ISSN 0378-6986

Official Journal

of the European Communities

C 131

Volume 45

1 June 2002

English edition

Information and Notices

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I

(Information)

COURT OF JUSTICE

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ORDER OF THE COURT

(Second Chamber)

of 11 December 2001

in Case C-301/00 P: Karl L. Meyer v Commission of the European Communities [1]

(PTOM — Project financed by the EDF — Action for damages — Legitimate expectations — Commission duty to monitor)

(2002/C 131/01)

(Language of the case: French)

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

In Case 301/00 P: Karl L. Meyer, residing at Uturoa (Island of Raiatea, French Polynesia), represented by J.-D. des Arcis, avocat, — appeal against the judgment of the Court of First Instance of the European Communities, Third Chamber, of 27 June 2000 in Case T-72/99 Meyer v Commission [2000] ECR II-2521, seeking to have that judgment set aside, the other party to the proceedings being Commission of the European Communities (Agent: X. Lewis) — the Court, composed of N. Colneric (Rapporteur), President of Chamber, R. Schintgen and V. Skouris, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, made an order on 11 December 2001, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Mr Meyer shall bear the costs.*

(1) OJ C 273 of 23.9.2000.

ORDER OF THE COURT

(Fourth Chamber)

of 13 December 2001

in Case C-61/01 P: Francis Panichelli v European Parliament [1]

(Officials — Temporary agent — Lack of promotion — Reassessment of post — Drawing up of staff reports — Termination of contract — Appeal manifestly inadmissible and manifestly unfounded)

(2002/C 131/02)

(Language of the case: French)

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

In Case 61/01 P: Francis Panichelli, residing in Wezembeek-Oppem (Belgium), represented by E. Boigelot, lawyer — appeal against the judgment of the Court of First Instance of the European Communities, Second Chamber, of 13 December 2000 in Joined Cases T-130/98 and T-131/98 Panichelli v Parliament [2000] ECR-SC I-A-287, II-1311, seeking to have that judgment set aside, the other party to the proceedings being European Parliament (Agents: J. F. de Wachter and D. Moore) — the Court, composed of S. von Bahr (Rapporteur), President of Chamber, D.A.O. Edward and A. La Pergola, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, made an order on 13 December 2001, the operative part of which is as follows:

1. *The appeal brought by Mr Panichelli and the cross-appeal brought by the European Parliament are dismissed.*

2. *Mr Panichelli and the European Parliament shall bear their own costs.*

3. *The Parliament's application for the Court to order Mr Panichelli to bear his own costs at first instance in Case T-130/98 is rejected.*

([1]) OJ C 108 of 7.4.2001.

ORDER OF THE COURT

(Fourth Chamber)

of 14 March 2002

in Joined Cases C-250/01 P and C-251/01 P: Mario Costacurta v Commission of the European Communities ([1])

(Appeals — Application of Article 3 of Annex X to the Staff Regulations — Re-posting of the applicant to a non-Member State — Action for annulment — Inadmissibility — Appeal manifestly unfounded and inadmissible — Costs)

(2002/C 131/03)

(Language of the case: French)

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

In Joined Cases C-250/01 P and C-251/01 P: Mario Costacurta, a former official of the Commission of the European Communities, residing at Luxembourg, represented by M. Petit, lawyer — two appeals against the orders of the Court of First Instance of the European Communities, Second Chamber, of 7 June 2001 in Case T-328/00 Costacurta v Commission, not published in the European Court Reports, seeking to have those orders set aside, the other party to the proceedings being Commission of the European Communities (Agents: J. Currall, assisted by B. Wägenbaur) — the Court (Fourth Chamber), composed of S. von Bahr, President of Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, made an order on 14 March 2002, the operative part of which is as follows:

1. *The appeals are dismissed.*

2. *Mr Costacurta shall bear the costs.*

([1]) OJ C 245 of 1.9.2001.

Reference for a preliminary ruling by the Bundespatentgericht by order of that Court of 22 January 2002 in the administrative appeal brought by Heidelberger Bauchemie GmbH

(Case C-49/02)

(2002/C 131/04)

Reference has been made to the Court of Justice of the European Communities by order of the Bundespatentgericht (Federal Patents Court) (Germany) of 22 January 2002, received at the Court Registry on 20 February 2002, for a preliminary ruling in the administrative appeal brought by Heidelberger Bauchemie GmbH on the following questions:

For the purposes of registration as a trade mark, do colours or combinations of colours claimed in the abstract, without delineation and in hues which are indicated by a colour sample (colour specimen), named in words and identified under a recognised colour classification system fulfil the requirements for ability to constitute a trade mark laid down in Article 2 of First Council Directive 89/104/EEC ([1]) of 21 December 1988 to approximate the laws of the Member States relating to trade marks?

In particular, for the purposes of Article 2 of the directive, is such an '(abstract) colour mark'

a) a sign,

b) sufficiently distinctive to be capable of indicating origin,

c) capable of being represented graphically?

([1]) OJ L 40 of 11.2.1989, p. 1.

Reference for a preliminary ruling by the Landesgericht Eisenstadt by order of that Court of 17 January 2002 in the private prosecutions brought by Montres Rolex S.A. and Others

(Case C-60/02)

(2002/C 131/05)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht Eisenstadt (Regional Court, Eisenstadt) of 17 January 2002, received at the Court Registry on 25 February 2002, for a preliminary ruling in the private prosecutions brought by Montres Rolex S.A. and Others, on the following question:

Is a provision of national law, in casu Paragraph 60(1) and (2) of the Markenschutzgesetz (Austrian Law on the Protection of Trademarks), in conjunction with Paragraph 10a thereof, which may be interpreted as meaning that the mere transit of goods manufactured/distributed in contravention of provisions of the law on trademarks is not punishable under criminal law, contrary to Article 2 of Council Regulation (EC) No 3295/94 [1] of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods, as amended by Council Regulation (EC) No 241/1999 [2] of 25 January 1999?

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[1] OJ L 341, p. 8.
[2] OJ L 27, p. 1.

Reference for a preliminary ruling by the Hof van Cassatie by judgment of that Court of 28 February 2002 in the case of Agence Maritime Lalemant against 1. Malzfabrik Tivoli GmbH, 2. Malteurop G.I.E, 3. Belgische Interventie- en Restitutiebureau and Malzfabrik Tivoli GmbH against Belgische Interventie- en Restitutiebureau

(Case C-82/02)

(2002/C 131/06)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hof van Cassatie (Belgian Court of Cassation) of 28 February 2002, received at the Court Registry on 12 March 2002, for a preliminary ruling in the case of Agence Maritime Lalemant against 1. Malzfabrik Tivoli GmbH, 2. Malteurop G.I.E, 3. Belgische Interventie- en Restitutiebureau and Malzfabrik Tivoli GmbH against Belgische Interventie- en Restitutiebureau on the following question:

Must Article 9(1) of Commission Regulation (EEC) No 2730/79 [1] of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products be interpreted as meaning that goods exported to non-member countries and in respect of which customs export formalities have been completed are to be regarded as having left the geographical territory of the Community when they actually leave the territory of the Community or when they are placed in a customs warehouse?

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[1] OJ L 317, 1979, p. 1.

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

(Case C-86/02)

(2002/C 131/07)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 13 March 2002 by the Commission of the European Communities, represented by Josef Christian Schieferer, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, C 254, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

(1) declare that, by adopting Paragraph 1(6) and Paragraph 1.44 of the SprengÄndG 1997 of 23 June 1998, the Federal Republic of Germany has failed to fulfil its obligations, imposed on it by the first paragraph of Article 10 and the third paragraph of Article 249 of the EC Treaty, to comply with Directive 93/15/EEC [1] and has failed to comply with its obligations arising from the first paragraph of Article 226 of the EC Treaty;

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

Pleas in law and main arguments

The Commission objects to the provision whereby explosives, apart from those intended for export to, or introduction into, another Member State, may only be used or relinquished to others if they bear an identification mark issued by the Bundesanstalt für Materialforschung und -prüfung (BAM) (Federal Institute for Materials Research and Testing). The fact that, as a result of provisional measures taken by the BAM, that obstacle to trade no longer exists is not enough to cure the infringement of Community law.

The transitional provision contained in Paragraph 1.44 of the German statute could lead to serious distortions of the internal market, since explosives which may be freely placed on the market within the Community pursuant to the provisions of the directive are not permitted on the German market, whereas explosives which should no longer feature on the market after the expiry of the transitional period might be allowed in Germany.

