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I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

OPINION 1/00 OF THE COURT

of 18 April 2002

(Opinion pursuant to Article 300(6) EC — Proposed agreement between the European Community and non-Member States on the establishment of a European Common Aviation Area)

(2002/C 156/01)

The Court of Justice has received a request for an opinion, lodged at the Court Registry on 13 October 2000 [1] by the Commission of the European Communities pursuant to Article 300(6) EC, on the compatibility with the provisions of the EC Treaty of a proposed agreement on the establishment of a European Common Aviation Area (the ECAA Agreement) to be concluded between the Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the European Community, the Republic of Hungary, the Republic of Iceland, the Republic of Latvia, the Republic of Lithuania, the Kingdom of Norway, the Republic of Poland, Romania, the Slovak Republic and the Republic of Slovenia (the Contracting Parties), and particularly of the system of legal supervision provided for therein. The Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, J.-P. Puissochet, M. Wathelet, R. Schintgen, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges, after hearing S. Alber, First Advocate General, F.G. Jacobs, P. Léger, D. Ruiz-Jarabo Colomer, J. Mischo, A. Tizzano, L.A. Geelhoed and C. Stix-Hackl, Advocates General, gives the following Opinion:

The system of legal supervision proposed by the Agreement on the establishment of a European Common Aviation Area in Articles 17, 23 and 27 and Protocol IV is compatible with the EC Treaty.

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[1] OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

(Third Chamber)

of 23 April 2002

in Case C-62/01 P: Anna Maria Campogrande v Commission of the European Communities [1]

(Appeal — Officials — Sexual harassment — Commission's duty of assistance — Liability)

(2002/C 156/02)

(Language of the case: French)

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

In Case C-62/01 P, Anna Maria Campogrande, Commission of the European Communities, Brussels (Belgium), represented by A. Krywin, avocat: Appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 5 December 2000 in Case T-136/98 Campogrande v Commission [2000] ECR-SC I-A-267 and ECR II-1225, seeking to have that judgment set aside in part, a finding that there was an act of sexual harassment and an order against the Commission of the European Communities for compensation for the non-material damage resulting from that wrongful conduct, the other party to the proceedings being: Commission of the European Communities (Agent: C. Berardis-Kayser, assisted by D. Waelbroeck), the Court (Third Chamber), composed of: F. Macken, President of the Chamber, J.-P. Puissochet (Rapporteur) and J.N. Cunha Rodrigues, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 23 April 2002, in which it:

1. *Dismisses the appeal;*

2. *Orders Ms Campogrande to pay the costs;*

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(1) OJ C 134 of 5.5.2001.

ORDER OF THE COURT

(Fifth Chamber)

of 25 April 2002

in Case C-323/00 P: DSG Dradenauer Stahlgesellschaft mbH v Commission of the European Communities (1)

(Appeal — ECSC — State aid to steel undertakings)

(2002/C 156/03)

(Language of the case: German)

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

In Case C-323/00 P, DSG Dradenauer Stahlgesellschaft mbH, represented by U. Theune and M. Luther: Appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber, Extended Composition) in Case T-234/95 DSG v Commission [2000] ECR II-2603, seeking to have that judgment set aside, the other parties to the proceedings being: Commission of the European Communities (Agent: K.-D. Borchardt, assisted by professor M. Hilf), Federal Republic of Germany (Agent: W.-D. Plessing, assisted by W. Kirchhoff and M. Schütte) and United Kingdom of Great Britain and Northern Ireland, the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, D.A.O. Edward, M. Wathelet, C.W.A. Timmermans and A. Rosas, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on , the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *DSG Dradenauer Stahlwerke mbH is to pay the costs.*

3. *The Federal Republic of Germany is to bear its own costs.*

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(1) OJ C 355 of 9.12.2000.

ORDER OF THE COURT

(Second Chamber)

of 30 January 2002

in Case C-151/01 P: La Conqueste SCEA v Commission of the European Communities (1)

(Community protection of geographical indications — Regulation (EC) No 1338/2000 — Registration of the name 'Canard à foie gras du Sud-Ouest' — Inadmissibility of the action for annulment — Appeal manifestly unfounded)

(2002/C 156/04)

(Language of the case: French)

In Case C-151/01 P, La Conqueste SCEA, established in Morlaas (France), represented by A. Lyon-Caen, F. Fabiani and F. Thiriez, avocats, appeal against the order of the Court of First Instance of the European Communities (Fifth Chamber) in Case T-215/00 La Conqueste v Commission [2001] ECR II-181, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: A.-M. Rouchaud and X. Lewis) — the Court (Second Chamber), composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 30 January 2002, in which it:

1. *Dismisses the action.*

2. *Orders La Conqueste SCEA to pay the costs.*

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(1) OJ C 173 of 16.6.2001.

Reference for a preliminary ruling by the Bundessozialgericht by order of that Court of 19 December 2001 in the case of Cargo Ray Uluslararasi Tasimacilile ve LTD, Sezgin Ergin, Demirkapi Mahallesi and Vedat Calis against Bundesanstalt für Arbeit

(Case C-48/02)

(2002/C 156/05)

Reference has been made to the Court of Justice of the European Communities by order of the Bundessozialgericht (Federal Social Court) of 19 December 2001, received at the Court Registry on 19 February 2002, for a preliminary ruling in the case of Cargo Ray Uluslararasi Tasimacilile ve LTD, Sezgin Ergin, Demirkapi Mahallesi and Vedat Calis against Bundesanstalt für Arbeit on the following questions:

1. Is Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey to be interpreted as prohibiting a Member State of the Community from introducing national provisions which, in comparison with the position under national law on 1 December 1980, lay down new restrictions on access to the employment market for Turkish workers generally, or does the prohibition on introducing new restrictions under Article 13 of Decision No 1/80 relate only to the time when a worker is first legally resident and employed?

2. Is Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey also to be applied to workers employed in Turkey, who, as long-distance lorry drivers engaged in international haulage, regularly pass through a Member State of the Community without belonging to the legitimate labour force of that Member State?

3. Is Article 41(1) of the Additional Protocol of 23 November 1970 to the Agreement establishing an Association between the European Economic Community and Turkey to be interpreted as meaning that a Turkish worker is entitled to plead restriction, contrary to that protocol, of the freedom to provide services?

4. Does a restriction on the freedom to provide services within the meaning of Article 41(1) of the Additional Protocol exist where a Member State of the Community, from the entry into force of the Additional Protocol, abolishes a previously-existing exemption from the requirement to have a work permit for Turkish lorry drivers engaged in international haulage who are employed by a (Turkish) employer, established in Turkey?

Appeal brought on 25 March 2002 by the European Parliament against the judgment delivered on 23 January 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-237/00 between Patrick Reynolds and the European Parliament.

(Case C-111/02 P)

(2002/C 156/06)

An appeal against the judgment delivered on 23 January 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-237/00 between Patrick Reynolds and the European Parliament was brought before the Court of Justice of the European Communities on 25 March 2002 by the European Parliament, represented by Hannu von Hertzen and Dominique Moore, acting as Agents, with an address for service in Luxembourg.

The appellant claims that the Court should:

— set aside the judgment delivered by the Court of First Instance;

— decide the case definitively, by dismissing as unfounded the applications for annulment and for compensation;

— alternatively, refer the case back to the Court of First Instance so that it may determine anew Mr Reynolds' applications for annulment and for compensation;

— make such costs order as may be appropriate.

Pleas in law and main arguments

— Insufficiency of the reasoning of the Court of First Instance concerning the obligation of the appointing authority to comply with the 'minimum conditions' in order to terminate the secondment of an official in the interests of the service to the post of secretary-general of a political group.

— Failure to have regard to the case-law concerning the powers of the appointing authority.

— Contradictory reasoning concerning the alleged discretion of the appointing authority.

— Failure to have regard to the case-law concerning the rights of the defence.

— Insufficient and contradictory reasoning concerning the significance of the consequences of reintegration on the material situation of the person seconded.

— If the Parliament has not committed any unlawful act by adopting the contested decision, there can be no question, in the present case, of the Community incurring any non-contractual liability.

Reference for a preliminary ruling by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen by order of that Court of 14 March 2002 in the case of Kohlpharma GmbH against Federal Republic of Germany

(Case C-112/02)

(2002/C 156/07)

Reference has been made to the Court of Justice of the European Communities by order of the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court of North Rhine-Westphalia) of 14 March 2002, received at the Court Registry on 27 March 2002, for a preliminary ruling in the case of Kohlpharma GmbH against Federal Republic of Germany on the following question:

Is it justified under Article 30 EC or other Community law for the competent German authority to obstruct the parallel import of a medicinal product by refusing authorisation under the simplified procedure, contrary to Article 28 EC, although on the one hand it accepts that the medicinal product to be imported (Jumex), authorised for Chiese Farmaceutici S.p.A. in Italy, is as regards the medically active ingredient (Selegilinhydrochloride) identical to the medicinal product (Movergan) produced by the German authorisation holder Orion Pharma GmbH, the medically active ingredient of which is delivered to the Italian firm by the manufacturer, located in Hungary, on the basis of a licensing agreement but to the German firm solely on the basis of a supply agreement with Orion Corp. Finland, either directly or via Finland, if on the other hand the German authority does not give, as regards the medically active ingredient or the excipients, which the authorities consider to differ both qualitatively and quantitatively in the present case, reasons to show that the two medicinal products are not identical, and in particular are not manufactured according to the same formulation and using the same active ingredient or that they have the same therapeutic effects?

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

(Case C-117/02)

(2002/C 156/08)

An action against the Portuguese 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 António Caeiros, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by allowing the approval of a project in the tourist sector which included construction of housing, hotels and golf clubs in the Ponta do Abano area, without an appropriate assessment of its environmental impact, the Portuguese Republic failed to fulfil its obligations under Article 2(1) of Council Directive 85/337/EEC [1] of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Commission takes the view that the correct transposition of Article 2(1) and Article 4(2) of Directive 85/337/EEC cannot be relied upon by the Portuguese Republic in order to exempt from the assessment obligation provided for in Article 2(1) a specific project which, as in the case of the project relating to work carried out in the area of Ponta do Abano, although falling within the scope of Annex II to that directive, is likely to have a significant impact on the environment by virtue of their nature, size or location.

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[1] OJ 1985 L 175, p. 40.

Reference for a preliminary ruling by the Raad van State by judgment of that Court of 27 March 2002 in the case of Landelijke Vereniging tot Behoud van de Waddenzee, also acting on behalf of Nederlandse Vereniging tot Bescherming van Vogels against Staatssecretaris van Landbouw, Natuurbeheer en Visserij

(Case C-127/02)

(2002/C 156/09)

Reference has been made to the Court of Justice of the European Communities by judgment of the Raad van State (Council of State) of 27 March 2002, received at the Court Registry on 8 April 2002, for a preliminary ruling in the case of Landelijke Vereniging tot Behoud van de Waddenzee, also acting on behalf of Nederlandse Vereniging tot Bescherming van Vogels against Staatssecretaris van Landbouw, Natuurbeheer en Visserij on the following questions:

1. a. Are the words 'plan or project' in Article 6(3) of the habitats directive [1] to be interpreted as also covering an activity which has already been carried on for many years but for which an authorisation is in principle granted each year for a limited period, with a fresh assessment being carried out on each occasion as to whether, and if so in which sections of the area, the activity may be carried on?

   b. If the answer to question 1a is in the negative, must the relevant activity be regarded as a 'plan or project' if the intensity of this activity has increased over the years or an increase in it is made possible by the authorisations?

2. a. If it follows from the answer to question 1 that there is a 'plan or project' within the meaning of Article 6(3) of the habitats directive, is Article 6(3) of the habitats directive to be regarded as a special application of the rules in Article 6(2) or as a provision with a separate, independent purpose in the sense that, for example:

   (i) Article 6(2) relates to existing use and Article 6(3) relates to new plans or projects, or

   (ii) Article 6(2) relates to management measures and Article 6(3) to other decisions, or

   (iii) Article 6(3) relates to plans or projects and Article 6(2) to other activities?

   b. If Article 6(3) of the habitats directive is to be regarded as a special application of the rules in Article 6(2), can the two subparagraphs be applicable cumulatively?

3. a. Is Article 6(3) of the habitats directive to be interpreted as meaning that there is a 'plan or project' once a particular activity is likely to have an effect on the site concerned (and an 'appropriate assessment' must then be carried out to ascertain whether or not the effect is 'significant') or does this provision mean that an 'appropriate assessment' has to be carried out only where there is a (sufficient) likelihood that a 'plan or project' will have a significant effect?

   b. On the basis of which criteria must it be determined whether or not a plan or project within the meaning of Article 6(3) of the habitats directive not directly connected with or necessary to the management of the site is likely to have a significant effect thereon, either individually or in combination with other plans or projects?

