/02)

(2002/C 118/42)

(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 4 February 2002 by Kronofrance S.A., of Sully sur Loire (France), represented by R. Nierer, lawyer.

The applicant claims that the Court should:

— annul the Commission's decision of 25 July 2001 not to raise any objections to the grant of aid by the Federal Republic of Germany to Glunz AG;

— order the Commission to bear its own costs and to pay the costs of the applicant.

Pleas in law and main arguments

The applicant manufactures, inter alia, particle boards and oriented strand boards. It is contesting the Commission's decision, published in OJ C 333 of 28 November 2001, not to raise any objections to the grant to Glunz AG of Aid No N 517/2000. That aid concerns a non-repayable advance of EUR 46201868 and an investment allowance of EUR 23596120 for the construction of an integrated wood processing plant at Nettgau in the Land of Sachsen-Anhalt, Federal Republic of Germany.

The applicant asserts as follows:

The Commission did not adhere strictly to the guidelines/framework rules. Rather than involving application of the multisectoral framework on regional aid, the matter arguably constitutes restructuring aid. The Commission wrongly considered, when applying the multisectoral Community framework for the purposes of determining the competitive factor, that particle boards and oriented strand boards formed part of a single relevant market, instead of assessing the markets for those products separately. The annual growth rates were incorrectly assessed; the product market in question is positively shrinking. Consequently, the competitive factor according to Point 3.10 of the multisectoral framework is not 1.00 but 0.25. The particle board market is experiencing a ruinous price war. That price war is being intensified to an intolerable degree by the further subsidisation of new production plants.

The Commission disregarded the discretion vested in it and incorrectly assumed, when approving the aid, that it had no latitude in the matter. That failure to exercise its discretion constitutes an error of assessment.

Even if it is assumed that, from a formal standpoint, the Commission correctly applied the multisectoral framework on regional aid, it must be doubted whether that framework is compatible with Article 87 EC.

By failing to initiate the formal examination procedure, despite considerable difficulties in reviewing the aid and an investigation lasting nearly 12 months, the Commission has infringed both Regulation No 659/1999 and Article 88(2) EC, thereby breaching an essential procedural requirement and substantive law.

The fact that no formal examination procedure was initiated has unlawfully prevented the applicant and the Member States from taking part in such a procedure. This is contrary to the applicant's rights of defence and restrictive of its right to a fair hearing.

The contested decision is not supported by an adequate statement of reasons.

Action brought on 13 February 2002 by S.A. Global Electronic Finance Management against the Commission of the European Communities

(Case T-29/02)

(2002/C 118/43)

(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 13 February 2002 by S.A. Global Electronic Finance Management, represented by Mr Matthias E. Storme and Ms Ann Gobien of Keuleneer, Storme, Vanneste, Van Varenbergh, Verhelst, Brussels (Belgium).

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— order the Commission to pay to the applicant the equivalent in Euro of the sum of 40 693 ECU;

— declare the Commission's attempt to recover from the applicant the sum of 273 516 ECU unfounded and therefore order the Commission to issue a 'credit note' for the amount of 273 516 ECU;

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

Pleas in law and main arguments

The object of the present application, pursuant to an arbitration clause within the meaning of Article 238 [ex Article 181] of the EC Treaty, is an order requiring the Commission, representing the European Community, to pay the Applicant the sum of 40 693 ECU, in respect of the execution of a contract concluded under the ESPRIT-Programme, aiming to stimulate the development of financial infrastructure, systems and transaction mechanisms necessary for the successful growth of electronic commerce within the European Union. The Law of Belgium is the applicable law.

In support of its conclusions, the applicant submits as follows:

— It executed its contractual tasks correctly, as stated repeatedly by the Commission during the project execution and confirmed by the final Review Report. The amount of the account submitted by the applicant to the Commission for payment was justified and well documented. There should be accordingly no grounds on which the Commission may claim repayment of any amount.

— There is no proof of any payment having been made in error by the Commission.

— The Commission communicated for the first time its change of position in respect of acceptance of the project costs only six months after the completion of the project, and three months after the Final Review Report. By so doing, the defendant did not communicate its objections within a reasonable time.