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[1] OJ L 121 of 15.5.1993, p. 20.

Reference for a preliminary ruling by the Il Tribunale Di Brescia, Seconda Sezione Civile by order of that Court of 21 January 2002 in the civil case of Società Dolomite Italiana — SDI s.p.a. (C-88/02), Dolomite Franchi s.p.a. (C-89/02) against Ministero delle Finanze; by order of 8 October 2001 Ugine Srl (C-95/02), TOMAR Srl (C-96/02), Rezzola Scavi Srl (97/02) and Villa Gemma SpA (C-98/02) against Ministero delle Finanze

(Cases C-88/02, C-89/02, C-95/02, C-96/02 and C-98/02)

(2002/C 131/08)

Reference has been made to the Court of Justice of the European Communities by orders of the Il Tribunale Di Brescia (Brescia Regional Court) Seconda Sezione Civile (Second Civil Chamber) of 21 January 2002, received at the Court Registry on 14 March 2002, for a preliminary ruling in the civil cases of Società Dolomite Italiana — SDI s.p.a. (C-88/02), Dolomite Franchi s.p.a. (C-89/02) against Ministero delle Finanze; by order of 8 October 2001, received at the Court Registry on 18 March 2002, in the cases of Ugine Srl (C-95/02), TOMAR Srl (C-96/02), Rezzola Scavi Srl (97/02) and Villa Gemma SpA (C-98/02) against Ministero delle Finanze, on the following questions:

1. Is Article 11(1) of Italian Law No 448 of 23 December 1998 (G.U.R.I. No 302 of 29 December 1998, ordinary supplement) compatible with Community law, in particular with Articles 10 and 12 of Council Directive 69/335/EEC [1] of 17 July 1969 concerning indirect taxes on the raising of capital, inasmuch as it provides that the administrative charge is payable at a flat annual rate for registration of other company documents for each of the years from 1985 to 1992, equal to the sum of the sum of ITL 750 000 for public limited companies and partnerships limited by shares and ITL 400 000 for private limited companies and ITL 90 000 for other companies?

2. Is Article 11(3) of Law No 448/98 compatible with Community law, inasmuch as it provides that interest on the sums to be reimbursed in so far as they exceed the sum provided for by Article 11(1) should be calculated according to the legal rate in force at the date on which that Law entered into force (2,5 % per annum) and not according to the rate provided for by Article 5 with respect to Article 1 of Law No 29 of 26 January 1961, as subsequently amended?

[1] OJ L 249 of 3.10.1969, p. 25.

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

(Case C-104/02)

(2002/C 131/09)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 20 March 2002 by the Commission of the European Communities, represented by Günter Wilms, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that the Federal Republic of Germany has infringed its obligations under Article 49 of Commission Regulation (EEC) No 1214/92 [1] of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure and/or Article 379 of Commission Regulation (EEC) No 2454/93 [2] of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 [3] establishing the Community Customs Code in conjunction with Article 2(1) of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 [4] implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, by transferring own resources to the Community too late;

(2) declare that the Federal Republic of Germany is obliged, pursuant to Article 11 of Regulation No 1552/89 for the period up to 31 May 2000 and Article 11 of Regulation 1150/2000 [5] for the period after 31 May 2000, to pay into the Community budget the interest accrued as a result of the late transfer;

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

Pleas in law and main arguments

Article 49 of Regulation No 1214/92 (on the implementation of the Community transit procedure) and Article 379 of Regulation No 2454/93 (implementing the Customs Code) set a clear and mandatory time-limit by which the customs authorities of the Member States must initiate post-clearance recovery proceedings. This is not purely a procedural time-limit. Had it intended to do so, the legislature would have identified such a time-limit by using less binding wording. The intention of the legislature and the unambiguous wording of the statute permit solely the conclusion that Article 49 of Regulation No 1214/92 and Article 379(2) of Regulation No 2454/93 do not merely provide for action which the State ought to take but, rather, prescribe a binding obligation. Post-clearance recovery must be carried out by no later than the expiry of a period of 14 months. Since both the debtor and the amount of the debt to be claimed from him are known to the custom authorities by that stage, the debtor must be

notified in accordance with Article 2(1) of Regulation No 1552/89. Should the Member State fail within that time-limit to fulfil its obligation to effect post-clearance recovery of the duties and to determine the own resources, this may — depending on the length of the period exceeding the time-limit — lead to a delay in the transfer of the corresponding own resources.

The German authorities did not comply with the time-limits laid down by Article 49 of Regulation No 1214/92 and Article 379 of Regulation No 2454/93 and therefore determined own resources too late. Article 11 of Regulation No 1552/89 is applicable to the extent that the late determination led to delays in the transfer of own resources. That article imposes on the Member States an obligation to pay interest irrespective of the reason for the delay.

(1) OJ L 132 of 16.5.1992, p. 1.
(2) OJ L 253 of 11.10.1993, p. 1.
(3) OJ L 302 of 19.10.1992, p. 1.
(4) OJ L 155 of 7.6.1989, p. 1.
(5) OJ L 130 of 31.5.2000, p. 1.

Action brought on 21 March 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-105/02)

(2002/C 131/10)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 21 March 2002 by the Commission of the European Communities, represented by Günter Wilms, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

declare that the Federal Republic of Germany has failed to comply with its obligations under Council Regulation (EEC, Euratom) No 1552/89 (1) of 29 May 1989 on the system of the Communities' own resources, as replaced with effect from 31 May 2002 by Council Regulation (EC, Euratom) No 1150/2000 (2),

(1) by failing properly to process certain transit documents (TIR carnets) and, as a result, to enter correctly and to transfer to the Commission within the specified time-limit the own resources resulting from those documents; and

(2) by failing to inform the Commission of all other uncontested customs duties relating to TIR carnets not processed at German customs posts from 1994 until amendment of the decree adopted in 1996 by the Federal Ministry of Finance (Decree of 11 September 1996, III B 1 — Z 0912 — 31/96), which received similar treatment (entry in the 'B' accounts instead of the 'A' accounts);

(3) declare that the Federal Republic of Germany is obliged forthwith to credit to the Commission the own resources not transferred as a result of the infringements set forth under 1(a) and (b) above;

(4) declare that, with respect to any amounts already transferred, the Federal Republic of Germany is obliged to state the date on which each amount fell due, the amount owed and, where appropriate, the date of transfer;

(5) declare that the Federal Republic of Germany is obliged, pursuant to Article 11 of Regulation No 1552/89 for the period up to 31 May 2000 and Article 11 of Regulation No 1150/2000 for the period after 31 May 2000, to pay into the Community budget the interest accrued as a result of the late transfer;

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

Pleas in law and main arguments

The Commission concedes that, pursuant to Article 6 of Regulation No 1552/89, the entry of import duties in the 'A' accounts for own resources can only be required to the extent that the Member State concerned has been provided with security corresponding to cash payment. However, this does not mean that such security must be 'directly and immediately realisable'.

The German authorities dispute in a general — and thus unsubstantiated — manner — that, in the case of goods taxable at a high rate, the security of ECU 60 024 per TIR carnet, which is provided in the same way for national import duties and EU own resources, is sufficient to cover duty claims in the majority of cases. They also do not — and cannot — dispute that, in all cases, the security in question is at least partially sufficient to cover the claims. Consequently, such security should, at least to this extent, have been entered in the 'A' accounts, provided that no other assessment is called for in view of the termination by the reinsurer, because, as a result thereof — and as the German authorities claim — the risk cover existed 'only on paper'. However, since, in principle, the point in time at which the TIR procedure begins and at which the corresponding security is provided is decisive, claims arising before 1995 should in any event have been entered in the 'A' accounts and transferred.

If the German Government's assertion that from 1995 the duties claims had to be regarded as unsecured on account of the termination by the reinsurer were correct, the German authorities should not have permitted the TIR procedure due to the lack of security. If they nevertheless accepted the procedure without security and therefore entered the claims in the 'B' accounts, they must themselves bear the risk relating to collection of those claims. It must be assumed that there was

at least partial security. The Federal Republic temporarily waived enforcement of its existing claims against the guarantor association AIST only on the condition that the association continued to be liable with an appropriate own share and assigned its claims against the reinsurer by way of security. Consequently, the claims arising in 1995 and the subsequent years were secured and should, to the extent that they had not been contested within the time-limit provided, have been entered, at least partly, in the 'A' accounts and transferred.