4. a. When Article 6 of the habits directive is applied, on the basis of which criteria must it be determined whether or not there are 'appropriate steps' within the meaning of Article 6(2) or an 'appropriate assessment', within the meaning of Article 6(3), in connection with the certainty required before agreeing to a plan or project?

   b. Do the terms 'appropriate steps' or 'appropriate assessment' have independent meaning or, in assessing these terms, is account also to be taken of Article 174(2) EC and in particular the precautionary principle referred to therein?

   c. If account must be taken of the precautionary principle referred to in Article 174(2) EC, does that mean that a particular activity, such as the cockle-fishing in question, can be authorised where there is no obvious doubt as to the absence of a possible significant effect or is that permissible only where there is no doubt as to the absence of such an effect or where the absence can be ascertained?

5. Do Article 6(2) or Article 6(3) of the habitats directive have direct effect in the sense that individuals may rely on them in national courts and those courts must provide the protection afforded to individuals by the direct effect of Community law, as was held inter alia in Case C-312/93 Peterbroeck (cited above)?

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[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206 of 22.7.1992, p. 7).

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

(Case C-144/02)

(2002/C 156/10)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 17 April 2002 by the Commission of the European Communities, represented by Enrico Traversa, Legal Adviserl, and Kilian Gross, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, at Wagner Centre C 254, Kirchberg, Luxembourg.

The applicant claims that the Court should:

1. declare that by failing to make financial aid payable under Council Regulation (EC) No 603/95 [1] of 21 February 1995 on the common organisation of the market in dried fodder subject to VAT (value added tax), the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of the Sixth VAT Directive (Council Directive 77/388/EEC) [2];

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

Pleas in law and main arguments

In its reference to 'subsidies directly linked to the price of such [taxable] supplies', the Community legislator intended, by using such general wording, to include in the basis of assessment for VAT purposes all subsidies directly related to the price of the goods sold or the services provided, i.e., subsidies which have a direct effect on the amount of consideration received by the supplier. There must be a direct, causal relationship, which is precisely quantified or quantifiable, between those subsidies and the supply of the goods or services: the subsidy is granted where and to the extent that those goods (or services) are, in fact, sold on the market. The subsidy granted per tonne of dried fodder pursuant to Directive 603/95 has such a direct, causal effect on the sale price of dried fodder. The processing undertakings can sell the dried fodder at the world market price, which is less than the price they would have to charge on the basis of their costs, only because they are in receipt of the relevant subsidies. The fact that the level of the subsidy is not adjusted to take account of fluctuations in the world market price, does not alter the fact that the subsidy acts as a price supplement. The spirit and the purpose of Article 11(A)1(a) of the Sixth VAT Directive is therefore observed, even where the subsidy payment is taxable as part of the consideration received in return for the sale of the products (or the provision of the services).

The fact that when the products leave the processing undertaking, the subsidy is effectively paid as an advance on the total sale price even if there is no actual contract with the recipient of the products, does not preclude the subsidy from forming part of the consideration. Even though for each individual sale it may be impossible to calculate the exact proportion of the consideration constituted by the subsidy, no practical difficulties are to be expected. The taxable amount is instead calculated on the basis of the consideration obtained plus the total subsidies received. In the Commission's view, the fact that the majority of Member States already tax dried fodder subsidies shows that no difficulties arise in practice.

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[1] OJ L 63, 21.3.1995, p. 1.
[2] OJ L 145, 13.6.1977, p. 1.

Action brought on 25 April 2002 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-149/02)

(2002/C 156/11)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 25 April 2002 by the Commission of the European Communities, represented by H. van Lier and M. Patakia, acting as Agents.

The applicant claims that the Court should:

1. Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC [1] 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, or in any event by failing to inform the Commission of those provisions, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for implementation of the directive expired on 14 March 2000.

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(1) OJ 1998 L 77, p. 36.

Reference for a preliminary ruling by the Landesarbeitsgericht Schleswig-Holstein by order of that Court of 25 March 2002 in the case of Landeshauptstadt Kiel against Dr. med. Norbert Jaeger

(Case C-151/02)

(2002/C 156/12)

Reference has been made to the Court of Justice of the European Communities by order of the Landesarbeitsgericht Schleswig-Holstein (Schleswig-Holstein Higher Labour Court) of 25 March 2002, received at the Court Registry on 26 April 2002, for a preliminary ruling in the case of Landeshauptstadt Kiel against Dr. med. Norbert Jaeger on the following questions:

1. Does time spent on call by an employee in a hospital, in general, constitute working time within the meaning of Article 2(1) of Directive 93/104/EC (1) even where the employee is permitted to sleep at times when he is not required to work?

2. Is it in breach of Article 3 of Directive 93/104/EC for a rule of national law to classify time spent on call as a rest period unless work is actually carried out, where the employee stays in a room provided in a hospital and works as and when required to do so?

3. Is it in breach of Directive 93/104/EC for a rule of national law to permit a reduction in the daily rest period of 11 hours in hospitals and other establishments for the treatment, care and supervision of persons, where the amount of time actually worked during time spent on call or stand-by, not exceeding one half of the rest period, is compensated for at other times?

4. Is it in breach of Directive 93/104/EC for a rule of national law to permit a collective agreement or a works agreement based on a collective agreement to allow rest periods, where time is spent on call and stand-by, to be adapted to the special circumstances of such duties, including in particular reductions in rest periods as a result of work actually being carried out, with these periods of duty being compensated for at other times?

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(1) OJ L 307, p. 18.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 21 March 2002 in the case of Terra Baubedarf-Handel GmbH against Finanzamt Osterholz-Scharmbeck

(Case C-152/02)

(2002/C 156/13)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 21 March 2002, received at the Court Registry on 26 April 2002, for a preliminary ruling in the case of Terra Baubedarf-Handel GmbH against Finanzamt Osterholz-Scharmbeck on the following question:

Can a taxable person exercise his right to deduct only in respect of the calendar year in which he holds an invoice pursuant to Article 18(1)(a) of Directive 77/388/EEC (1) or must the right to deduct always be exercised (even if retrospectively) in respect of the calendar year in which the right to deduct pursuant to Article 17(1) of Directive 77/388/EEC arose?

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(1) OJ L 145, p. 1.

Action brought on 30 April 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-162/02)

(2002/C 156/14)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 30 April 2002 by the Commission of the European Communities, represented by Gerald Braun, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, at Wagner Centre C 254, Kirchberg, Luxembourg.

The applicant claims that the Court should:

(1) declare that the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and Commission Directive 1999/68/EC [1] of 28 June 1999 setting out additional provisions for lists of varieties of ornamental plants as kept by suppliers under Council Directive 98/56/EC [2] in that it has not adopted all the laws, regulations and administrative provisions necessary in order to transpose that directive into national law within the prescribed period;

(2) order the defendant to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 31 December 1999.

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[1] OJ 1999 L 172, p. 42.
[2] OJ 1998 L 226, p. 16.

Action brought on 30 April 2002 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-163/02)

(2002/C 156/15)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 30 April 2002 by the Commission of the European Communities, represented by Gerald Braun, of its Legal Service, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of its Legal Service, at Wagner Centre C 254, Kirchberg, Luxembourg.

The applicant claims that the Court should:

(1) declare that the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and Commission Directive 1999/66/EC [1] of 28 June 1999 setting out requirements as to the label or other document made out by the supplier pursuant to Council Directive 98/56/EC [2] in that has not adopted all the laws, regulations and administrative provisions necessary in order to transpose that directive into national law within the prescribed period;

(2) order the defendant to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 31 December 1999.

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[1] OJ 1999 L 164, p. 76.
[2] OJ 1998 L 226, p. 16.

Action brought on 2 May 2002 by the Kingdom of the Netherlands against the Commission of the European Communities

(Case C-164/02)

(2002/C 156/16)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 2 May 2002 by the Kingdom of the Netherlands, represented by H.G. Sevenster, acting as Agent.

The applicant claims that the Court should:

1. Annul Commission Decision SG (2002) D/228533 of 15 February 2002 relating to Aid Measure No N 812/2001 (the Decision, Annex 1) in so far as the Commission takes the view therein that the contributions paid to port authorities pursuant to the Stimuleringsregeling verwerking baggerspecie (Rules on incentives to encourage the recycling of dredging silt) constitute State aid within the meaning of Article 87(1) EC [1];

2. Order the Commission to pay the costs.

Pleas in law and main arguments

— Breach of Article 87 EC: the Netherlands Government considers that the Commission errs in taking the view that, in the administration of waterways and the maintenance of general infrastructures in port areas, port authorities may be regarded as being undertakings within the meaning of Article 87(1) EC. In the opinion of the Netherlands Government, the administration of shipping channels (including dredging) must be regarded in this connection as being a public responsibility and not an economic activity. Investments in infrastructures of this kind are, under normal circumstances, regarded by the Commission as constituting general measures, expenditure on which is borne by the State as part of its responsibilities within the area of planning and development of a transport system serving the general public interest, on condition that the infrastructures, in accordance with Community legislation, are de jure and de facto open to all actual or potential users.

— Infringement of the principle that reasons must be given.

— Infringement of the principles of the protection of legitimate expectations and of legal certainty: the Commission has, in a number of documents, made known its views on State aid within the ports sector. In these documents, which consist of a variety of decisions, the Commission has, on the one hand, detailed and clarified the Treaty provisions relating to, inter alia, State aid within the ports sector, and, on the other, set out its views on future developments within that sector. By so doing, the Commission has created legitimate expectations.

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[1] Even though this is compatible with the common market under Article 87(3)(c) EC, with reference to point 38 of the Guidelines on State aid for environmental protection (OJ 2001 C 37, p. 3).

Reference for a preliminary ruling by the Tribunal Judicial de Comarca de Alcácer do Sal by order of that Court of 26 April 2002 in the case of Daniel Fernando Messejana Viegas against Companhia de Seguros Zurich S.A. and Mitsubishi Motors de Portugal S.A., CGU International Insurance plc — Agência Geral em Portugal, intervener

(Case C-166/02)

(2002/C 156/17)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Judicial de Comarca de Alcácer do Sal of 26 April 2002, received at the Court Registry on 2 May 2002, for a preliminary ruling in the case of Daniel Fernando Messejana Viegas against Companhia de Seguros Zurich S.A. and Mitsubishi Motors de Portugal S.A., CGU International Insurance plc — Agência Geral em Portugal, intervener.

The Tribunal Judicial de Comarca de Alcácer do Sal requests the Court of Justice to give a ruling on the interpretation of Second Council Directive 84/5/EEC [1] of 30 December 1983 on the approximation of the laws of the Member States relating to third-party liability insurance in respect of the use of motor vehicles [2], having regard to Article 508 of the Civil Code.

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[1] OJ 1984 L 8, p. 17.

[2] Which, in the applicant's view, fixes the minimum capital for compulsory third-party insurance without establishing any dichotomy of schemes or limits to strict liability, with the result that, if the accident had taken place in any other country within the Community, the person responsible would have had to pay compensation up to the amount compulsorily insured (which now is EUR 600 000). Moreover, the limit imposed by that directive is a minimum amount, which implies the repeal of Article 508 of the Civil Code which sets the maximum amount of compensation in the case of a road traffic accident at 'the amount equal to twice the maximum value of actions which may be decided on appeal' (that is to say, EUR 29 927,88).

Appeal brought on 3 May 2002 by Willy Rothley and 70 other Members of the European Parliament against the judgment delivered on 26 February 2002 by the Court of First Instance of the European Communities (Fifth Chamber) in Case T-17/00 Willy Rothley and 70 other Members of the European Parliament v The European Parliament, supported by the Council of the European Union, the Commission of the European Communities, the Kingdom of the Netherlands and the French Republic

(Case C-167/02 P)

(2002/C 156/18)

An appeal against the judgment delivered on 26 February 2002 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-17/00 Willy Rothley and 70 other Members of the European Parliament v The European Parliament, supported by the Council of the European Union, the Commission of the European Communities, the Kingdom of the Netherlands and the French Republic was brought before the Court of Justice of the European Communities on 26 February 2002 by Willy Rothley and 70 other Members of the European Parliament, represented by Dr Hans-Jürgen Rabe, Rechtsanwalt, Nörr Stiefenhofer Lutz, Charlottenstrasse 57, D-10117 Berlin.

The appellants claim that the Court should:

1. set aside the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 26 February 2002 [1];

2. annul the decision of the European Parliament of 18 November 1999 on the amendments to the Rules of Procedure following the Interinstitutional Agreement of 25 May 1999 on the internal investigations conducted by the European Anti-Fraud Office (OLAF) [2] in so far as it concerns the Members of the European Parliament,

   in the alternative,

   refer the case back to the Court of First Instance for a new judgment;

3. order the European Parliament (respondent) to pay the costs.