— The Commission has not complied with the general principles of protection of legitimate expectations, of due process and of execution of a contract 'in good faith'.

Action brought on 22 February 2002 by Ricosmos B.V. against the Commission of the European Communities

(Case T-53/02)

(2002/C 118/44)

(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 22 February 2002 by Ricosmos B.V., established at Delfzijl (Netherlands), represented by Martijn Hendrik Fleers, Michel Chatelin and Pierre Metzler, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

(1) annul the Commission's decision C(2001) 3663 final of 16 November 2001 in Case REM 09/00;

(2) order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is the grantee of various customs permits enabling it to organise Community transit. In that context, the applicant organised various shipments of cigarettes to the Czech Republic under the rules governing external Community transit.In the case of certain of those shipments, dating from 1994, it subsequently became apparent that fraud had been committed by third parties.

In 1997 the applicant submitted to the Netherlands customs authorities an application for remission of import duties pursuant to Article 239 of Regulation No 2913/92 [1], since the applicant itself had not been involved in the fraud and had, moreover, taken all possible steps to prevent the fraud. According to the applicant, it was not to blame, in connection with those shipments, for any fraudulent acts or manifest negligence. The Netherlands authorities passed that application on to the Commission in accordance with Article 905 of Regulation No 2454/93 [2]. By the contested decision, the Commission refused the remission of the customs duties.

The applicant pleads, first, infringement of Article 907 of Regulation No 2454/93. According to the applicant, the time-limit of nine months for issuing the decision was wrongly extended three times. The applicant further claims that its rights of defence have been infringed. It states that it was not kept informed of the course of the procedure, and in particular of the questions put by the Commission to the Netherlands authorities. Furthermore, the applicant was initially denied access to the complete file for the purposes of submitting its observations. However, the Commission calculated the time which elapsed in that connection as an extension of time. Yet, according to the applicant, the time-limit for taking a decision could not be extended whilst the applicant remained unaware of the questions put and was denied complete access to the file.

The applicant further pleads infringement of the principle of legal certainty. It argues that, pursuant to Article 907 of Regulation No 2454/93, a decision in its favour must be deemed to have been taken after nine months had elapsed, since it was not aware of any extension of the time-limit provided for in that article.

The applicant further contests the Commission's conclusion that it was manifestly negligent. It argues that it did not itself infringe any rules of law and acted in accordance with established usages and international practice. There was no causal link between the involvement of the applicant and the fraud which was perpetrated.

Lastly, the applicant pleads infringement of the principle of proportionality. It claims that the duty charged is in any event disproportionate to any negligence on its part.

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[1] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302 of 19.10.1992, p. 1).

[2] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253 of 11.10.1993, p. 1).

Action brought on 12 March 2002 by Organización de Productores de Túnidos Congelados against Commission of the European Communities

(Case T-69/02)

(2002/C 118/45)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 March 2002 by the Organización de Productores de Túnidos Congelados, whose registered office is in Bermeo (Vizcaya, Spain), represented by Ramón Garcia-Gallardo Gil-Fournier and Javier Guillém Carrau, lawyers.

The applicant claims that the Court should:

— declare the present action admissible;

— annul the measure which is the subject-matter of the present action by which the European Commission has reduced the quantities in respect of which OPTUC is eligible for compensation, namely, Article 2(2) of and the annex to Regulation Commission Regulation (EC) No 2496/2001 of 19 December 2001 providing for compensation to producer organisations for tuna delivered to the processing industry between 1 January and 31 March 2001 [1],

— make any other appropriate order requiring the Commission to fulfil its obligations under Article 233 EC and, in particular, order the European Commission to re-examine the matter;

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

Pleas in law and main arguments

In the present case, the applicant, a Spanish frozen tunny producers' organisation which has previously contested before the Court of First Instance a number of Commission regulations providing for compensation to producer organisations for tuna delivered to the processing industry for the quarters between 1 July 1999 and 31 December 2000 ([2]), is challenging the regulation relating to the period between 1 January and 31 March 2001.

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

([1]) OJ 2001 L 337, p. 25.
([2]) Cases T-142/01 and T-283/01.
([3]) OJ C 245, p. 28.