The German authorities have not as yet supplied substantiated proof for their submission that they acted vicariously in the Community interest to prevent a collapse of the TIR system. If, however, actual evidence of such a serious crisis existed, it is difficult to see why the German authorities did not, in the Community interest, consult the Commission and the other Member States before reaching their decision temporarily to waive collection of the claims. The unilateral action of the German authorities is just as much an infringement of the duty of co-operation laid down in Article 10 of the EC Treaty as the fact that it was only in their response to the letter setting the deadline that the German authorities complied with the Commission's repeated request for notification of the details of the agreement concluded by the Federal Republic with the guarantor association and of further agreements with other security providers.

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(1) OJ L 155 of 7.6. 1989, p. 1.
(2) OJ L 130 of 31.5.2000, p. 1.

Action brought on 22 March 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-106/02)

(2002/C 131/11)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 22 March 2002 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser of the Commission of the European Communities, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg.

The Commission claims that the Court should:

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 97/43/Euratom (1) of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure, and repealing Directive 84/466/Euratom, in the field of medical exposure in the operation of radiological installations, and in any event by failing to notify the Commission of them, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

2. Order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

It follows from the binding nature of directives under the third paragraph of Article 161 EA and from the first paragraph of Article 192 EA that the Member States to which a directive is addressed are obliged to transpose its provisions into national law in such a way that they become fully effective in practice from the date of expiry of the period for transposition.

In accordance with Article 14 of the directive, the Member States were obliged to comply with it before 13 May 2000. Although the Federal Republic of Germany has now largely transposed the directive by means of the Strahlenschutzverordnung of 20 July 2001, the necessary provisions for the operation of radiological installations are still lacking.

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(1) OJ L 180 of 9.7.1997, p. 22.

Action brought on 22 March 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-108/02)

(2002/C 131/12)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 22 March 2002 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser of the Commission of the European Communities, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg.

The Commission claims that the Court should:

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/32/EC[1] of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, or in any case by failing to notify the Commission of them, the Federal Republic of Germany has failed to fulfil its obligations under Article 10 of that directive;

2. Order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

It follows from the binding nature of directives under the third paragraph of Article 249 EC and from the first paragraph of Article 10 EC that the Member States to which a directive is addressed are obliged to transpose its provisions into national law in such a way that they become fully effective in practice from the date of expiry of the period for transposition. The period prescribed by Article 10 of the directive expired on 1 July 2000.

[1] OJ L 121 of 11.5.1999, p. 13.

Action brought on 22 March 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-109/02)

(2002/C 131/13)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 22 March 2002 by the Commission of the European Communities, represented by Mr Enrico Traversa, Legal Adviser, and Mr Günter Wilms, Member of its Legal Service, with an address for service in Luxembourg at the office of Mr Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg, Luxembourg.

The applicant claims that the Court should:

1. declare that, by applying a reduced rate of turnover tax to both services provided by musical ensembles which put on their own public performances or do so through an events organiser and services provided by soloists putting on their own public performances, whilst the services of soloists who work for an organiser are subject to the normal rate, the Federal Republic of Germany has failed to fulfil its obligations under the third subparagraph of Article 12(3)(a) of the Sixth Council Directive 77/388/EEC[1] of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment;

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

Pleas in law and main arguments

The action is directed against the rule in subparagraph (7)(a) of Article 12(2) of the German Law on turnover taxes, which is incompatible with the principles of the Sixth VAT Directive (fiscal neutrality, objectivity and uniform rate of duty). The third subparagraph of Article 12(3)(a) of the Sixth VAT Directive, in conjunction with Annex H thereto, does not permit a taxable activity to be divided into subgroups for the purpose of applying different rates of tax to such subgroups, as the rule at issue provides. Community law does not recognise an objective distinction as regards the different treatment at issue of the activities of performing artists according to whether the artists are appearing as soloists or as part of an ensemble. In the Commission's view there is also competition between similar services provided by soloists and ensembles as 'performing artists' for the purposes of the third subparagraph of Article 12(3)(a), in conjunction with paragraph 8 of Annex H to, the Sixth VAT Directive.

[1] OJ L 145 of 13.6.1997, p. 1.

Action brought on 25 March 2002 by Commission of the European Communities against Council of the European Union

(Case C-110/02)

(2002/C 131/14)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 25 March 2002 by the Commission of the European Communities, represented by Francisco Santaolalla Gadea, Dimitris Triantafyllou and Vittorio Di Bucci, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Council Decision 2002/114/EC [1];

— order the defendant to pay the costs.

Pleas in law and main arguments

— Lack of competence of the Council: the underlying assumption of the Treaty is that it is for the Commission, as a general rule, to monitor State aid. It is true to say that in the framework of such a monitoring system the third subparagraph of Article 88(2) EC remains applicable, but only as a departure from the usual mechanism, that is to say as an extraordinary power under the general law which must be interpreted restrictively. Since it is not explicitly provided for, instances of Council decisions which come after Commission decisions must be resolved in accordance with the principles which underlie the explicit conflicts rule contained in the Treaty, namely: that there is no order of precedence in conflicts of competences, no preemption and no power to revoke or amend. Once the Commission has adopted a final decision, the Council can no longer intervene. Likewise and for the same reasons the Council also has no power to negative the effects of a final decision of the Commission, as in the present case, by emptying it of its substance by authorising the grant of aid in an amount equal to that of the aid declared to be incompatible.

— Misuse of powers and abuse of process: where the Council uses its powers of authorisation not just to grant authorisation, in exceptional circumstances, for aid which would otherwise be, in all likelihood, declared incompatible by the Commission, but, after the adoption of the Commission decision, with a view to nullifying its effects, it is exercising its powers with a purpose other than that intended by the Treaty.

Although the Treaty empowers the Council to intervene exceptionally where what is required is an assessment of the compatibility of a measure with the common market, it does not allow it to substitute its own assessment for that of the Commission as to the existence of State aid.

By adopting the contested decision, the Council has itself bypassed, and allowed a Member State to bypass, the remedy under Article 230 and the applicable time-limits in order to negative the effects of a decision which could no longer be annulled by the Community judicature.

— Infringement of the Treaty and of general principles of Community law: the contested decision constitutes a flagrant infringement of Article 14 of Council Regulation 659/99 [2] since, in this specific case, it is preventing the effective recovery of aid by authorising aid in an equivalent amount.

The contested decision also upsets the institutional equilibrium established by the Treaty between the Commission and the Council in that the latter has usurped the supervisory role which, other than within the narrowly-bounded exception provided for in Article 88(2), falls within the purview of the Commission.

The conduct in question also upsets the institutional balance between the 'executive' institutions and the Community judicature and, more generally, undermines the jurisdictional system set up by the Treaty.

There has also been an infringement of the principle of legal certainty as embodied in the procedural time-limits.

— (In the alternative): manifest error of assessment and misuse of powers as regards the existence of exceptional circumstances.

— (In the further alternative): lack of or erroneous statement of reasons.

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[1] Council Decision 2002/114/EC of 21 January 2002 authorising the Government of Portugal to grant aid to Portuguese pig farmers who were beneficiaries of the measures granted in 1994 and 1998 (OJ L 43 of 14.2.2002, p. 18).

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

Action brought on 27 March 2002 by the Commission of the European Communities against the French Republic

(Case C-114/02)

(2002/C 131/15)

An action against the French Republic was brought before the Court of Justice of the European Communities on 27 March 2002 by the Commission of the European Communities, represented by L. Ström, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by failing to adopt all the laws, regulations and administrative measures necessary in order to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], or at any rate by failing to communicate the same, the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission claims that only a small part of Directive 98/8/EC has been transposed. France has communicated transposition measures in respect of Article 3(1), (2), (3) and (6) and Articles 5, 6, 7 and 9 of the directive. The obligations imposed by the directive which required to be transposed but have not been transposed or, at any rate, have not been communicated, therefore include transposition measures in respect of Article 3(4), (5) and (7) and Articles 4, 8, 11, 12, 14, 17, 18, 19, 20, 21, 22, 23, 25 and 26 of the directive. The time-limit for transposition expired on 13 May 2000.

[1] OJ L 123 of 24.4.1998, p. 1.