Pleas in law and main arguments

— Infringement of the fourth paragraph of Article 230 EC: in the contested judgment, the Court of First Instance incorrectly found that the appellants were not, according to any conceivable criterion established in the case-law of the Court, individually concerned by the contested legal measure. Both the content and the effects of the contested decision of the Parliament extend beyond the purely internal organisation of the work of the Parliament, and the decision therefore has direct effects for the Members of the Parliament. That decision is thus a measure which can be the subject of an action under the first paragraph of Article 230 EC, a view also subscribed to by the Court of First Instance in the contested judgment. Those effects are grounds enough for the action to be admissible, and it is not necessary in such a case to decide whether the appellants are individually concerned. In the alternative: contrary to the view of the Court of First Instance, the appellants are already individually concerned by virtue of the fact that they form a closed circle of persons, the identity and number of whom is both fixed and known.

  The Court of First Instance also incorrectly found that the case-law establishing that an action for annulment of a measure of general application is admissible where the author of that measure was under an obligation, imposed by a higher-ranking legal provision, to take account of the special situation of the applicants, was not applicable to the case at issue.

  Both the investigative powers of the OLAF on the one hand, and the obligations to provide information and to permit, and cooperate with, the activities of the OLAF imposed on the Members of Parliament, their employees and the staff of the Parliament by the contested decision on the other, significantly encroach upon the right to independent and free exercise of their mandate. The OLAF's powers of intervention and action, considered as a whole, infringe or circumvent the immunities accorded to Members of the Parliament under Article 10 of the Protocol on the Privileges and Immunities of the European Communities. The contested decision and the powers which that decision confers on the OLAF to carry out investigations in the Parliament also significantly encroach upon the right of committees of inquiry to conduct investigations, thereby adversely affecting the rights of the members of such committees, in particular, those of the appellants.

— Breach of the principle of effective judicial protection: the Court failed to consider whether its interpretation of the fourth paragraph of Article 230 EC ensured effective judicial protection for the appellants or whether, in particular in respect of the condition requiring that an applicant be individually concerned, the Court should have applied an interpretation which afforded the appellants adequate judicial protection against the contested decision.

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[1] Not yet published in the European Court Reports.
[2] OJ 1999 L 2002, p. 1.

Reference for a preliminary ruling by the Østre Landsret by order of that Court of 1st May 2002 in the case of Dansk Postordreforening against Skatteministeriet

(Case C-169/02)

(2002/C 156/19)

Reference has been made to the Court of Justice of the European Communities by order of the Østre Landsret (Eastern Regional Court) of 1st May 2002, received at the Court Registry on 6 May 2002, for a preliminary ruling in the case of Dansk Postordreforening against Skatteministeriet on the following questions:

1. Is Article 13(A)(1)(a) of the Sixth VAT Directive (Council Directive 77/388/EEC) [1] to be interpreted as meaning:

   (i) that a Member State has the right to levy VAT on the conveyance by the public postal services of COD letters and parcels to private persons where the Member State has removed such items of mail from the exclusive right and obligation to convey mail under the Member State's national postal legislation, or

   (ii) is a Member State required not to levy VAT on such items of mail?

2. If neither Question 1(i) or 1(ii) can be answered unequivocally in the affirmative, what criteria should be used to establish whether a Member State has a right, under the circumstances set out in Question 1(i), to levy VAT on the conveyance of COD letters and parcels to private individuals or is it required not to levy VAT on such items of mail?

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[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145 of 13.6.1977, p. 1).

Appeal brought on 7 May 2002 by Schlüsselverlag J.S. Moser Gesellschaft m.b.H., J. Wimmer Medien GmbH & Co KG, Styria Medien AG, Zeitungs- und Verlags-Gesellschaft m.b.H., Eugen Ruß Vorarlberger Zeitungsverlag und Druckerei Gesellschaft mbH, 'Die Presse' Verlags-Gesellschaft m.b.H. and 'Salzburger Nachrichten' Verlags-Gesellschaft m.b.H. & Co KG against the order made on 11 March 2002 by the Court of First Instance of the European Communities (Third Chamber) in Case T-3/02 between Schlüsselverlag J.S. Moser Gesellschaft m.b.H., J. Wimmer Medien GmbH & Co KG, Styria Medien AG, Zeitungs- und Verlags-Gesellschaft m.b.H., Eugen Ruß Vorarlberger Zeitungsverlag und Druckerei Gesellschaft mbH, 'Die Presse' Verlags-Gesellschaft m.b.H. and 'Salzburger Nachrichten' Verlags-Gesellschaft m.b.H. & Co KG and Commission of the European Communities

(Case C-170/02 P)

(2002/C 156/20)

An appeal against the order made on 11 March 2002 by the Court of First Instance of the European Communities (Third Chamber) in Case T-3/02 between Schlüsselverlag J.S. Moser Gesellschaft m.b.H., J. Wimmer Medien GmbH & Co KG, Styria Medien AG, Zeitungs- und Verlags-Gesellschaft m.b.H., Eugen Ruß Vorarlberger Zeitungsverlag und Druckerei Gesellschaft mbH, 'Die Presse' Verlags-Gesellschaft m.b.H. and 'Salzburger Nachrichten' Verlags-Gesellschaft m.b.H. & Co KG and Commission of the European Communities [1] was brought before the Court of Justice of the European Communities on 7 May 2002 by Schlüsselverlag J.S. Moser Gesellschaft m.b.H., J. Wimmer Medien GmbH & Co KG, Styria Medien AG, Zeitungs- und Verlags-Gesellschaft m.b.H., Eugen Ruß Vorarlberger Zeitungsverlag und Druckerei Gesellschaft mbH, 'Die Presse' Verlags-Gesellschaft m.b.H. and 'Salzburger Nachrichten' Verlags-Gesellschaft m.b.H. & Co KG, represented by Dr Michael Krüger, Rechtsanwalt, Linz.

The appellants claim that the Court should:

— Set aside the contested order and give judgment in accordance with the form of order sought in the application; in the alternative, set aside the contested order and refer the case back to the Court of First Instance; in either case, order the defendant Commission to pay the costs.

Pleas in law and main arguments

— Incompleteness of findings of fact

  The Court of First Instance took the Commission's statement that the letters of 12 July 2001 and 3 September 2001 'give the opinion of the merger control directorate and are not binding on the European Commission' as the basis for its legal assessment without including the content of that statement in its findings of fact.

— Incorrect legal assessment of the letter of the director of the merger control directorate of 7 November 2001

The interpretation of the Court of First Instance that the letter of 7 November 2001 is to be imputed to the Commission as a contestable act, since in contrast to the two previous letters there is no mention in it of the Commission not being bound, appears arbitrary and contrary to the principle of good faith and hence in breach of general principles of Community law.

With a correct legal assessment, the Court of First Instance should have concluded that the letter of the merger control directorate of 7 November 2001 was not imputable to the Commission, so that there was a continuing failure to act by the Commission.

([1]) Not yet reported in the ECR.

Reference for a preliminary ruling by the Belgian Cour de Cassation by judgment of that Court of 29 April 2002 in the case of Robert Bourgard against Institut National d'Assurances Sociales pour Travailleurs Indépendants

(Case C-172/02)

(2002/C 156/21)

Reference has been made to the Court of Justice of the European Communities by judgment of the Belgian Cour de Cassation (Third Chamber) of 29 April 2002, received at the Court Registry on 10 May 2002, for a preliminary ruling in the case of Robert Bourgard against Institut National d'Assurances Sociales pour Travailleurs Indépendants on the following question:

Does Article 7(1)(a) of Directive 79/7/EEC ([1]) of the Council of 19 December 1978 authorise a Member State which has set the pensionable age of male self-employed workers at 65 and that of female self-employed workers at 60, with the result that the old-age pension of male workers is calculated on the basis of an insurance record expressed as a fraction with a denominator of 45, whilst the denominator is 40 for female workers, to impose on male workers, who alone have the right to rquest early payment of the old-age pension in the five years prior to normal retirement age, a reduction in the amount of the pension of 5 % for each year by which the pension is taken in advance?

([1]) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6 of 10.1.1979, p. 24).

Reference for a preliminary ruling by the Corte Suprema di Cassazione by order of that Court of 17 January 2002 in the cases of 1) Agenzia per le erogazioni in agricoltura — AGEA against Azienda agricola Fava Alessandro & Delledonne Carla; 2) Agenzia per le erogazioni in agricoltura — AGEA against Luigi Serpelloni; 3) Azienda agricola Coato Giovanni, Lorenzo & Vaccaro Ivana against Agenzia per le erogazioni in agricoltura — AGEA; and 4) Agenzia per le erogazioni in agricoltura — AGEA against Battista e Giacomo Malzani

(Case C-177/02, C-178/02, C-179/02 e C-180/02)

(2002/C 156/22)

Reference has been made to the Court of Justice of the European Communities by order of the la Corte Suprema di Cassazione (Supreme Court of Cassation) of 17 January 2002, received at the Court Registry on 13 May 2002, for a preliminary ruling in the cases of 1) Agenzia per le erogazioni in agricoltura — AGEA against Azienda agricola Fava Alessandro & Delledonne Carla; 2) Agenzia per le erogazioni in agricoltura — AGEA against Luigi Serpelloni; 3) Azienda agricola Coato Giovanni, Lorenzo & Vaccaro Ivana against Agenzia per le erogazioni in agricoltura — AGEA; and 4) Agenzia per le erogazioni in agricoltura — AGEA against Battista e Giacomo Malzani on the following question:

Must Article 1 of Regulation (EEC) No 856/84 ([1]) of 31 March 1984 and Articles 1 to 4 of Regulation No 3950/92 ([2]) of 28 December 1992 be interpreted as meaning that the additional levy on milk and milk products is in the nature of an administrative penalty with the result that producers are liable to pay it only where quantities allocated have been exceeded by them intentionally or as a result of negligence?

([1]) OJ L 90 of 1.4.1984, p. 10.
([2]) OJ L 405 of 31.12.1992, p. 1.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT

of 24 April 2002

in Case T-220/96: Elliniki Viomichania Oplon AE (EVO) v Council of the European Union and Commission of the European Communities [1]

(Non-contractual liability for an unlawful act — Regulation (EEC) No 2340/90 — Embargo on trade with Iraq — Impairment of rights equivalent to expropriation — Causal link)

(2002/C 156/23)

(Language of the case: Greek)

In Case T-220/96, Elliniki Viomichania Oplon AE (EVO), established in Athens (Greece), represented by T. Fortsakis, lawyer, with an address for service in Luxembourg, v Council of the European Union (Agent: S. Kyriakopoulou) and Commission of the European Communities (Agent: M. Condou-Durande): Application for compensation for the damage allegedly suffered by the applicant as a result of the adoption of Council Regulation (EEC) No 2340/90 of 8 August 1990 preventing trade by the Community as regards Iraq and Kuwait (OJ 1990 L 213, p. 1), the Court of First Instance (Fourth Chamber), composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 24 April 2002, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 54 of 22.2.1997.

JUDGMENT OF THE COURT

of 20 March 2002

in Case T-9/99, HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and Others v Commission of the European Communities [1]

(Competition — Cartel — District heating pipes — Article 85 of the Treaty (now Article 81 EC) — Boycott — Fine — Guidelines on setting fines — Objection of illegality — Non-retroactivity — Rights of defence — Leniency notice)

(2002/C 156/24)

(Language of the case: German)

In Case T-9/99: HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG, established in Rosenheim (Germany), HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH, Verwaltungsgesellschaft, established in Rosenheim, Isoplus Fernwärmetechnik Vertriebsgesellschaft mbH, established in Rosenheim, Isoplus Fernwärmetechnik Gesellschaft mbH, established in Hohenberg Austria, Isoplus Fernwärmetechnik GmbH, established in Sondershausen (Germany), represented by P. Krömer and F. Nusterer, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: W. Mölls and É. Gippini Fournier) — application for, primarily, annulment of Commission Decision 1999/60/EC of 21 October 1998 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4: — Pre-Insulated Pipe Cartel) (OJ 1999 L 24, p. 1) or, in the alternative, reduction of the fine imposed on the applicants by that decision — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 20 March 2002, in which it:

1. *Annuls Articles 3(d) and 5(d) of Commission Decision 1999/60/EC of 21 October 1999 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691.E-4: — Pre-Insulated Pipe Cartel) in so far as it relates to HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH, Verwaltungsgesellschaft;*

2. *Dismisses the remainder of the application;*

3. *Orders the applicants jointly and severally to bear their own costs, including those relating to the interlocutory proceedings, and to pay 80 % of the costs incurred by the Commission, including those relating to the interlocutory proceedings;*

4. *Orders the Commission to bear 20 % of its own costs, including those relating to the interlocutory proceedings.*

(1) OJ C 86 of 27.3.1999.