Action brought on 18 March 2002 by Schneider Electric S.A. against Commission of the European Communities

(Case T-77/02)

(2002/C 118/46)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 March 2002 by Schneider Electric S.A., established in Rueil-Malmaison (France), represented by Antoine Winckler and Eric de La Serre, lawyers.

The applicant claims that the Court should:

— Annul in its entirety, and in the alternative in part, the Commission's decision of 30 January 2002 requiring undertakings to be separated (Case COMP/M.2283 — Schneider/Legrand) on the basis of Article 8(4) of Council Regulation (EEC) No 4064/89;

— Take any other measure it may consider appropriate;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is the parent company of a group which is active in the production and sale of products and systems in the sectors of distribution of electricity, industrial control and automation. On 16 February 2001 it formally informed the Commission of the concentration it intended to enter into with Legrand, the parent company of a group operating in the production and sale of low-voltage electrical equipment.

The commission declared the operation incompatible with the common market. The applicant brought an action for annulment of that decision (Case T-310/01; notice published in OJ C 56 of 2.3.2002, p. 15). The Commission then ordered the applicant, on the basis of Article 8(4) of Council Regulation (EEC) No 4064/89 ([1]), to separate from Legrand. The latter decision is the subject of the present proceedings.

The applicant observes, first, that in its opinion the decision declaring the concentration incompatible with the common market should be annulled. Since the decision at issue in the present action is the direct consequence of the first decision, the unlawfulness of the first decision entails the unlawfulness of the present decision.

The applicant observes further that the effect of the contested decision is to deprive the applicant of its lawfully held rights of property.

In support of the present application, the applicant claims, first, that there has been an infringement of its right of access to the case-file and its right to a proper hearing. The applicant also considers that the report of the hearing officer did not examine compliance with the rights of the defence throughout the procedure. The applicant also claims that there was a breach of the obligation to state reasons.

The applicant further claims that there was a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It submits that there is no effective remedy before a court with full jurisdiction against decisions of the Commission concerning the control of concentrations. The Commission must therefore itself comply fully with the principle of impartiality. To that end, the investigative and decision-making functions must, in the applicant's view, be entrusted to different persons or bodies, which was not the case.

The applicant also claims that there was a breach of the general principle of Community law that any person whose rights have been infringed is entitled to an effective remedy. According to the applicant, the contested decision interferes with the action brought by the applicant against the decision declaring the operation incompatible with the common market. Any annulment which might follow from that first application would be deprived of a great part of its effect as a result of the decision at issue in the present application. The contested decision thus also constitutes an infringement of the principle of good administration, given that it obliged the applicant to bring a fresh application in order to safeguard the effectiveness of the first application.

The applicant then claims that the Commission exceeded its territorial jurisdiction by laying down certain conditions for the separation. The applicant further submits that the Commission did not comply with Article 8(4) of Regulation No 4064/89. That article, according to the applicant, requires the Commission to restore effective competition, not to restore competitors in the market in question, as was done in the contested decision. In that decision, finally, the Commission also failed to comply with the general principle of proportionality and made manifest errors of assessment.

(1) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395 of 30.12.1989, p. 1, republished in OJ L 257 of 21.9.1990, p. 13).

Action brought on 20 March 2002 by Jan Pflugradt against the European Central Bank

(Case T-83/02)

(2002/C 118/47)

(Language of the case: German)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 20 March 2002 by Jan Pflugradt, of Frankfurt am Main (Germany), represented by N. Pflüger, lawyer.

The applicant claims that the Court should:

— annul the formal warning given by letter of 28.2.2002;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an employee of the defendant, argues in support of his claim that the formal warning at issue is null and void, inasmuch as it is based on incorrect factual allegations, and that the complaints on which that warning is based are totally unjustified. The applicant's conduct does not reflect any continuing pattern of poor performance, and the applicant has adequately performed his contractual duties.

Furthermore, the defendant is precluded by the obligation of an employer to have regard for the welfare and interests of his employees from taking into account certain facts by way of justification for the giving of the warning at issue. An employer is under an obligation forthwith to rebuke the person concerned in respect of any matters on which he proposes to rely by way of justification for the adoption of measures adversely affecting the employee. In addition, the defendant's conduct infringes the European rules on data protection.