Reference for a preliminary ruling by the Cour de cassation, chambre commerciale, financiere et economique by judgment of that Court of 26 March 2002 in the case of Administration des Douanes et Droits Indirects against Rioglass SA and Transremar SL

(Case C-115/02)

(2002/C 131/16)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour de cassation, chambre commerciale, financiere et economique (Court of Cassation, Commercial, Financial and Economic Chamber) of 26 March 2002, received at the Court Registry on 29 March 2002, for a preliminary ruling in the case of Administration des Douanes et Droits Indirects against Rioglass SA and Transremar SL on the following question:

Must Article 30 of the EC Treaty, (now, after amendment, Article 28 EC) be interpreted as meaning that it precludes the implementation, pursuant to the Code de la Propriété Intellectuelle, of procedures for the detention by the customs authorities of goods lawfully manufactured in a Member State of the European Community which are intended, following their transit through French territory, to be placed on the market in a non-member country, in the present case Poland?

Action brought on 3 April 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-119/02)

(2002/C 131/17)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 3 April 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Minas Konstantinidis, Legal Advisers.

The Commission claims that the Court should:

— declare that, by not adopting measures to instal a collecting system for urban waste water from the area of Thriasio Pedio and not subjecting urban waste water from that area to more stringent secondary treatment before its discharge into the 'sensitive area' of the Bay of Elefsina, the Hellenic Republic has failed to fulfil its obligations under Articles 3(1) and 5(2) of Council Directive 91/271/EEC [1] concerning urban waste-water treatment, as amended by Commission Directive 98/15/EC [2] of

27 February 1998 which amended Directive 91/271/EEC with respect specifically to certain requirements established in Annex I thereto;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

In order for Article 3(1) of the directive to be properly implemented, collecting systems must exist for urban waste water which enters 'sensitive areas' within the meaning of Article 5(1) of the directive. Also, in order for Article 5(2) to be properly implemented, more stringent secondary treatment is required for urban waste water before its discharge into 'sensitive areas' within the meaning of Article 5(1) of the directive — by 31 December 1998 at the latest for agglomerations with a population equivalent ('p.e.') of more than 10 000.

The Bay of Elefsina was classified as a 'sensitive area' by Joint Ministerial Decision 19661/1982 of 2 August 1999. It is not disputed that the overall population of the area of Thriasio Pedio exceeds 10 000 inhabitants. It is also accepted that the area's waste water is discharged into the Bay of Elefsina, which has been defined as a 'sensitive area' since 1999.

Consequently, the Greek authorities were obliged, under Article 3(1) of the directive, to ensure that there was a collecting system for that area's urban waste water by 31 December 1998 at the latest. Nevertheless, as the letter of 8 October 2001 from the Greek Permanent Representation to the European Union also makes clear, such a system does not exist today.

Article 5(2) of the directive obliges the Member States, by 31 December 1998 at the latest, to subject urban waste water entering collecting systems which is from agglomerations with a p.e. exceeding 10 000 to more stringent secondary treatment before its discharge into sensitive areas.

It is not in dispute that today urban waste water from the area of Thriasio Pedio is discharged without treatment into an area which has been classified as 'sensitive' by the joint ministerial decision of 2 August 1999, in breach of Article 5(2) of the directive.

The Greek authorities do not dispute the absence of a treatment system for urban waste water from the area of Thriasio Pedio.

(1) OJ L 135 of 30.5.1991, p. 40.
(2) OJ L 67 of 7.3.1998, p. 29.

Action brought on 5 April 2002 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-120/02)

(2002/C 131/18)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 5 April 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Joelle Adda, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by failing hitherto to adopt all the laws, regulations and administrative measures necessary in order to comply fully with Council Directive 1998/83/EC of 3 November 1998 on the quality of water intended for human consumption [1], or at any rate by failing fully to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The time-limit for transposition expired on 25 December 2000 but the Grand Duchy of Luxembourg has not adopted the measures required.

(1) OJ L 330 of 5.12.1998, p. 32.

Action brought on 4 April 2002 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-121/02)

(2002/C 131/19)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 4 April 2002 by the Commission of the European Communities, represented by Mikko Huttunen and Hendrik van Lier, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

(a) declare that, by failing to take the necessary measures to comply with the judgment delivered by the Court of Justice on 16 December 1999 in the case of Commission v Luxembourg [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 228(1) of the EC Treaty;

(b) order the Grand Duchy of Luxembourg to pay to the Commission a periodic penalty of 9 000 euros per day for each day that it fails to comply with the aforementioned obligations, running from the date of notification of the judgment, that being the date of commencement of its non-compliance with its obligations in the present case;

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

Pleas in law and main arguments

Although Article 228 EC does not indicate the period of time allowed to a Member State to comply with its obligations, the fact remains that compliance with a judgment delivered against is must be commenced forthwith and completed as rapidly as possible. In the present case, all the provisions and measures necessary in order for the Grand Duchy of Luxembourg to bring its legislation into conformity with the Court's judgment should have been adopted and brought into force long ago; at the time when the Commission issued its reasoned opinion, over a year had already elapsed since delivery of the judgment of the Court.

In the Commission's view, a periodic penalty of 9 000 euros per day is appropriate, having regard to the seriousness and duration of the non-compliance and the need to impose an effective penalty. The Commission has calculated the amount of the periodic penalty which it was required to indicate to the Court by using the calculation method defined in its communication of 8 January 1997 [2]. It has applied a weighting of 10 to take account of the seriousness of the non-compliance, and a weighting of 1.8 in respect of the duration thereof.

[1] Case C-138/99, OJ C 63 of 4.3.2000, p. 8.
[2] OJ C 63 of 28.2.1997, p. 2.

Action brought on 5 April 2002 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-122/02)

(2002/C 131/20)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 5 April 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Joelle Adda, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by failing hitherto to adopt all the laws, regulations and administrative measures necessary in order to comply fully with Council Directive 1998/83/EC of 3 November 1998 on the quality of water intended for human consumption [1], or at any rate by failing fully to inform the Commission thereof, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The time-limit for transposition expired on 25 December 2000 but the Kingdom of Belgium has not adopted the measures required.

[1] OJ L 330 of 5.12.1998, p. 32.

Action brought on 8 April 2002 by the Commission of the European Communities against the French Republic

(Case C-129/02)

(2002/C 131/21)

An action against the French Republic was brought before the Court of Justice of the European Communities on 8 April 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Joelle Adda, acting as Agents, with an address for service in Luxembourg.

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

— declare that, by failing to communicate to the Commission any information concerning the quality of bathing waters in France for the 1999 bathing season, the French Republic has failed to fulfil its obligations under Article 13 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water [1];

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that the social conflict giving rise to the omission which has been established cannot justify that omission. Although, according to a general principle common to the laws of the Member States, force majeure is deemed to arise in the event of an occurrence possessing, simultaneously, the characteristics of being beyond the control of the State, being unforeseeable and being irresistible in its effects, the social conflict in issue here does not fulfil those criteria. The fact that checks continued to be carried out on the ground, in accordance with the requirements of the directive, cannot absolve France of its obligations under Article 13 of the directive, which has its own particular purpose. The Commission further notes that, as at the expiry of the period stated in the reasoned opinion, the French authorities had not sent the Commission any information concerning the quality of bathing waters in France for the 1999 bathing season, and that it had still not done so as at the date of the present application.

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[1] OJ L 31 of 5.2.1976, p. 1.

Action brought on 9 April 2002 by the Commission of the European Communities against the Republic of Austria

(Case C-131/02)

(2002/C 131/22)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 9 April 2002 by the Commission of the European Communities, represented by Gerald Braun, of the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg.

The Commission claims that the Court should:

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/24/EC [1] of 28 April 2000 amending the Annexes to Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC on the fixing of maximum levels for pesticide residues in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables respectively, the Republic of Austria has failed to fulfil its obligations under the EC Treaty;

2. Order the defendant to pay the costs.

Pleas in law and main arguments

In view of the binding nature of the provisions of the third paragraph of Article 249 EC and of the first paragraph of Article 10 EC, the Member States to which a directive is addressed are obliged to transpose it into national law in such a way that it becomes fully effective on expiry of the period for transposition. The period prescribed in Article 5(2) of the directive expired on 31 December 2000 without the Republic of Austria having adopted the necessary provisions.

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[1] OJ L 107, 2000, p. 28.

Action brought on 9 April 2002 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-132/02)

(2002/C 131/23)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 9 April 2002 by the Commission of the European Communities, represented by M. Patakia, acting as Agent, with an address for service in Luxembourg.

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

(1) declare that, by failing to adopt all the laws, regulations and administrative measures necessary in order to comply with Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The time-limit for transposition expired on 14 March 2000.

(1) OJ L 77 of 14.3.1998, p. 36.