JUDGMENT OF THE COURT

of 20 March 2002

in Case T-15/99, Brugg Rohrsysteme GmbH v Commission of the European Communities (1)

(Competition — Cartel — District heating pipes — Article 85 of the EC Treaty (now Article 81 EC) — Boycott — fine — Guidelines on setting fines — Non-retroactivity — Legitimate expectation)

(2002/C 156/25)

(Language of the case: German)

In Case T-15/99, Brugg Rohrsysteme GmbH, established in Wunstorf (Germany), represented by T. Jestaedt, H.-C. Salger and M. Sura, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: W. Mölls and É. Gippini Fournier) — application for annulment of Commission Decision 1999/60/EC of 21 October 1998 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4: — Pre-Insulated Pipe Cartel) (OJ 1999 L 24, p. 1) or, in the alternative, for reduction of the fine imposed on the applicant by that decision — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; G. Herzig, Administrator, for the Registrar, has given a judgment on 20 March 2002, in which it:

1. *Dismisses the application;*

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

(1) OJ C 86 of 27.3.1999.

JUDGMENT OF THE COURT

of 20 March 2002

in Case T-16/99, Lögstör Rör (Deutschland) GmbH v Commission of the European Communities (1)

(Competition — Cartel — District heating pipes — Article 85 of the EC Treaty (now Article 81 EC) — Boycott — Access to the file — Fine — Guidelines on the method of setting fines — Non-retroactivity — Legitimate expectations)

(2002/C 156/26)

(Language of the case: German)

In Case T-16/99, Lögstör Rör (Deutschland) GmbH, established in Fulda (Germany), represented by H.-J. Hellmann and T. Nägele, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: W. Mölls and E. Gippini Fournier) — application for, primarily, annulment of Commission Decision 1999/60/EC of 21 October 1998 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4: — Pre-Insulated Pipe Cartel) (OJ 1999 L 24, p. 1) or, in the alternative, reduction of the fine imposed on the applicant by that decision — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, V. Tiili, and R.M. Moura Ramos, Judges; B. Pastor, Principle Administrator, for the Registrar, has given a judgment on 20 March 2002, in which it:

1. *Dismisses the application;*

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

(1) OJ C 86 of 27.3.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 March 2002

in Case T-21/99, Dansk Rørindustri A/S v Commission of the European Communities [1]

(Competition — Cartel — District heating pipes — Article 85 of the EC Treaty (now Article 81 EC) — Continuous infringement — Boycott — Fine — Guidelines on the method of setting fines — Non-retroactivity — Legitimate expectations)

(2002/C 156/27)

(Language of the case: Danish)

In Case T-21/99, Dansk Rørindustri A/S, established in Fredericia (Denmark), represented by K. Dyekjær-Hansen, K. Høegh et C. Karhula Lauridsen, avocats, with an address for service in Luxembourg, against Commission of the European Communities (Agents: E. Gippini Fournier and H.C. Støvlbæk) — application for annulment of Commission Decision 1999/60/EC of 21 October 1998 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4: — Pre-Insulated Pipe Cartel) (OJ 1999 L 24, p. 1) and also for reduction of the fine imposed on the applicant by that decision — the Court of First Instance (Fourth Chamber), composed of P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 20 March 2002, in which it:

1. *Annuls Commission Decision 1999/60/EC of 21 October 1998 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4 — Pre-Insulated Pipe Cartel) in so far as it finds that the applicant infringed Article 85(1) of the Treaty by participating in the infringement referred to in that article during the period April to August 1994;*

2. *Dismisses the remainder of the application;*

3. *Orders the applicant to bear its own costs and to pay 90 % of the costs incurred by the Commission;*

4. *Orders the Commission to bear 10 % of its own costs.*

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[1] OJ C 100 of 10.4.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 March 2002

in Case T-95/99: Satellimages TV 5 SA v Commission of the European Communities [1]

(Action for annulment — Competition — Complaint — Commission letter addressed to the complainant — Preparatory measure — Inadmissibility)

(2002/C 156/28)

(Language of the case: English)

In Case T-95/99, Satellimages TV 5 SA, established in Paris (France), represented by E. Marissens, lawyer, with an address for service in Luxembourg, supported by French Republic (Agents: initially K. Rispal-Bellanger, and, subsequently, G. de Bergues and F. Million), v Commission of the European Communities (Agents: B. Doherty and K. Wiedner), supported by Deutsche Telekom Ag, established in Bonn (Germany), represented by F. Roitzsch and K. Quack, with an address for service in Luxembourg: Application for the annulment of the alleged decision by the Commission of 15 February 1999 relating to a complaint by the applicant under Article 86 of the EC Treaty (now Article 82 EC) (IV/36.968 — Satellimages TV 5/Deutsche Telekom), 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, has given a judgment on 7 March 2002, in which it:

1. *Dismisses the application as inadmissible;*

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

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

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[1] OJ C 188 of 3.7.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 March 2002

in Joined Cases T-127/99, T-129/99 and T-148/99: Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities [1]

(State aid — Concept of State aid — Tax measures — Selective nature — Justification owing to the nature or scheme of the tax system — Compatibility of the aid with the common market)

(2002/C 156/29)

(Language of the case: Spanish)

In Joines Cases T-127/99, Territorio Histórico de Álava — Diputación Foral de Álava and Others, represented by A. Creus Carreras and B. Uriarte Valiente, lawyers, T-129/99, Comunidad Autónoma del País Vasco, Gasteizko Industria Lurra, SA, established in Vitoria (Spain), represented by F. Pombo García, E. Garayar Gutiérrez and J. Alonso Berberena, lawyers, with an address for service in Luxembourg, and T-148/99 Daewoo Electronics Manufacturing España, SA, established in Vitoria, represented by A. Creus Carreras and B. Uriarte Valiente, lawyers, against Commission of the European Communities (Agents: F. Santaolalla, G. Rozet and G. Valero Jordana) supported by Asociación Nacional de Fabricantes de Electrodomésticos de Línea Blanca (ANFEL), having its registered office in Madrid (Spain), represented by M. Muñiz and M. Cortés Muleiro, lawyers, with an address for service in Luxembourg, and by Conseil européen de la construction d'appareils domestiques (CECED), represented by A. González Martínez, lawyer, with an address for service in Luxembourg — application for annulment of Commission Decision 1999/718/EC of 24 February 1999 concerning State aid granted by Spain to Daewoo Electronics Manufacturing España SA (Demesa) (OJ 1999 L 292, p. 1) — the Court of First Instance (Third Chamber, Extended Composition), composed of J. Azizi, President of the Chamber, K. Lenaerts, V. Tiili, R.M. Moura Ramos and M. Jaeger, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 6 March 2002, the operative part of which is as follows:

1. *In Case T-129/99, the action is inadmissible in so far as it seeks the annulment of Article 1(d) and (e) of Commission Decision 1999/718/EC of 24 February 1999 concerning State aid granted by Spain to Daewoo Electronics Manufacturing España SA (Demesa) and of Article 2(1)(b) thereof.*

2. *In Cases T-129/99 and T-148/99, Article 1(a) of Decision 1999/718 is annulled.*

3. *In Cases T-129/99 and T-148/99, Article 1(b) of Decision 1999/718 is annulled.*

4. *In Cases T-129/99 and T-148/99, Article 1(c) of Decision 1999/718 is annulled in so far as it excludes the plant valued at EUR 1 803 036,31 from the eligible costs covered by the Ekimen aid scheme.*

5. *In Cases T-127/99 and T-148/99, Article 1(e) of Decision 1999/718 is annulled.*

6. *In Cases T-129/99 and T-148/99, Article 2(1)(a) of Decision 1999/718 is annulled in so far as it refers to Article 1(a) and (b) of that decision and in so far as it instructs the Kingdom of Spain to recover from Demesa aid relating to the annulled part of Article 1(c) of that decision.*

7. *In Cases T-127/99 and T-148/99, Article 2(1)(b) of Decision 1999/718 is annulled in so far as it refers to Article 1(e) of that decision.*

8. *The actions are dismissed as to the remainder.*

9. *Each party is ordered to pay its own costs.*

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[1] OJ C 226 of 7.8.1999 and C 299 of 16.10.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 March 2002

in Case T-168/99 Territorio Histórico de Àlava — Diputación Foral de Àlava v Commission of the European Communities [1]

(State aid — Decision to initiate the procedure under Article 88(2) — Order to suspend payment of alleged aid)

(2002/C 156/30)

(Language of the case: Spanish)

In Case T-168/99 Territorio Histórico de Àlava — Diputación Foral de Àlava, represented by A. Creus Carreras, lawyer, v Commission of the European Communities (Agents: F. Santaolalla, G. Rozet and G. Valero Jordana) — application for annulment of the Commission Decision of 31 March 1999 initiating the procedure under Article 88(2) EC in respect of the aid granted by the Spanish authorities to Ramondín SA and Ramondín Cápsulas SA, on the one hand, and requiring the Spanish authorities to suspend payment of that aid, on the other (OJ 1999 C 194, p. 18) — the Court of First Instance

(Third Chamber, Extended Composition), composed of J. Azizi, President of the Chamber, K. Lenaerts, V. Tiili, R.M. Moura Ramos and M. Jaeger, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 6 March 2002 in which it:

1. *Declares that there is no need to adjudicate on the application;*

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

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(1) OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 March 2002

in Case T-212/99: Intervet International BV v Commission of the European Communities (1)

(Regulation (EEC) No 2377/90 — Veterinary medicinal products — Application for the inclusion of 'Altrenogest' in the list of substances for which a provisional maximum residue limit may be established — Opinion of the Committee for Veterinary Medicinal Products (CVMP) — Action for annulment — Inadmissibility — Action for failure to act — Adoption of a position putting an end to the inaction — No need to adjudicate)

(2002/C 156/31)

(Language of the case: English)

In Case T-212/99, Intervet International BV, formerly Hoechst Roussel Vet GmbH, established in Boxmeer (Netherlands), represented by D. Waelbroek and D. Brinckman, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: T. Christoforou, H. Stolvlbaek and F. Ruggeri-Laderchi): Application for the annulment of an alleged Commission decision rejecting an application by the applicant for the insertion of the substance 'altrenogest' in Annex III to Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 1990 L 224, p. 1) and, in the alternative, for a declaration that the Commission unlawfully failed to prepare a draft of measures to be taken with a view to such insertion and to initiate the procedure laid down in Article 8 of that regulation. 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, has given a judgment on 7 March 2002, in which it:

1. *Dismisses the claim for annulment as inadmissible;*

2. *Declares that there is no longer need to adjudicate on the claim for a declaration that the Commission failed to act;*

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

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(1) OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 February 2002

in Joined Cases T-227/99 and T-134/00: Kvaerner Warnow Werft GmbH v Commission of the European Communities (1)

(State aids — Shipbuilding — Former German Democratic Republic — Limits on capacity — Composition of the Commission — Commission Member given leave of absence — Election of Commission Members to the European Parliament)

(2002/C 156/32)

(Language of the case: German)

In Joined Cases T-227/99 and T-134/00: Kvaerner Warnow Werft GmbH, established in Rostock-Warnemünde (Germany), represented by M. Schütte, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agent: K.-D. Borchardt) — application for annulment of Commission Decision 1999/675/EC of 8 July 1999, as amended, and of Commission Decision 2000/336/EC of 15 February 2000 on State aid granted by the Federal Republic of Germany to Kvaerner Warnow Werft GmbH (OJ 1999 L 274, p. 23 and OJ 2000 L 120, p. 12, respectively) — the Court of First Instance (Fourth Chamber, Extended Composition), composed of: P. Mengozzi, President, R. García-Valdecasas, V. Tiili, R.M. Moura Ramos and J.D. Cooke, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 28 February 2002, in which it:

1. *Annuls Commission Decision 1999/675/EC of 8 July 1999 on the State aid implemented by Germany in favour of Kvaerner Warnow Werft GmbH, as amended by Commission Decision 2000/416/EC of 29 March 2000 on State aid implemented by Germany in favour of Kvaerner Warnow Werft GmbH (1999) and Commission Decision 2000/336/EC of 15 February 2000 on State aid implemented by Germany in favour of Kvaerner Warnow Werft GmbH;*

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

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(1) OJ C 6 of 8.1.2000 and C 211 of 22.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 March 2002

in Joined Cases T-92/00 and T-103/00, Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities (1)

(State aid — Concept of State aid — Tax measures — Selective nature — Justification owing to the nature or scheme of the tax system — Misuse of powers)

(2002/C 156/33)

(Language of the case: Spanish)

In Joined Cases T-92/00, Territorio Histórico de Álava — Diputación Foral de Álava, represented by A. Creus Carreras and B. Uriarte Valiente, lawyers, and T-103/00 Ramondín SA, established in Logroño (Spain), Ramondín Cápsulas SA, established in Laguardia (Spain), represented by J. Lazcano-Iturburu, lawyer, against Commission of the European Communities (Agents: F. Santaolalla, G. Rozet and G. Valero Jordana) — application for the annulment of Commission Decision 2000/795/EC of 22 December 1999 on the State aid implemented by Spain for Ramondín SA and Ramondín Cápsulas SA (OJ 2000 L 318, p. 36) — the Court of First Instance (Third Chamber, Extended Composition), composed of J. Azizi, President of the Chamber, K. Lenaerts, V. Tiili, R.M. Moura Ramos and M. Jaeger, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 6 March 2002, in which it:

1. *Dismisses the actions.*

2. *Orders the applicants to pay their own costs and also those incurred by the Commission.*

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(1) OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 26 February 2002

in Case T-169/00, Esedra SPRL v Commission of the European Communities (1)

(Public contract for the supply of services — Day nursery management services — Principle of non-discrimination — Contract notice — Contract documents — Reasons for decision not to award contract — Misuse of powers)

(2002/C 156/34)

(Language of the case: French)

In Case T-169/00: Esedra SPRL, established in Brussels (Belgium), represented by G. Vandersanden, E. Gillet and L. Levi, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: initially by X. Lewis and L. Parpala, and, subsequently, H. van Lier and L. Parpala) — application first, for the suspension of operation of the Commission's decision not to award to the applicant the public contract relating to invitation to tender No 99/52/IX.D.1, notified to the applicant by letter of 31 May 2000, and the Commission's decision to award the contract to a group of Italian companies represented by Centro Studi Antonio Manieri Srl, notified to the applicant by letter of 9 June 2000, and, second, for compensation for the damage allegedly caused by those decisions — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President of the Chamber, R. García-Valdecasas and J.D. Cooke, Judges; B. Pastor, Administrator, for the Registrar, has given a judgment on 26 February 2002, in which it:

1. *Dismisses the application.*

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

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(1) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 January 2002

in Case T-174/00: Biret International SA v Council of the European Union [1]

(Substances having a hormonal action — Directive 88/146/EEC — Action for damages — Period of limitation)

(2002/C 156/35)

(Language of the case: French)

In Case T-174/00: Biret International SA, a company in judicial liquidation, established in Paris, represented in these proceedings by M. de Thoré, liquidator, and by S. Rodrigues, lawyer, with an address for service in Luxembourg, against Council of the European Union (Agents: J. Carbery and F.P. Ruggeri Laderchi), supported by Commission of the European Communities (Agents: T. Christoforou and A. Bordes) — application under Article 178 of the EC Treaty (now Article 235 EC) and the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) for compensation for the damage allegedly suffered by the applicant as a result of the prohibition on the importation into the Community of beef and veal treated with certain hormones — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 11 January 2002, in which it:

1. *Dismisses the action as being partly inadmissible and for the rest unfounded;*

2. *Orders the applicant to pay, in addition to its own costs, those incurred by the Council. The Commission shall pay its own costs.*

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[1] OJ C 285 of 7.10.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 January 2002

in Case T-210/00: Etablissements Biret et Cie. SA v Council of the European Union [1]

(Substances having a hormonal action — Directive 88/146/EEC — Action for damages — Period of limitation)

(2002/C 156/36)

(Language of the case: English)

In Case T-210/00, Établissements Biret et Cie SA, established in Paris (France), represented by S. Rodrigues, lawyer, with an address for service in Luxembourg, v Council of the European Union (Agents: J. Carbery and F. P. Ruggeri Laderchi), supported by Commission of the European Communities (Agents: T. Christoforou and A. Bordes): Application under Article 178 of the EC Treaty (now Article 235 EC) and the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) for compensation for the damage allegedly suffered by the applicant as a result of its subsidiary, Biret International SA, being placed in judicial liquidation following the prohibition on the importation into the Community of beef and veal treated with certain hormones, the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 11 January 2002, in which it:

1. *Dismisses the action as being partly inadmissible and for the rest unfounded;*

2. *Orders the applicant to pay, in addition to its own costs, those incurred by the Council. The Commission shall pay its own costs.*

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[1] OJ C 302 of 21.10.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 January 2002

in Cases T-212/00: Nuove Industrie Molisane Srl v Commission of the European Communities [1]

(State Aid — Decision declaring aid compatible with the common market — Action for annulment — Recipient company — Legal interest in bringing proceedings — Inadmissibility)

(2002/C 156/37)

(Language of the case: Italian)

In Case T-212/00, Nuove Industrie Molisane Srl, established in Sesto Campano (Italy), represented by I. Van Bael and F. Di Gianni, lawyers, v Commission of the European Communities (Agents: V. Di Bucci, A. Abate and G.B. Conte): Application for the partial annulment of Commission Decision SG(2000)D/103923 of 30 May 2000 authorising State aid amounting to LIT 29176,69 million in favour of Nuove Industrie Molisane in order to carry out investment at Sesto Campano (Molise, Italy), the Court of First Instance of the European Communities (First Chamber, Extended Composition), composed of: B. Vesterdorf, President, M. Vilaras, J. Pirrung, A.W.H. Meij and N.J. Forwood, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 30 January 2002, in which it:

1. *Dismisses the application as inadmissible;*

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

[1] OJ C 302 of 21.10.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 March 2002

in Case T-241/00: Azienda Agricola 'Le Canne' Srl against Commission of the European Communities [1]

(Agriculture — Reduction of Community financial assistance — Obligation to state reasons)

(2002/C 156/38)

(Language of the case: Italian)

In Case T-241/00: Azienda Agricola 'Le Canne' Srl, established in Porto Viro (Italy), represented by G. Carraro, F. Mazzonetto and G. Arendt, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: E. de March, L. Visaggio and A. Dal Ferro) — application, first, for annulment of Commission Decision C (2000) 1754 of 11 July 2000 reducing the assistance granted to the applicant in respect of project I/16/90/02, and second, for damages — the Court of First Instance (First Chamber), composed of B. Vesterdor, President, N. Forwood and H. Legal, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 5 March 2002, in which it:

1. *Annuls Decision C (2000) 1754 of 11 July 2000;*

2. *Dismisses the remainder of the appeal;*

3. *Orders the Commission to pay the costs, including those of the application for interim relief.*

[1] OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 April 2002

in Case T-325/00: Elke Sada v Commission of the European Communities [1]

(Officials — Temporary agent — Unemployment allowance — Refused)

(2002/C 156/39)

(Language of the case: German)

In Case T-325/00: Elke Sada, former temporary agent at the Commission of the European Communities, residing in Besozzo (Italy), represented by H.-J. Rüber, Rechtsanwalt, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and B. Wägenbaur) — application for annulment of the decision of the Commission of 20 December 1999 refusing to grant the applicant an unemployment allowance under Article 28a of the Conditions of Employment of Other Servants of the European Communities — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; H. Jung, Registrar, gave a judgment on 17 April 2002, in which it:

1. *dismisses the application;*

2. *orders the parties to bear their own costs.*

([1]) OJ C 372 of 23.12.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 March 2002

in Case T-355/00: DaimlerChrysler AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

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

(2002/C 156/40)

(Language of the case: German)

In Case T-355/00: DaimlerChrysler AG, established in Stuttgart (Germany), represented by S. Völker, lawyer, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl and D. Schennen) — action brought against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 September 2000 (Case R 142/2000-3) relating to registration of 'TELE AID' as a Community trade mark — 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, has given a judgment on 20 March 2002, in which it:

1. *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 September 2000 (Case R 142/2000-3) as regards the following categories of goods and services:*

   — *'electrical and electronic devices for transferring speech and data; stationary and mobile transmission, relay and audio receivers and devices; data processing equipment and parts therefor; navigation devices' within Class 9;*

   — *'operation of a communications network' within Class 38;*

   — *'collection, storage, processing and output of information' within Class 42.*

2. *As to the remainder, dismisses the action;*

3. *Orders the applicant to pay its own costs and one half of the defendant's costs; the defendant is to pay the other half of its own costs.*

([1]) OJ C 28 of 27.1.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 April 2002

in Case T-372/00: Mario Campolargo v Commission of the European Communities [1]

(Officials — Recruitment procedures — Application of Article 29(1) of the Staff Regulations — Recruitment of a temporary agent — Withdrawal of an administrative act)

(2002/C 156/41)

(Language of the case: French)

In Case T-372/00: Mario Campolargo, temporary agent at the Commission of the European Communities, residing in Kraainem (Belgium), represented by C. Mourato, avocat, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall and D. Waelbroeck) — application for annulment of the decision of the Commission of 15 February 2000 annulling the appointment of the applicant to the post of Head of Unit XIII.G.2 — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; H. Jung, Registrar, gave a judgment on 23 April 2002, in which it:

1. *annuls the decision of the Commission of 15 February 2000 annulling the appointment of Mr Campolargo to the post of Head of Unit XIII.G.2.*

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

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[1] OJ C 45 of 10.2.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 April 2002

in Case T-51/01: Joachim Fronia v Commission of the European Communities [1]

(Officials — Reorganisation of the Commission's administrative structures — Reappointment of a former Head of Unit as an ad personam adviser)

(2002/C 156/42)

(Language of the case: French)

In Case T-51/01: Joachim Fronia, an official of the Commission of the European Communities, residing in Overijse, Belgium, represented by J.-N. Louis and V. Peere, avocats, with an address for service in Luxembourg, against Commission of the European Communities (Agent: F. Clotuche-Duvieusart) — application for annulment of the decisions whereunder, on the reorganisation of the Commission's administrative structures, the applicant was not kept on as acting head of Unit, but was instead appointed as an ad personam adviser — the Court of First Instance (Second Chamber), composed of R.M. Moura Ramos, President, and J. Pirrung and A.W.H. Meij, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 16 April 2002, in which it:

1. *Dismisses the application;*

2. *Orders each of the parties to bear their own costs.*

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[1] OJ C 186 of 30.6.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 22 March 2002

in Case T-143/93: K. Schumacher v Council of the European Union and Commission of the European Communities [1]

(Action for damages — Non-contractual liability — Milk — Producers subscribed to non-marketing or reconversion undertakings — Proceedings not continued by successors — No need to adjudicate)

(2002/C 156/43)

(Language of the case: German)

In Case T-143/93: K. Schumacher, residing in Kiel (Germany), represented by C. Paulsen and P. Paulsen, Rechtanwälte, with an address for service in Luxembourg, against Council of the European Union (Agents: A. Brautigam and A.-M. Colaert) and Commission of the European Communities (Agents: D. Booß, M. Niejahr, H.-J. Rabe and Núñez-Müller) — application for compensation pursuant to Articles 178 and the second paragraph of Article 215 of the EC Treaty (now, Article 235 EC and the second paragraph of Article 288 EC) for the loss suffered by the applicant as a result of having been prevented from marketing milk pursuant to Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 93, p. 13), supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 (OJ 1984 L 132, p. 11) — 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 22 March 2002, the operative part of which is as follows:

1. *There is no need to adjudicate on the present case.*

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

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[1] OJ C 146 of 5.6.1991.

ORDER OF THE COURT OF FIRST INSTANCE

of 24 January 2002

in Case T-38/95 DEP: Groupe Origny SA v Commission of the European Communities [1]

(Taxation of costs)

(2002/C 156/44)

(Language of the case: French)

In Case T-38/95: Groupe Origny SA, established in Paris, represented by X. de Roux, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agent: R. Lyal) — application for taxation of the costs to be paid by the defendant to the applicant pursuant to the judgment of the Court of First Instance in Joined Cases T-25/95, T-26/95, T-30 to T-32/95, T-34 to T-39/95, T-42 to T-46/95, T-48/95, T-50 to T-65/95, T-68 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 [2000] ECR II-491), the Court of First Instance (Third Chamber, Extended Composition), composed of: M. Jaegar, President, R. García-Valdecasas, K. Lenaerts, P. Lindh and J. Azizi, Judges; B. Pastor, Principal Administrator, for the Registrar, has made an order on 24 January 2002, the operative part of which is as follows:

The amount of costs recoverable by the applicant in Case T-38/95 is fixed at EUR 106 714,31 (FRF 700 000).