Action brought on 11 April 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-135/02)

(2002/C 131/24)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 11 April 2002 by the Commission of the European Communities, represented by Josef Christian Schieferer, of the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, Wagner Centre C 254, Kirchberg.

The Commission claims that the Court should:

1. Declare that, by failing within the prescribed period to notify to the Commission, or failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/23/EC(1) of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and that directive;

2. Order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 29 May 1999.

(1) OJ L 181 of 9.7.1997, p. 1.

Action brought on 16 April 2002 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-142/02)

(2002/C 131/25)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 16 April 2002 by the Commission of the European Communities, represented by M. Patakia, acting as Agent, with an address for service in Luxembourg.

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

(1) declare that, by failing to adopt all the laws, regulations and administrative measures necessary in order to comply with Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained(1), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The time-limit for transposition expired on 14 March 2000.

(1) OJ L 77 of 14.3.1998, p. 36.

Action brought on 17 April 2002 by the Commission of the European Communities against the Republic of Austria

(Case C-146/02)

(2002/C 131/26)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 17 April 2002 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of the Commission's legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

(1) declare that the Republic of Austria has failed to fulfil its obligations under Articles 4(1), 5(1), 6(1) and (3) and 11(1) and (2) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) [1], by

— failing to send to the Commission within the prescribed time-limit a summary of its inventory in accordance with the requirements of Article 4(1);

— failing correctly and/or fully to transpose the prohibition contained in Article 5(1) precluding the separation of PCBs from other substances for the purpose of re-using the PCBs;

— failing correctly and/or fully to transpose into Austrian law the provisions of Article 6(1) concerning the obligation to transfer used PCBs and equipment containing PCBs which is subject to inventory in accordance with Article 4(1) to undertakings licensed pursuant to Article 8 of the directive;

— failing correctly and/or fully to transpose into Austrian law the provisions of Article 6(3) concerning the removal and separate collection of equipment containing PCBs which is not subject to inventory in accordance with Article 4(1) of the directive;

— failing to communicate to the Commission, within the prescribed time-limit, a plan corresponding to the requirements of the first indent of Article 11(1) of the directive for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;

— failing to communicate to the Commission, within the prescribed time-limit, the outlines provided for in the second indent of Article 11(1) of the directive;

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

Pleas in law and main arguments

The Republic of Austria was required to communicate by 16 September 1999 the various plans, outlines and summaries of inventories provided for in Articles 11 and 4(1) of the directive referred to in the Commission's application; it has not done so.

In addition, the legislation communicated by the Republic of Austria contains none of the express provisions corresponding to the obligations imposed by Article 5(1) (prohibition of separation of PCBs) and Article 6(1) (obligation to transfer to licensed undertakings) and (3) (collection of equipment not subject to inventory) of the directive.

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[1] OJ L 243, 1996, p. 31.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 December 2001

in Case T-44/98: Emesa Sugar (Free Zone) NV v Commission of the European Communities [1]

(Association arrangements for overseas countries and territories — Sugar imports — Refusal of import licence — Action for annulment — Plea of illegality — Decision 97/803/EC — Irreversible nature of the experience acquired — Principle of proportionality — Legal certainty — Regulation (EC) No 2553/97)

(2002/C 131/27)

(Language of the case: Dutch)

In Case T-44/98: Emesa Sugar (Free Zone) NV, established in Oranjestad (Aruba), represented by G. van der Wal, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: P.J. Kuijper and T. van Rijn), supported by Council of the European Union (Agents: J. Huber and G. Houttuin), Kingdom of Spain (Agents: M. López-Monis Gallego and R. Silva de Lapuerta), French Republic (Agent: K. Rispal-Bellanger), and United Kingdom of Great Britain and Northern Ireland (Agent: R. Magrill) — application for annulment of the Commission's decision of 23 December 1997 (VI/51329), addressed to the Hoofdproductschap voor Akkerbouwproducten, rejecting an application for an import licence for 3 010 tonnes of sugar, submitted pursuant to Commission Regulation No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products (OJ 1997 L 349, p. 26), — the Court of First Instance (Third Chamber), composed of J. Azizi, President, K. Lenaerts and M. Jaeger, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 6 December 2001, in which it:

(1) *Dismisses the action;*

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

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

[1] OJ C 151 of 16.5.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 January 2002

in Case T-35/99: Keller SpA and Keller Meccanica SpA v Commission of the European Communities [1]

(State aid — Undertakings active in the field of producing railway rolling stock — Undertakings in special administration — Aid for the regions of Sicily and Sardinia — Subsidised loans — Pre-existing or new aid — Scope of the decisions approving the schemes in question — Aid for the rescue or restructuring of undertakings in difficulties Commission guidelines — Article 92 of the EC Treaty (now Article 87 EC) — Obligation to state reasons)

(2002/C 131/28)

(Language of the case: Italian)

In Case T-35/99 Keller SpA, established at Palermo (Italy) and Keller Meccanica SpA, established at Villacidro (Italy), represented by D. Corapi, V. Cappucelli and M. Merola, lawyers, with an address for service in Luxembourg, supported by Italian Republic (Agents: V. Leanza and O. Fiumara), against Commission of the European Communities (Agents: initially G. Rozet and A. Aresu, subsequently G. Rozet and V. Di Bucci): — application for annulment of Commission decision 1999/195/EC of 1 July 1998 on aid granted and to be granted by Italy to Keller SpA and Keller Meccanica SpA (OJ 1999 L 63, p. 55) — the Court of First Instance (Second Chamber, Extended Composition), composed of: A.W.H. Meij, President, and K. Lenaerts, M. Jaeger, J. Pirrung and M. Vilaras, Judges; H. Jung, Registrar, has given a judgment on 30 January 2002 in which it:

1. *Dismisses the application.*

2. *Orders the applicants to bear their own costs and, jointly and severally, to pay the Commission's costs.*

3. *Orders the intervener to bear its own costs.*

[1] OJ C 121 of 1.5. 1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 March 2002

in Case T-77/99 REV: Girish Ojha v Commission of the European Communities [1]

(Officials — Application for revision of a judgment — New fact — None — Inadmissible)

(2002/C 131/29)

(Language of the case: French)

In Case T-77/99 REV: Girish Ojha, official of the Commission of the European Communities, residing in Korbeek-Lo (Belgium), represented by A. Ottati, lawyer, v Commission of the European Communities (Agent: C. Berardis-Kayser) — application for revision of the judgment of the Court of First Instance of 6 March 2001 in Case T-77/99 Ojha v Commission [2001] ECR-SC I-A-61 and II-293 — the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President of the Chamber, V. Tiili and P. Mengozzi, Judges; H. Jung, Registrar, has given a judgment on 6 March 2002, in which it:

1. *Dismisses the application for revision as inadmissible;*

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

([1]) OJ C 174 of 19.6.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 March 2002

in Case T-139/00: Laurent Bal v Commission of the European Communities [1]

(Officials — Internal competition — Non-admission to the competition — Professional experience required)

(2002/C 131/30)

(Language of the case: French)

In Case T-139/00: Laurent Bal, residing in Walhain (Belgium), represented by I. Cooreman and T. Delvaux, lawyers, v Commission of the European Communities (Agent: J. Currall) — application inter alia for annulment of the decision rejecting the applicant's candidacy for internal competition COM/TB/99 — the Court of First Instance (Second Chamber), composed of: R.M. Moura Ramos, President of the Chamber, J. Pirrung and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 13 March 2002, in which it:

1. *Annuls the decision of the selection board of 24 February 2000 not to admit the applicant to the tests of internal competition COM/TB/99;*

2. *Dismisses the remainder of the application;*

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

([1]) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 March 2002

in Joined Cases T-357/00, T-361/00, T-363/00 and T-364/00: Justina Martínez Alarcón and Others v Commission of the European Communities [1]

(Officials — Internal competition — Non-admission to competition — Requisite professional experience)

(2002/C 131/31)

(Language of the case: French)

In Case T-Joined Cases T-357/00, T-361/00, T-363/00 and T-364/00: Justina Martínez Alarcón, Antonio Cherenti, Luigia Dricot, Sophie Van Weyenbergh, officials of the Commission of the European Communities, residing in Thuin (Belgium), Overijse (Belgium) and Tervuren (Belgium), represented by C. Mourato, avocat, with an address for service in Luxembourg, against Commission of the European Communities (Agents: H. Tserepa-Lacombe and F. Clotuche-Duvieusart) — application for annulment of decisions rejecting the applicants' candidature for internal competition COM/TB/99 — the Court of First Instance (Second Chamber), composed of R.M. Moura Ramos, President, J. Pirrung and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, gave a judgment on 13 March 2002, the operative part of which is as follows:

In Case T-364/00:

1. *The decision of the selection board of 28 January 2000 rejecting Ms Van Weyenbergh's application to internal competition COM/TB/99 and the decision of the appointing authority of 9 October 2000 rejecting the complaint lodged by the applicant are annulled.*

2. *The remainder of the application is dismissed.*

3. *The Commission is ordered to pay the costs.*

In Cases T-357/00, T-361/00 and T-363/00:

1. *The applications are dismissed.*

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

(1) OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 February 2002

in Case T-117/01: Marcos Roman Parra v Commission of the European Communities (1)

(Officials — Promotion — Complaint through official channels — Implied rejection — Reasons)

(2002/C 131/32)

(Language of the case: French)

In Case T-117/01: Marcos Roman Parra, an official of the Commission of the European Communities, residing in Zaventem (Belgium), represented by J.-N. Louis and V. Peere, avocats, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser) — application for annulment of the Commission's decision not to promote him to Grade A 6 in the course of the 2000 promotion procedure — the Court of First Instance (Single Judge: Mr H. Legal); Blanca Pastor, Principal Administrator, for the Registrar, gave a judgment on 20 February 2002, in which it:

1. *Annuls the decision of the Commission not to promote Mr Roman Parra to Grade A 6 in the course of the 2000 promotion procedure, as evidenced by the publication in Administrative Notices No 65-2000 of 14 August 2000 of the list of officials promoted to that Grade.*

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

(1) OJ C 227 of 11.8.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 25 January 2002

in Case T-207/00: Nuno Antas de Campos v European Parliament (1)

(Officials — Mobility scheme of the European Parliament — Inadmissibility)

(2002/C 131/33)

(Language of the case: Portuguese)

In Case T-207/00: Nuno Antas de Campos, an official of the European Parliament, residing in Lisbon, represented by C. Botelho Moniz, lawyer, with an address for service in Luxembourg, against European Parliament (Agents: R. Da Silva Passos and J.F. De Wachter) — application for annulment of the decision communicated to him by a letter of 30 March 2000 by the Directorate General of Personnel, according to which he is subject to the mobility scheme for 2000 — the Court of First Instance (Second Chamber), composed of R.M. Moura Ramos, President, J. Pirrung and A.W.H. Meij, Judges; H. Jung, Registrar, made an order on 25 January 2002, the operative part of which is as follows:

1. *The order is dismissed as inadmissible.*

2. *The European Parliament shall bear its own costs and pay one half of those incurred by the applicant. The applicant shall bear one half of his own costs.*

3. *The parties shall bear their own costs incurred in the interlocutory proceedings.*

(1) OJ C 302 21.10.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 27 November 2001

in Case T-222/00: Otto Wöhr GmbH v Commission of the European Communities [1]

(State aid — Approval decisions — Refusal to open the procedure pursuant to Article 88(2) EC — Complaint — Admissibility)

(2002/C 131/34)

(Language of the case: German)

In Case T-222/00: Otto Wöhr GmbH, established at Friolzheim (Germany), represented by C. Hebel and G. Walz, v Commission of the European Communities, (Agents: K.-D. Borchardt and M. Nuñez-Müller), — application for annulment of the Commission's decision of 26 June 2000 not to open the formal examination procedure pursuant to Article 88(2) EC, following the complaint lodged by the applicant concerning State aid in favour of Hydraulik Markranstädt GmbH and Hydraulik Seehausen GmbH, — the Court of First Instance (Second Chamber, Extended Composition), composed of R.M. Moura Ramos, President, V. Tiili. J. Pirrung, P. Mengozzi and A.W.H. Meij, Judges; H. Jung, Registrar, made an order on 27 November 2001, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

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

3. *There is no need to give a decision on the Federal Republic of Germany's application to intervene.*

(1) OJ C 316 of 4.11.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 17 January 2002

in Case T-236/00: Gabriele Stauner and Others v European Parliament and Commission of the European Communities [1]

(Action for annulment — Framework agreement on relations between the European Parliament and the Commission — Article 197 EC — Inadmissibility)

(2002/C 131/35)

(Language of the case: German)

In Case T-236/00: Gabriele Stauner, residing in Wolfratshausen (Germany), Freddy Blak, residing in Næstved (Denmark), Mogens Camre, residing in Copenhagen (Denmark), Rijk van Dam, residing in Rotterdam (Netherlands), Christopher Heaton-Harris, residing in Kettering, Northamptonshire (United Kingdom), Franz-Xaver Mayer, residing in Landau-sur-l'Isar (Germany), Ursula Schleicher, residing in Munich (Germany), Jens-Peter Bonde, residing in Bagsværd (Denmark), Theodorus Bouwman, residing in Eindhoven (Netherlands), Kathalijne Maria Buitenweg, residing in Amsterdam (Netherlands), Michl Ebner, residing in Bolzano (Italy), Joost Lagendijk, residing in Rotterdam, Nelly Maes, residing in Sinaai (Belgium), Franziska Emilia Müller, residing in Bruck (Upper Palatinate) (Germany), Alexander Radwan, residing in Rottach-Egern (Germany), Alexander de Roo, residing in Amsterdam, Heide Rühle, residing in Stuttgart (Germany), Inger Schöring, residing in Gävle (Sweden), Esko Olavi Seppänen, residing in Helsinki (Finland), Bart Staes, residing in Antwerp (Belgium), Claude Turmes, residing in Esch-sur-Alzette (Luxembourg), Lousewies van der Laan, residing in Brussels (Belgium), Members of the European Parliament, represented by J. Sedemund and T. Lübbig, Rechtsanwälte, with an address for service in Luxembourg, against European Parliament (Agents: C. Pennera and M. Berger) and Commission of the European Communities (Agents: U. Wölker and X. Lewis), — application for annulment of the Framework Agreement of 5 July 2000 on Relations between the European Parliament and the Commission (OJ 2001 C 121, p. 122), — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; H. Jung, Registrar, has made an order on 17 January 2002, in which it:

1. *Dismisses the application as inadmissible.*

2. *Orders the applicants to pay their own costs and those of the Parliament and the Commission, including those incurred in the proceedings for interim measures.*

(1) OJ C 316 of 4.11.2000.

Action brought on 26 February 2002 by Brasserie Jules Simon & Cie against the Commission of the European Communities

(Case T-50/02)

(2002/C 131/36)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 February 2002 by Brasserie Jules Simon & Cie, established at Wiltz (Luxembourg), represented by Alexandre Carnelutti and Jerry Mosar, lawyers.

The applicant claims that the Court should:

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

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

— order the Commission to pay the costs.

Pleas in law and main arguments

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

Action brought on 25 February 2002 by Kabushiki Kaisha Kenwood against the Office for Harmonisation in the Internal Market

A further party to the proceedings before the Board of Appeal was Karstadt Quelle Aktiengesellschaft

(Case T-58/02)

(2002/C 131/37)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 25 February 2002 by Kabushiki Kaisha Kenwood, represented by Mr Emiliano Garayar Gutiérrez, Mr Joaquín García-Romanillos Valverde and Ms Anna García Castillo of Gómez-Acebo & Pombo, Brussels (Belgium).

The applicant claims that the Court should:

— annul the contested decision no. R0612/1999-2,

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	Kabushiki Kaisha Kenwood (also trading as Kenwood Corporation)
The Community trade mark concerned:	The word mark 'DualMags' for goods in classes 9, 37 and 38.
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Karstadt Quelle Aktiengesellschaft
Trade mark or sign asserted by way of opposition in the opposition proceedings:	The national German word mark 'Dual' for certain goods in class 9.
Decision of the Opposition Division:	Partial rejection of the Community trade mark application because of likelihood of confusion for certain goods in class 9.
Decision of the Board of Appeal:	Dismissal of the appeal by the applicant for the Community trade mark.
Grounds of claim:	Violation of Article 8.1 (b) of Council Regulation 40/94 [1] since there is no risk of confusion. According to the applicant, the word 'dual' should be considered as a descriptive complement to the distinctive trade mark 'Mags'. The opposing mark should further be considered as a weak trade mark due to its descriptive nature and the word 'dual' is a common element in several trade marks.