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[1] OJ C 119 of 13.5.1995.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 January 2002

in Case T-87/97 DEP, Starway SA v Council of the European Union [1]

(Taxation of Costs)

(2002/C 156/45)

(Language of the case: French)

In Case T-87/97 DEP, Starway SA, established in Luynes (France), represented by J.-F. Bellis and P. De Baere, lawyers, with an address for service in Luxembourg, against Council of the European Union (Agents: R. Tanca and S. Marquardt), supported by Commission of the European Communities (Agents: V. Kreuschitz and S. Meany) — application for taxation of the costs to be paid to the applicant by the defendent following the judgment of the Court of First Instance of 26 September 2000 in Case T-80/97 Starway v Council [2000] ECR II-3099 — the Court of First Instance (Third Chamber, Extended Composition), composed of M. Jaeger, President, R. García-Valdecasas, K. Lenaerts, P. Lindh and J. Azizi, Judges; H. Jung, Registrar, has made an order on 10 January 2002, the operative part of which is as follows:

The total costs payable to the applicant by the Council in Case T-80/97 are fixed at EUR 58 031,87.

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[1] OJ C 212 of 12.7.1997.

ORDER OF THE COURT OF FIRST INSTANCE

of 9 April 2002

in Case T-353/99: N.V. Calberson Belgium v Commission of the European Communities [1]

(Action for annulment — Importation of television sets from Turkey — No need to adjudicate)

(2002/C 156/46)

(Language of the case: Dutch)

In Case T-353/99: N.V. Calberson Belgium, represented by L. Gheysen, lawyer, with an address for service in Luxembourg, supported by Kingdom of the Netherlands (Agents: A. Fierstra and J. van Bakel) against Commission of the European Communities (Agents: R. Tricot and J. Stuyck) — application for annulment of the decisions of the Commission C(1999)2140 final (REC 8/98) and C(1999)2143 final (REC 9/98), of 19 July 1999, finding that it was appropriate, first, to make post clearance recovery and, secondly, to refuse to refund duties in respect of the importation of television sets from Turkey — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, K. Lenaerts, and J. Azizi, Judges; H. Jung, Registrar, made an order on 9 April 2002, the operative part of which is as follows:

1. *There is no need to adjudicate on the present case.*

2. *The Commission shall pay all the costs.*

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[1] OJ C 79 of 18.3.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 14 January 2002

in Case T-84/01, Association contre l'heure d'été (ACHE), formerly Association contre l'horaire d'été (ACHE) v European Parliament and Council of the European Union [1]

(Action for annulment — Directive 2000/84/EC — Summer-time arrangements — Locus standi — Association — Inadmissibility)

(2002/C 156/47)

(Language of the case: French)

In Case T-84/01, Association contre l'heure d'été (ACHE), formerly Association contre l'horaire d'été (ACHE), established at Marly-le-Roy (France), represented by C. Lepage, lawyer, against European Parliament (Agents: C. Pennera and M. Goméz-Leal) and Council of the European Union (Agent: A. Lopes Sabino) — application for annulment of Directive 2000/84/EC of the European Parliament and of the Council of 19 January 2001 on summer-time arrangements (OJ 2001 L 31, p. 21) — 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; H. Jung, Registrar, has made an order on 14 January 2002, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

2. *The applicant shall bear the costs.*

([1]) OJ C 173 of 16.6.2001.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 20 December 2001

in Case T-213/01 R: Österreichische Postsparkasse AG v Commission of the European Communities

(Proceedings for interim measures — Competition — Access to documents — Admissibility — Urgency — Weighing of interests)

(2002/C 156/48)

(Language of the case: German)

In Case T-213/01 R: Österreichische Postsparkasse AG, established in Vienna, represented by M. Klusmann, F. Wiener and A Reidlinger, lawyers, against Commission of the European Communities (Agent: S. Rating), — application principally for suspension of the operation of the Commission's decision COMP/D-1/36.571 of 9 August 2001 and, in the alternative, for an order restraining the Commission from disclosing to the Freiheitliche Partei Österreichs the statement of objections of 10 September 1999 and the further statement of objections of 21 November 2000 in Case COMP/36.571, — the President of the Court of First Instance has made an order on 20 December 2001 in which he:

1. *Dismisses the application for interim measures.*

2. *Reserves the costs.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 20 December 2001

in Case T-214/01 R: Bank für Arbeit und Wirtschaft AG v Commission of the European Communities

(Proceedings for interim measures — Competition — Access to documents — Admissibility — Urgency — Weighing of interests)

(2002/C 156/49)

(Language of the case: German)

In Case T-214/01 R: Bank für Arbeit und Wirtschaft AG, established in Vienna, represented by H.J. Niemeyer, lawyer, against Commission of the European Communities (Agent: S. Rating), — application principally for suspension of the operation of the Commission's decision COMP/D-1/36.571 of 25 July 2001 and, in the alternative, for an order restraining the Commission from disclosing to the Freiheitliche Partei Österreichs the statement of objections of 10 September 1999 and the further statement of objections of 21 November 2000 in Case COMP/36.571, — the President of the Court of First Instance has made an order on 20 December 2001 in which he:

1. *Dismisses the application for interim measures.*

2. *Reserves the costs.*

ORDER OF THE COURT OF FIRST INSTANCE

of 21 March 2002

in Case T-218/01: Laboratoire Monique Remy SAS against the Commission of the European Communities ([1])

(Action for annulment — Time-limits — Manifest inadmissibility)

(2002/C 156/50)

(Language of the case: French)

In Case T-218/02: Laboratoire Monique Remy SAS, established in Grasse (France), represented by J.-F. Pupel, lawyer, v Commission of the European Communities (Agent: A. Bordes)

— application for annulment of Commission Decision C (2001) 1380 of 2 July 2001 withdrawing the financial assistance previously granted to the applicant by the European Agricultural Guidance and Guarantee Fund (Guidance Section), the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, N. Forwood and H. Legal, Judges; H. Jung, Registrar, has made an order on 21 March 2002, the operative part of which is as follows:

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

2. *The applicant is ordered to pay its own costs and those of the defendant.*

([1]) OJ C 317 of 10.11.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 11 March 2002

in Case T-3/02: Schlüsselverlag J. S. Moser GmbH and Others v Commission of the European Communities ([1])

(Control of concentrations — Action for a declaration of failure to act — Definition of a position — Manifest inadmissibility)

(2002/C 156/51)

(Language of the case: German)

In Case T-3/02, Schlüsselverlag J.S. Moser GmbH, established in Innsbruck (Austria), J. Wimmer Medien GmbH & Co. KG, established in Linz (Austria), Styria Medien AG, established in Graz (Austria), Zeitungs- und Verlags-Gesellschaft mbH, established in Bregenz (Austria), Eugen Ruß Vorarlberger Zeitungsverlag und Druckerei GmbH, established in Schwarzach (Austria), 'Die Presse' Verlags-Gesellschaft mbH, established in Vienna (Austria), 'Salzburger Nachrichten' Verlags-Gesellschaft mbH & Co. KG, established in Salzburg (Austria), represented by M. Krüger, lawyer, Linz, v Commission of the European Communities (Agent: K. Wiedner): Application for a declaration that, by unlawfully failing to adopt a decision on the compatibility of a concentration with the common market, the defendant has failed to act, the Court of First Instance (Third Chamber), composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; H. Jung, Registrar, has made an order on , the operative part of which is as follows:

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

2. *The applicants shall pay the costs.*

([1]) OJ C 84 of 6.4.2002.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 18 March 2002

in Case T-21/02 R: Giuseppe Atzeni and Others v Commission of the European Communities

(Procedure for interim relief — State aid — Time-limit for bringing proceedings — Admissibility of the action in the main proceedings)

(2002/C 156/52)

(Language of the case: Italian)

In Case T-21/02 R: Giuseppe Atzeni, residing at Serdiana (Italy), and 77 others, represented by G. Dore and F. Ciulli, lawyers, v Commission of the European Communities (Agent: D. Triantafyllou) — application for suspension of operation of Commission Decision 97/612/EC of 16 April 1997 on aid granted by the Region of Sardinia, Italy, in the agriculture sector (OJ 1997 L 248, p. 27) — the President of the Court of First Instance made an order on 18 March 2002, the operative part of which is as follows:

1. *The application for interim measures is dismissed.*

2. *The costs are reserved.*

Action brought on 14 March 2002 by Classen Holding KG against the Office for Harmonisation in the Internal Market

(Case T-71/02)

(2002/C 156/53)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 14 March 2002 by Classen Holding KG, represented by Mr Stephan von Petersdorff-Campen of Rospatt Osten Pross Rechtsanwälte, Düsseldorf (Germany).

The applicant claims that the Court should:

— annul the Decision of the Second Board of Appeal of the Office dated 14 December 2001 (Appeal No. R0810/1999-2), registered letter of notification of the Decision received on 14 January 2002;

— order the Office to bear the costs of the action.

Pleas in law and main arguments

Applicant of the Community trade mark:	International Paper Company
Trade mark concerned:	Word mark BECKET EXPRESSION — Application No 93880 for certain goods in class 16
Proprietor of an opposing trade mark or sign:	Classen Holding KG
Opposing trade mark or sign:	Word mark Expression for certain goods in class 16
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	To declare the appeal inadmissible and reject the request for restitutio in integrum
Pleas in law relied on:	Incorrect interpretation of Article 78 of Council Regulation No 40/94 — Infringement of the applicant's right to due process of law

Action brought on 19 March 2002 by Tetra Laval B.V. against the Commission of the European Communities

(Case T-80/02)

(2002/C 156/54)

(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 19 March 2002 by Tetra Laval B.V., represented by Mr Alexandre Vandencasteele and Mr Denis Waelbroeck (Liedekerke Siméon Wessing Houthoff), Mr Andreas Weitbrecht, (Latham & Watkins) and Mr Sven Völcker (Wilmer Cutler & Pickering) of Brussels (Belgium).

The applicant claims that the Court should:

— annul the contested Decision in its entirety;

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

Pleas in law and main arguments

The applicant in the present case is primarily active in carton packaging. It envisaged a concentration with another company, Sidel, mainly active in (polyester) packaging equipment. This concentration was declared to be incompatible with the common market and the EEA Agreement by the Commission. The applicant has introduced an application for annulment of this Decision (Case T-5/02; Communication published in OJ C 68, p. 19).

In the present case, the applicant contests the decision of the Commission to oblige the applicant to sell Sidel as a measure taken to restore the conditions of effective competition pursuant to Article 8(4) of Council Regulation 4064/89 [1] (Merger Control Regulation).

The applicant submits in the first place that the contested Decision is devoid of any basis, as it is the direct consequence of the earlier Decision declaring the concentration incompatible with the common market. This earlier Decision being void itself, according to the applicant, it cannot serve as basis for the Decision contested in this case. The applicant refers in this respect to the pleas and arguments stated in its application in case T-5/02.

The applicant further submits that Article 8 (4) of the Merger Control regulation, which constitutes the legal basis of the present Decision, is only applicable where a concentration has been implemented. The applicant states, however, that the concentration in this case has not been implemented in any way.

Thirdly, the applicant argues that the modalities for the divestiture constitute an infringement of Community law. According to the applicant, these modalities are disproportionate and exceed the Commission's competences under Article 8(4) of the Merger Control Regulation.

The applicant finally claims that the Commission has failed to respect the applicant's procedural rights, in that the Commission did not respect the applicant's right to be heard and relied on information not provided to the applicant.

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

Action brought on 20 March 2002 by Check Point Software Limited against the Office for Harmonisation in the Internal Market

(Case T-89/02)

(2002/C 156/55)

(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 20 March 2002 by Check Point Software Limited, represented by Mr Graham Farrington of Farrington & Co Solicitors, Reading (United Kingdom).

The applicant claims that the Court should:

— annul the Decision of the defendant's First Board of Appeal of 7 January 2002; and

— order the defendant to remit the application to its Examination Division for re-examination of Community Trade Mark no. 1744168 (SECURECLIENT).

Pleas in law and main arguments

The Communuity Trade Mark concerned:	SECURECLIENT
Product or service:	'Computer software to protect systems from unauthorised access', in International Class 9.
Challenged Decision before the Board of Appeal:	Refusal of registration by the Examiner.
Grounds submitted:	Infringement of Article 7(1)(b) and (c) of Regulation No 40/94.

Action brought on 28 March 2002 by Klausner Nordic Timber GmbH & Co. KG against the Commission of the European Communities

(Case T-91/02)

(2002/C 156/56)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 March 2002 by Klausner Nordic Timber GmbH & Co. KG, Wismar (Germany), represented by D.O. Reich, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision of 15 January 2002 on State aid granted by Germany to Klausner Nordic Timber GmbH & Co. KG;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant manages, as general partner, the business of the company Klausner Nordic Timber GmbH which was founded in 1997 and built a sawmill in Wismar in 1998. By the contested decision, the Commission declared the State aid which the Federal Republic of Germany granted to the applicant in relation to the construction and expansion of the sawmill to be incompatible with the common market.