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

Action brought on 1 March 2002 by Waardals AS against the Commission of the European Communities

(Case T-62/02)

(2002/C 131/38)

(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 1 March 2002 by Waardals AS, represented by Mr Trygve Olavson Laake and Mr Jan Magne Langseth of Advokatfirmaet Schjødt AS, Stavanger (Norway).

The applicant claims that the Court should:

— annul Article 1 of the Decision in so far as it concerns the applicant, or, in the alternative, reduce the duration of the infringement in so far as it concerns the applicant;

— annul the fine imposed upon the applicant by Article 3(f) of the Decision, or, in the alternative, substantially reduce the amount of the fine imposed;

— grant its request for measures of organisation of procedure including the summoning and hearing of witnesses and access to the Commission's report from the Hearing;

— order the Commission to pay the costs.

Pleas in law and main arguments

The Decision which is challenged in this case is the same as that in Case T-33/02 Britannia Alloys & Chemicals -v- Commission. The grounds and main arguments are similar to those raised in that case.

In particular, the applicant submits:

— that the Commission has based its calculation of the fine on an incorrect assessment of the evidence and facts of the case. Firstly, the Commission found that all addressees of the Decision committed an infringement of the same duration, 4 years and 1 month. In so doing, the Commission should have not taken into account that Waardals' infringement ceased between April 1995 and August 1995. The defendant should have ignored the fact that the applicant withdrew from the cartel and terminated its infringements immediately following the investigations.

— that the Commission incorrectly calculated the fine and incorrectly applied the Guidelines on the method of setting fines. On this point, the applicant states that the fine was increased on the basis of the duration of the infringement and because of the fact that the Commission did not differentiate between the members of the cartel in an appropriate manner. Moreover, the Commission has not taken into account that the applicant was invited to join a cartel that already existed, and that it never was part of the 'inner circle', nor has the Commission taken into account that Waardals implemented the agreements in question only to a very slight degree. In setting the fines, the defendant consequently infringed the principles of equal treatment and proportionality and misapplied the Guidelines mentioned above.

Action brought on 4 March 2002 by Maria Concetta Cerafogli and Paolo Poloni against European Central Bank

(Case T-63/02)

(2002/C 131/39)

(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 4 March 2002 by Maria Concetta Cerafogli and Paolo Poloni, of Frankfurt am Main, represented by Boris Karthaus, Christian Roth and Tanja Raab-Rhein, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

1. Annul the statements of earnings issued to the applicants for the month of July 2001;

2. Order the defendant to issue the applicants with statements of earnings on the basis of an annual salary adjustment of at least 2,7 % in the month of July 2001;

3. In the alternative, order the defendant to issue the applicants with statements of earnings in accordance with the view of the law taken by the Court;

4. Order the defendant to pay the applicants the difference between the statements of earnings actually issued and the statements to be issued in accordance with claim 2, or in the alternative claim 3;

5. Order the defendant to pay the costs.

Pleas in law and main arguments

The applicants contest the annual salary adjustment for the year 2001 for staff of the European Central Bank. In 1999 the Governing Council of the defendant decided that the annual salary adjustment of the defendant was to be based on the average development of nominal salaries of the fifteen national central banks and the Bank for International Settlements as the 'central bank' of the central banks. This method was to be applied for three years altogether. By letter of 11 July 2001 the Vice-President of the defendant informed the Staff Committee that the Governing Council of the defendant endorsed the Executive Board's proposal for the salary adjustment for 2001, in accordance with the methodology decided in 1999. A table annexed to that letter showed that the salary adjustment for 2001 was to take effect from 1 July 2001 and would be 2,2 %.

On 13 July 2001 the applicants each received statements of earnings which were based on the new calculations.

The applicants claim that the statements of earnings issued for July 2001 should be annulled. They submit that the salary adjustment in 2001 was not the subject of consultation with the Staff Committee and is therefore unlawful. The method of calculation applied for the salary adjustment in July 2001 further infringed Article 13 of the Conditions of Employment, since it results in a loss of purchasing power at the place of employment. A correct method of calculation must take account at least of the rate of inflation and thus produce a figure of 2,7 %.

Action brought on 8 March 2002 by Masdar (U.K.) Ltd against the Commission of the European Communities

(Case T-68/02)

(2002/C 131/40)

(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 8 March 2002 by Masdar (U.K.) Ltd, represented by Mr Philip Bentley QC and Mr Patrick Green of Rosemary Smith & Co, Crowthorne (United Kingdom).

The applicant claims that the Court should:

— annul the defendant's refusal to grant the applicant access to the documents mentioned in the applicant's request dated 16 October 2001;

— order the Commission to pay the costs of this application.

Pleas in law and main arguments

The applicant provides consultancy services in the agricultural sector. The applicant was employed by another company in respect of two programs funded by the Commission's TACIS programme. The applicant brought proceedings against this company before a national Court for the recovery of sums still outstanding. In this respect, the applicant requested access to two audit reports of the Commission established in respect of the contracts in question. This access was refused by the Commission.

The applicant submits that the Commission failed to give reasons for this decision and has not respected the rights of the applicant under Decision 94/90 [1]. The applicant further claims that the Commission violated the principle of good administration.

[1] 94/90/ECSC, EC, Euratom: Commission Decision of 8 February 1994 on public access to Commission documents (OJ L 46 of 18.2.1994, p. 58)

Action brought on 18 March 2002 by Margot Wagemann-Reuter against the Court of Auditors of the European Communities

(Case T-81/02)

(2002/C 131/41)

(Language of the case: French)

An action against the Court of Auditors of the European Communities was brought before the Court of First Instance of the European Communities on 18 March 2002 by Margot Wagemann-Reuter, residing in Luxembourg, represented by Marc-Albert Lucas, lawyer.

The applicant claims that the Court should:

— annul the implicit decision of the Court of Auditors rejecting, on 22 May 2001, her request of 18 January 2001 for reinstatement following her leave on personal grounds;

— annul the Court of Auditors' decision of 12 December 2001 rejecting her administrative complaint of 14 August 2001 against the first contested decision and the defendant's refusal to reinstate her in the LA 4 post of head of translation unit which was vacant at the end of 2000 or the beginning of 2001 within the German section of the Language Service, or at least to consider her suitability for the post in question;

— order the defendant to pay her, by way of compensation for the damage to her career prospects resulting from the illegality of the contested decisions, a sum corresponding to the total remuneration which she would have received had she been reinstated in that post, together with interest at the annual rate of 8 % from the date on which those sums would have become due until payment thereof in full;

— order the defendant to pay her, by way of compensation for the non-material damage suffered by her as a result of the illegality of the contested decisions, the sum of 2 500 euros, evaluated on a fair and reasonable basis;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant pleads infringement of Article 40(4)(d) of the Staff Regulations of Officials, asserting that the defendant did not reinstate her in the post which fell vacant following the upgrading to grade LA 4 of LA 5 posts within the German section of the Language Service of the Court of Auditors, and did not even examine the possibility of reinstating her in that post.

Action brought on 25 March 2002 by Armand De Buck against the Commission of the European Communities

(Case T-84/02)

(2002/C 131/42)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 March 2002 by Armand De Buck, residing at Koersel (Belgium), represented by Lucas Vogel, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision adopted by the appointing authority on 14 December 2001 rejecting the complaint lodged by the applicant on 19 May 2001, by which he contested the decision of 20 February 2001 making definitive the provisional decision of 1 July 1999 refusing to recognise as an occupational disease the disease of the blood suffered by the applicant;

— annul the said decisions of 20 February 2001 and 1 July 1999;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his claim, the applicant pleads infringement of Article 73(1) of the Staff Regulations and of Article 3 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease. According to the applicant, the Commission committed a manifest error of assessment, inasmuch as it based its decision on medical documents the reasoning contained in which is vitiated by contradictions and incorrect assessments, arising from an erroneous analysis of the facts duly established.

Action brought on 28 March 2002 by Confédération Nationale du Crédit Mutuel against Commission of the European Communities

(Case T-93/02)

(2002/C 131/43)

(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 28 March 2002 by Confédération Nationale du Crédit Mutuel, established in Paris, represented by Alexandre Carnelutti, lawyer.

The applicant claims that the Court should:

— annul in its entirety the decision of the Commission of 15 January 2002 declaring incompatible with the common market state aid implemented by the French Republic in favour of Crédit Mutuel;

— in the alternative, annul Article 2 thereof in so far as it orders recovery of the aid identified;

— order the Commission to pay the costs.

Pleas in law and main arguments

The Livret Bleu is a tax-free savings product intended for the general public the tax advantage of which directly benefits the consumer. The applicant was entrusted by the French authorities in 1975 with the exclusive distribution of that savings book. In the contested decision, the Commission found that the applicant benefited from an overcompensation by the French State for the running costs of the Livret Bleu, which is incompatible with the State aid rules of the EC Treaty.

The applicant claims that the Commission infringed Article 87(1) of the EC Treaty in finding that there was aid. The Commission applied an unreasonable global method which is unjustified in the present case and it wrongly identified funding as State resources. Furthermore, it committed manifest errors of assessment by refusing to take into consideration the costs incurred, which were properly identified, and by endorsing the view taken by the Commission's consultant.

In the alternative, the applicant claims that, assuming that aid was granted, it cannot be deemed to be existing aid pursuant to Article 15(3) of Regulation No 659/1999.[1]

Pursuant to Article 15 of that regulation, the Commission has been barred from recovering aid since 1985 and the Commission has infringed the general principle of Community law which requires it to adopt a decision within a reasonable period. Moreover, the contested decision does not contain any evidence that the aid was in existence when the Livret Bleu was set up, which is a logical and legal condition which must be met if aid is to be described as new.

Finally, the applicant claims that the Commission infringed Article 14 of Regulation No 659/1999, Article 253 of the EC Treaty and the principle of sound administration, impartiality and fairness.

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

Action brought on 29 March 2002 by Hugh McBryan against the Commission of the European Communities

(Case T-96/02)

(2002/C 131/44)

(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 29 March 2002 by Hugh McBryan, residing in Brussels, represented by Jean-Noël Louis, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision establishing the calculation of the pension rights acquired by the applicant prior to his entry into service and transferred to the Community pension scheme pursuant to Article 11(2) of Annex VIII of the Staff Regulations;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of his claim, the applicant pleads non-compliance with the obligation to provide a statement of reasons and infringement of Article 11(2) of Annex VIII to the Staff Regulations and of the general provisions for the implementation thereof, as well as breach of the principle of equal treatment. According to the applicant, the calculation should have been carried out on the basis of his situation at the time of entering the service of the Communities as a member of the temporary staff, and not on the basis of his situation at the time of his being appointed as an established official, some nine years later.

Action brought on 2 April 2002 by Prodromos Mavridis against the Commission of the European Communities

(Case T-97/02)

(2002/C 131/45)

(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 2 April 2002 by Prodromos Mavridis, residing in Brussels, represented by Jean-Noël Louis, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision not to promote the applicant to grade A 5 in the context of the 2001 promotions procedure;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of his claim, the applicant pleads infringement of Article 45 of the Staff Regulations and of the principles of equal treatment and career progression. According to the applicant, his merits were not taken fully into consideration in the context of the 2001 promotions procedure.

Action brought on 11 April 2002 by Bolloré S.A. against Commission of the European Communities

(Case T-109/02)

(2002/C 131/46)

(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 11 April 2002 by Bolloré S.A., established in Puteaux (France), represented by Robert Saint-Esteben and Hugues Calvet, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul Articles 1, 2 and 3 of the Commission decision of 20 December 2001, reference COMP/E-1/36212 — Carbonless paper, relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, in so far as they refer to Bolloré;

— In the alternative, reduce very substantially the amount of the fine imposed on Bolloré by Article 3 of the decision;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests the Commission's decision finding that it took part in an agreement contrary to Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.

It seeks, first, the annulment of that decision, on the ground that by finding for the first time in the decision that it was liable for having personally taken part in the cartel in question, the Commission upheld a complaint which had not been set out in the statement of complaints. Bolloré was in fact concerned in the procedure only as the 100 % parent company of Copigraph, the latter being the company which, according to the Commission, took part in the cartel. Consequently, by finding against the applicant on the basis of a new complaint not notified in the statement of complaints, the Commission prevented it from defending itself properly and thereby infringed its rights of defence and right to be heard.

The applicant also claims that there was a breach of Article 81 of the EC Treaty and Article 53 of the EEA Agreement as a result of imputing to the applicant the anti-competitive conduct of Copigraph. Bolloré points out that, according to the latest case-law, the holding of 100 % of the capital of a company does not in itself mean that the infringing conduct of the subsidiary may be imputed to the parent company.

In the alternative, the applicant contests the amount of the fine imposed on it by the Commission, and seeks a very substantial reduction, on the ground that it infringed Article 15(2) of Regulation No 17 and the principle of proportionality.

Action brought on 5 April 2002 by Axions s.a. and Christian Belce against Office for Harmonisation in the Internal Market (Trade marks and designs)

(Case T-110/02)

(2002/C 131/47)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade marks and designs) was brought before the Court of First Instance of the European Communities on 5 April 2002 by Axions S.A., of Geneva (Switzerland), and Christian Belce, of Veyrier (Switzerland), represented by C.M. Eckhartt, lawyer.

The applicants claim that the Court should:

— Set aside the decision of the defendant's Third Board of Appeal of 16 January 2002 in appeal R 0538/2001-3;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark applied for:	Three-dimensional trade mark in the form of a representation of the frustrum of a pyramid upside down with a rectangular base area approximately 25 cm × 8 cm and bevelled lateral faces in the colour gold — Application No 1408889
Goods or services:	Goods in classes 16 and 30 (inter alia chocolate, chocolate goods; cardboard packaging in the form of a gold ingot for chocolate and chocolate goods)
Decision contested before the Board of Appeal:	Refusal of registration by the examiner
Decision of the Board of Appeal:	Dismissal of the appeal
Grounds of claim:	Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 [1]; error of assessment and breach of the principle of equal treatment.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11 of 14.1.1994, p. 1).

Action brought on 12 April 2002 by Gustaaf Van Dyck against the Commission of the European Communities

(Case T-112/02)

(2002/C 131/48)

(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 12 April 2002 by Gustaaf Van Dyck, residing at Wuustwezel (Belgium), represented by Matthias E. Storme and Ann Gobien, lawyers.

The applicant claims that the Court should:

(1) annul the tacit decision by which the appointing authority refused the request submitted to it by the applicant on 12 February 2001 seeking the adoption by it of a decision concerning the possible application to him of Article 31(2) of the Staff Regulations, having regard to the applicant's professional experience and training, and, in so far as may be necessary, annul the decision of 15 January 2002, drawn up in French, rejecting the applicant's complaint of 10 September 2001, and, lastly, annul the translation of that decision into Dutch, prepared on 18 February 2002;

(2) order the Commission to adopt all measures necessary to implement the judgment to be delivered in the present case;

(3) order the Commission to pay all the costs.

Pleas in law and main arguments

In support of his claim, the applicant pleads infringement of Article 31(2) of the Staff Regulations. According to the applicant, no decision has to date been adopted in respect of his request that Article 31(2) of the Staff Regulations be applied in his case. The applicant further pleads infringement of the duty to have regard for the welfare and interests of officials, of the obligation to provide an adequate statement of reasons and of the principle of proper administration.

Action brought on 11 April 2002 by Gustaaf Van Dyck against the Commission of the European Communities

(Case T-113/02)

(2002/C 131/49)

(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 11 April 2002 by Gustaaf Van Dyck, residing at Wuustwezel (Belgium), represented by Stefan Corbanie and André Bywater, lawyers.

The applicant claims that the Court should:

(1) annul the decision adopted by the Commission on 10 January 2002 and notified on 15 January 2002, rejecting the applicant's complaint of 14 August 2001;

(2) annul the Commission's decision of 5 July 2001 whereby it decided to take no action in respect of the request submitted by the applicant on 1 July 2001 concerning promotion to grade B 2;

(3) annul the Commission's decision whereby it decided to review the applicant's staff report;

(4) order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant pleads infringement of Article 45(1) and of the first paragraph of Article 25 of the Staff Regulations. According to the applicant, the decision of the Promotion Committee did not contain an adequate statement of reasons. Moreover, the reasons given in the Commission's response to the applicant's complaint are unfounded.

III

(Notices)

(2002/C 131/50)

Last publication of the Court of Justice in the Official Journal of the European Communities

OJ C 118, 18.5.2002

Past publications

OJ C 109, 4.5.2002

OJ C 97, 20.4.2002

OJ C 84, 6.4.2002

OJ C 68, 16.3.2002

OJ C 56, 2.3.2002

OJ C 44, 16.2.2002

These texts are available on:

EUR-Lex: http://europa.eu.int/eur-lex

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