The applicant claims, first, that the guarantee in excess of EUR 15,21 million with an aid component of 0,5 % must be regarded as 'de minimis' aid, thus precluding a Commission decision ordering the recovery of that aid. The Commission therefore wrongly applied Article 87 EC by failing to comply with Commission Regulation (EC) No 69/2001 [1] and/or the notice on the de minimis rule for State aid.

The applicant further submits that the Commission misapplied Articles 87 and 88 EC and the German Investment Allowance Law. The Investment Allowance Law of 1999 provides for the grant of a tax investment allowance for the acquisition and manufacture of capital equipment and buildings by businesses located in the former East Germany and was approved in its entirety by the Commission. The requirements of the Law are fulfilled, so that the investment allowance in favour of the applicant was lawful. The Commission's decision that the grant of an investment allowance to the applicant was permissible only as to 10 % is therefore unlawful.

Moreover, the applicant claims that the decision constitutes an infringement of the prohibition venire contra factum proprium and the Community principle of the protection of legitimate expectations. Furthermore, the Commission unlawfully failed to consider the actual aid intensity amount and infringed Council Regulation (EC) No 659/1999 and Article 253 EC [2]. Finally, the Commission infringed Articles 87, 88 and 253 EC by way of its formulaic and inaccurate consideration of the company Klausner Nordic Timber as a large-scale company.

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

[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 1999 L 83, p. 1).

Action brought on 27 March 2002 by Hugo Boss AG against the Office for Harmonisation in the Internal Market

(Case T-94/02)

(2002/C 156/57)

(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 27 March 2002 by Hugo Boss AG, represented by Mr Emmanuel Baud of Latham & Watkins, Paris (France). A further party to the proceedings before the Board of Appeal was Delta Protipos Biomichania Galaktos S.A.

The applicant claims that the Court should:

— annul the contested Decision rendered by the Fourth Board of Appeal in its ruling no. R0053/2001-4 on 12 December 2001;

— order that the BOSS Community Trade Mark application nr 331462 for ice cream be rejected;

— order the OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	Delta Protipos Biomichania Galaktos S.A.
The Community trade mark concerned:	The word mark 'BOSS' for certain goods in classes 29, 30, 31, 32 and 33
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Hugo Boss AG
Trade mark or sign asserted by way of opposition in the opposition proceedings:	The German registration of the word mark 'BOSS' for certain goods in classes 3, 9, 14, 18, 24 and 25 and the following international registration of this mark as well as the international registration of the word mark 'BOSS' for certain goods in classes 29, 30, 31, 32 and 33 and the international registration for these same goods of the word mark 'BOSS HUGO BOSS'.
Decision of the Opposition Division:	Rejection of the opposition.
Decision of the Board of Appeal:	Dismissal of the appeal introduced by Hugo Boss AG.

Grounds of claim:	Violation of Article 8(5) of Council Regulation 40/94 [1]. According to the applicant, the trade mark is detrimental to the repute of the earlier trade mark and constitutes an unfair advantage for Delta.

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

Action brought on 5 April 2002 by Ineos NV against the Commission of the European Communities

(Case T-99/02)

(2002/C 156/58)

(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 5 April 2002 by Ineos NV, represented by Mr Julian Ellison, Mr Mark Clough QC and Mr Matthew Hall of Ashurst Morris Crisp, Brussels (Belgium).

The applicant claims that the Court should:

— annul, under Article 230 of the EC Treaty, the Commission Decision in case no. COMP/M.2389-Shell/DEA in its entirety and/or insofar as it concerns the market for supply of merchant ethylene;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant in the present case is a purchaser of merchant ethylene on the ARG+ pipeline network in Belgium, the Netherlands and western Germany.

The applicant contests the Decision of the Commission declaring an operation where Deutsche Shell GmbH would acquire sole control of the undertaking DEA Mineraloel AG under certain conditions compatible with the common market and the EEA Agreement. These conditions were necessary since the operation gave rise to competition concerns on the ARG+ merchant ethylene market. In particular, there was a risk of creating a joint dominant position of Shell/DEA and BP/Veba Oel (case no. COMP/M.2533-BP/E.ON [1]). These cases were treated similarly by the Commission.

According to the applicant, the Commission made manifest errors of assessment and errors in law in concluding that the commitments are sufficient to take away the said competitive concerns and has therefore violated Articles 2 (2) and 8 (2) of the Merger Regulation [2].

In the contested Decision in the present case, the Commission imposed on Shell and DEA the obligation to make available, up to a certain quantity, access to Shell's terminal facilities to producers of ethylene. This remedy is based, according to the applicant, on an error of assessment. The applicant submits that this obligation is unclear in its definition of the entities that should be granted access. As a consequence, this remedy could be made ineffective if access is granted to entities who should not, according to the applicant, benefit from this access. The remedy is also limited in time, while the situation after its expiry will remained the same as it was originally. Furthermore, the applicant claims that the volume of ethylene that can be put on the ARG+market in this manner is insufficient to remedy the constraints on competition caused by the operation.

The Commission also made an error in law since there is no protection for third parties on the market until the remedies in the Shell/DEA case and in the BP/E.ON case become effective. The remedies imposed in each case are only effective if the remedies in the other case are operative as well. The remedies to be given by Shell/DEA will not, however, be operative until 1 January 2003 or later. Therefore, the jointly dominant position will, according to the applicant, be unconstrained until all the remedies are operative. Meanwhile, the contested Decision does not provide for any interim protection for third parties.

The applicant claims in addition that the errors of assessment and the error in law of the Commission concerning the remedy in the BP/E.ON case is another ground for annulment of the Decision contested in the present case since both cases are so closely related to each other. In the BP/E.ON case, the Commission considered that the commitment to reduce the combined shareholding of BP and Veba Oel, by two out of three shares, would achieve open access at reasonable prices for use of the ARG pipe network.

The applicant argues that the remedy in the BP/E.ON case gives no control over how the future shareholders will conduct themselves with regard to the company's future strategy, and that there is, therefore, no guarantee that this remedy would reconstitute the ARG pipe network as a common carrier. Furthermore, the applicant states that the transfer of a share needs the unanimous approval of all the other shareholders, which constitutes an element of uncertainty in the remedy. The applicant submits also that the Commission has made an error in law since the remedy gives no provisional solution to the problems of lack of access and high transportation charges on the pipe network until the divestment of the shares.

According to the applicant, the remedy in the Shell/DEA case remains ineffective as long as this problem is not addressed. According to the applicant, the commitment from BP/E.ON, that it will not use its voting rights to block any special resolutions pending the sale of the shares to be divested, is insufficient and remains unclear on what is to happen in a number of situations. The applicant claims therefore that this commitment does not offer an interim solution at all.

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(1) With the operation examined by the Commission in this case, BP, together with E.ON would acquire joint control of Veba Oel. The Decision of the Commission in case no. COMP/M.2533-BP/E.ON is also contested by this applicant in Case T-101/02.

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

Action brought on 5 April 2002 by EVC International N.V. against the Commission of the European Communities

(Case T-100/02)

(2002/C 156/59)

(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 5 April 2002 by EVC International N.V., represented by Mr Julian Ellison, Mr Mark Clough QC and Mr Matthew Hall of Ashurst Morris Crisp, Brussels (Belgium).

The applicant claims that the Court should:

— annul under Article 230 of the EC Treaty, the Commission Decision in case no. COMP/M.2389-Shell/DEA in its entirety and/or insofar as it concerns the market for supply of merchant ethylene;

— order the Commission to pay the costs

Pleas in law and main arguments

The applicant in the present case is a purchaser of merchant ethylene outside the ARG+ pipeline network.

The applicant contests the Decision of the Commission declaring an operation where Deutsche Shell GmbH would acquire sole control of the undertaking DEA Mineraloel AG under certain conditions compatible with the common market and the EEA Agreement. These conditions were necessary since the operation gave rise to substantial competition concerns on the ARG+ merchant ethylene market. In particular, there was a risk of creating a joint dominant position of Shell/DEA and BP/Veba Oel (case no. COMP/M.2533-BP/E.ON (1).

According to the applicant, the present Decision has an important effect on the ARG+ merchant ethylene market. There is a clear price link between this market and markets for merchant ethylene outside the ARG+, in which the applicant operates.

The pleas and arguments put forward in the present case are the same as those put forward in Case T-99/02.

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(1) With the operation examined by the Commission in this case, BP, together with E.ON, would acquire joint control of Veba Oel. The Decision of the Commission in case no. COMP/M.2533-BP/E.ON is also contested by this applicant in Case T-102/02.

Action brought on 5 April 2002 by Ineos NV against the Commission of the European Communities

(Case T-101/02)

(2002/C 156/60)

(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 5 April 2002 by Ineos NV, represented by Mr Julian Ellison, Mr Mark Clough QC and Mr Matthew Hall of Ashurst Morris Crisp, Brussels (Belgium).

The applicant claims that the Court should:

— annul under Article 230 of the EC Treaty the Commission Decision in case no. COMP/M.2533-BP/E.ON in its entirety and/or insofar it concerns the market for the supply of merchant ethylene;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant in the present case is a purchaser of merchant ethylene on the ARG+ pipeline network in Belgium, the Netherlands and western Germany.

The applicant contests the Decision of the Commission declaring an operation where BP, together with E.ON, would acquire joint control of Veba Oel under certain conditions compatible with the common market and the EEA Agreement. These conditions were necessary since the operation gave rise to substantial competition concerns on the ARG+ merchant ethylene market. In particular, there was a risk of creating a joint dominant position of BP/Veba Oel and Shell/DEA (case no. COMP/M. 2389-Shell/DEA [1].

The decisions in the BP/E.ON case is closely related to the decision in the Shell/DEA case. These cases were treated similarly and the remedies imposed in each case are only effective if the remedies in the other case are operative as well. Therefore, the applicant puts forward the same arguments as in Case T-99/02.

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[1] Under the operation examined by the Commission in this case, Deutsche Shell would acquire sole control of the undertaking DEA Mineraloel. The decision in case nr COMP/M. 2389-Shell/DEA is also contested by this Applicant in Case T-99/02.

Action brought on 5 April 2002 by EVC International N.V. against the Commission of the European Communities

(Case T-102/02)

(2002/C 156/61)

(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 5 April 2002 by EVC International N.V., represented by Mr Julian Ellison, Mr Mark Clough QC and Mr Matthew Hall of Ashurst Morris Crisp, Brussels (Belgium).

The applicant claims that the Court should:

— annul under Article 230 of the EC Treaty the Commission Decision in case no. COMP/M.2533-BP/E.ON in its entirety and/or insofar it concerns the market for the supply of merchant ethylene;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant in the present case is a purchaser of merchant ethylene outside the ARG+ pipeline network.

The applicant contests the Decision of the Commission declaring an operation where BP, together with E.ON, would acquire joint control of Veba Oel under certain conditions compatible with the common market and the EEA Agreement. These conditions were necessary since the operation gave rise to substantial competition concerns on the ARG+ merchant ethylene market. In particular, there was a risk of creating a joint dominant position of BP/Veba Oel and Shell/DEA (case no. COMP/M. 2389-Shell/DEA [1].

The Decision in the BP/E.ON case is closely related to the decision in the Shell/DEA case. These cases were treated similarly and the remedies imposed in each case are only effective if the remedies in the other case are operative as well.

Therefore, the applicant puts forward the same pleas and arguments as in Case T-100/02, which are again the same as those put forward in Case T-99/02.

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(1) Under the operation examined by the Commission in this case, Deutsche Shell would acquire sole control of the undertaking DEA Mineraloel. The decision in case no. COMP/M. 2389-Shell/DEA is also contested by this applicant in Case T-100/02.

Action brought on 5 April 2002 by Ineos Phenol GmbH & Co KG against the Commission of the European Communities

(Case T-103/02)

(2002/C 156/62)

(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 5 April 2002 by Ineos Phenol GmbH & Co KG, represented by Mr Julian Ellison, Mr Mark Clough QC and Mr Matthew Hall of Ashurst Morris Crisp, Brussels (Belgium).

The applicant claims that the Court should:

— annul under Article 230 of the EC Treaty the Commission Decision in case no. COMP/M.2533-BP/E.ON insofar as it relates implicitly to the merchant supply of cumene;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is a significant purchaser of a petrochemical product called cumene from BP and Veba Oel AG.

The applicant contests the Decision of the Commission declaring an operation where BP, together with E.ON, would acquire joint control of Veba Oel under certain conditions compatible with the common market and the EEA Agreement. The grounds of the present application relate to the omission of the Commission to consider, in this Decision, the competition issues raised by the combination of BP and Veba Oel, so far as their supply of merchant cumene is concerned.

The contested Decision contains, according to the applicant, several errors of assessment and errors in law. Firstly, the Commission erred in concluding that the merchant supply of cumene to one of the applicant's production sites does not constitute a separate economic market. Secondly, the Commission failed to consider whether a dominant position would be created in this market and failed to conclude that a dominant position had been created. Alternatively, the Commission failed to define a wider relevant market for the sale of cumene and failed to analyse the creation of a dominant position in such a market.

The applicant also puts forward a plea concerning the infringement of an essential procedural requirement, the misuse of powers and the violation of the principle of sound administration. According to the applicant, the Commission should have requested information from third parties in relation to the sale of cumene by BP and Veba Oel.

Finally, the applicant claims that there was a lack of reasoning in the contested Decision since the Commission failed to analyse the supply of merchant cumene by BP and Veba Oel and failed to address the issues raised in the present application.

Action brought on 8 April 2002 by SFT Gondrand Frères against the Commission of the European Communities

(Case T-104/02)

(2002/C 156/63)

(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 April 2002 by SFT Gondrand Frères of Paris, represented by Mireille Famchon, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Decision REM 06/01 of 14 January 2002 and allow a rebate of the anti-dumping duties imposed to SFT Gondrand Frères.

Pleas in law and main arguments

The applicant is an authorised customs agent. In 1997 it released for circulation three cargo loads of urea ammonium nitrate solution from Poland. When making the customs declaration the applicant applied for an exemption from anti-dumping duty which applies to imports of that product from Poland. Following checks, the French customs authorities took the view that anti-dumping duty was due and demanded payment of the customs duty from the applicant.

The applicant then requested a rebate of the anti-dumping duty and the corresponding VAT. That request was sent by the French authorities to the Commission, which refused a rebate of the anti-dumping duties. The applicant is challenging that decision in this case.

The applicant claims that anti-dumping duties are not payable, as a result of EC Regulation No 3319/94 [1]. The applicant states that the goods were invoiced directly by the Polish company, Zaklady Azotowe Pulawy, to a French company, Evertrade. The price of the goods was, furthermore, higher than the minimum import price. In those circumstances the applicant claims that to subject the contested imports to anti-dumping duties is unjustified.

The applicant also claims that it was justifiable for the duties to be subject to a rebate in this case in the light of one particular factor. According to the applicant, the idea is to prevent dumping by means of import routes involving intermediate companies in third countries. That danger has been averted here, since the first buyer from the Polish exporter was a French company. Furthermore, the regulation in question poses difficulties of interpretation. The applicant claims that the French authorities interpreted it in the same way as the applicant. It also adds that its omission is a purely formal one and has not had any real effect on the proper functioning of the customs system.

Finally, the applicant argues that it cannot be accused of deception and that it has not acted with manifest negligence.

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[1] Council Regulation (EC) No 3319/94 of 22 December 1994 imposing a definitive anti-dumping duty on imports of urea ammonium nitrate solution originating in Bulgaria and Poland, exported by companies not exempted from the duty, and collecting definitively the provisional duty imposed (OJ 1994 L 350, p. 20).

Action brought on 15 April 2002 by Grupo El Prado-Cervera, S.L. against Office for Harmonisation in the Internal Market

(Case T-117/02)

(2002/C 156/64)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 15 April 2002 by Grupo El Prado-Cervera, S.L., whose registered office is at Valencia (Spain), represented by Patricia Koch Moreno.

The applicant claims that the Court should:

— declare the Decision of 12 February 2002 of the First Board of Appeal of the OHIM rejecting the opposition filed against Community trade mark application No 1021229, CHUFAFIT, in Classes 29 and 31 incompatible with Article 8(1)(b) of Regulation (EC) No 40/94 on the Community Trade Mark and annul that decision;

— declare that there is a likelihood of confusion between Community trade mark application No 1021229, CHUFAFIT, in classes 29 and 31, and Spanish trade mark No 1778419, CHUFI, registered in respect of goods in Class 29, and Spanish trade mark No 2063328, CHUFI, registered in respect of goods in Class 31;

— refuse Community trade mark application No 1021229, CHUFAFIT, in Classes 29 and 31; and, finally,

— order the defendant and, if appropriate, the intervener to pay the costs of the proceedings.

Pleas in law and main arguments

Person applying to register the Community trade mark:	D.J. Debuschewits
Community trade mark concerned:	CHUFAFIT — application for registration No 1021229 — application in respect of goods in Classes 29 and 31.
Proprietor of the trade mark or distinctive sign relied on in the opposition proceedings:	The applicant company.
Trade mark or distinctive sign relied on in the opposition proceedings:	Spanish Trade Mark CHUFI, registered in respect of goods in Class 29, and Spanish graphic-denominative mark CHUFI, with specific distinction, registered in respect of goods in Class 31.
Decision of the Opposition Division:	Appeal against the Opposition
Decision of the Board of Appeal:	Appeal against the decision of the Opposition Division dismissed.
Grounds of appeal:	Unlawful application of Article 8(1)(b) of Regulation (EC) 40/94 on the Community Trade Mark.

Action brought on 17 April 2002 by Sunrider Corporation against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-124/02)

(2002/C 156/65)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: 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 17 April 2002 by Sunrider Corporation, Torrance (USA), represented by A. Kockläuner, lawyer. Vitakraft-Werke Wührmann & Sohn, Bremen (Germany), was an additional party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— partially annul Decision R 368/2000-2 of the Second Board of Appeal of 17 January 2002 to the extent that the applicant was ordered to bear its own costs in the opposition and appeal proceedings and that reimbursement of the appeal fee was not ordered;

— order the Office to pay the costs.

Pleas in law and main arguments

The applicant filed an application for registration of the word mark 'VITATASTE' in respect of goods in Classes 5 and 29 at the Office for Harmonisation in the Internal Market (application no 156463). Vitakraft-Werke Wührmann & Sohn opposed that application. The opposition was based on the German marks 'VITAKRAFT' and 'VITA' in respect of goods in Class 5.

As a result of a private settlement with the opposing party, the applicant limited the category of goods by removing some of the goods claimed in Class 5. The opposing party later withdrew its opposition but sought a decision on costs.

The Opposition Division decided that the applicant should bear the costs of the opposition procedure. The Board of Appeal set this decision aside and ordered each of the parties to pay its own costs in respect of the opposition and appeal proceedings.

The applicant is appealing against the decision of the Board of Appeal and claims that Article 81(4) of Council Regulation (EC) No 40/94 [1], not Article 81(3), is applicable in the present case. Furthermore, the defendant failed to consider that the requirements of Rule 51 of the implementing regulation [2] were satisfied so that the Board of Appeal should have ordered reimbursement of the appeal fee. Finally, the Board of Appeal failed to comply with its obligation to state reasons.

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

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

Action brought on 18 April 2002 by Pravir Kumar Chawdhry against Commission of the European Communities

(Case T-133/02)

(2002/C 156/66)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 April 2002 by Pravir Kumar Chawdhry, residing in Sangiano (Italy), represented by Georges Vandersanden and Laure Levi, avocats.

The applicant claims that the Court should:

— annul the decision of the authority empowered to conclude contracts of employment (AECCE) of 2 May 2001 classifying the applicant in Grade A 6, step 3, and, in so far as necessary, annul the decision of 14 December 2001, served on 8 January 2002, rejecting the applicant's complaint;

— order the defendant to pay the balance of the salary consisting in the difference between the remuneration corresponding to classification in Grade A 6, step 3, and the remuneration corresponding to a higher grade, together with default interest at the rate of 5,75 % per annum, with effect from 1 April 2001;

— order the defendant to pay damages provisionally assessed, ex æquo et bono, at EUR 1;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a temporary agent employed by the Commission, contests the decision of the AECCE classifying him in Grade A 6, step 3.

The applicant claims that the AECCE ought to have specifically assessed the possible application of Article 31(2) of the Staff Regulations to the applicant and that such an assessment should have led to the actual application of that provision to the applicant, that is to say to his classification in Grade A 5.

In support of his claims, the applicant alleges:

— infringement of Article 31(2) of the Staff Regulations;

— infringement of Article 32 of the Staff Regulations;

— breach of the principle of non-discrimination;

— breach of the duty to have regard for the welfare of officials;

— breach of the rules on the free movement of workers;

— breach of the obligation to state reasons.

Action brought on 25 April 2002 by Miguel Tejada Fernández against the Commission of the European Communities

(Case T-134/02)

(2002/C 156/67)

(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 April 2002 by Miguel Tejada Fernández, residing in Woluwé-St-Etienne, Belgium, represented by Lucas Vogel, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the appointing authority of 10 January 2002, notified to the applicant on 15 January 2002, rejecting the applicant's claim of 3 October 2001 for annulment of the decision refusing him promotion to grade B2 for the 2001 promotions year, and annulment of the proposals for promotion to that grade;

— in so far as is necessary, annul the decision refusing the applicant promotion to grade B2 for the 2001 promotions year, and the proposals for promotion to that grade;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant argues infringement of Article 45(1) of the Staff Regulations, infringement of the principle of non-discrimination and a manifest error of assessment. According to the applicant, any objective consideration of the respective merits of the officials eligible for promotion would not have led to his being disregarded.

Action brought on 18 April 2002 by Papelera Guipuzcoana de Zicuñaga, S.A. against Commission of the European Communities

(Case T-136/02)

(2002/C 156/68)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 April 2002 by Papelera Guipuzcoana de Zicuñaga, S.A., whose registered office is at Hernani (Guipúzcoa, Spain), represented by Iñigo Quintana Aguirre.

The applicant claims that the Court of First Instance should:

— annul Article 1 of the Commission decision of 20 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMPE/E/1/36.212 — Carbonless paper), in so far as it finds that Zicuñaga participated in the infringement and in so far as it relates to the duration of the infringement, and Article 3 in relation to the fine imposed in Article 4;

— in the alternative, reduce the fine imposed on the applicant in the contested decision as follows:

  (a) annul the application of the excess of 10 % applied by the Commission on the ground that a duration in excess of one year was not imputed to the applicant;

  (b) reduce substantially (by a minimum of 60 %) the basic penalty imposed to take account of the mitigating circumstances indicated;

  (c) award costs to the applicant, including expenditure and interest for the guarantees provided, deriving from the handling of the entire procedure.

Pleas in law and main arguments

The Commission decision against which the present action is brought is the same as that contested in Case T-109/92 Bolloré v Commission [1]. In that decision, the Commission found that the applicant had participated in the national meetings of the secret European cartel in the context of the European Association of Manufacturers of Carbonless Paper (AEMPC), the adoption and concerted application of price increases, the sharing of sales and market quotas in the copying paper sector and the establishment of control mechanisms.

In support of its claims, the applicant pleads infringement of the principles of presumption of innocence and of the burden of proof. In that regard, it denies having participated in the meetings held for the purpose of organising the European cartel. The applicant emphasises that the defendant institution ignored not only the fact that the applicant does not belong to the AEMPC but also the fact that that association did not possess information relating to the applicant's prices and sales volumes.

The applicant claims that the fine imposed on it should be reduced by at least 60 %. Apart from what has already been stated in the preceding paragraph, the applicant emphasises that the infringements imputed to it are alleged to have lasted for less than one year.

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[1] Not yet published in OJ.

Action brought on 8 May 2002 by Armin Petrich against the Commission of the European Communities

(Case T-145/02)

(2002/C 156/69)

(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 by Armin Petrich, of Travemünde, Germany, represented by Patrick Goergen, lawyer, with an address for service in Luxembourg,

The applicant asks the Court to:

— annul the decision taken by the Selection Board of Competition COM/A/7/01 on 11 February 2002 not to correct the written test of the applicant and not to admit him to the tests subsequent to the written test;

— annul all the subsequent steps and measures taken in the competition procedure in question;

— in the alternative, order the Commission to pay to the applicant EUR 100 000 as compensation for material and non-material damage;

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

Pleas in law and main arguments

In the present case, the applicant is challenging the refusal by the Selection Board in Open Competition COM/A/7/01 to correct his written test and admit him to the subsequent tests. The ground for that refusal is that the applicant is said to have insufficient experience in the area of human resource management.

It is pointed out that the applicant was included on the list of candidates who fulfilled the general conditions of the competition, he took part in the pre-selection tests, and was admitted to the written test.

In support of his application, the applicant claims that:

— there was a manifest error of assessment in this case;

— the obligation to state reasons has been infringed;

— the principle of sound administration and the duty to have regard to the welfare of applicants have not been complied with.

Removal from the register of Case T-163/97 [1]

(2002/C 156/70)

(Language of the Case: Dutch)

By order of 10 April 2002 the President of the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-163/97: Nederlands Antillen v Council of the European Union and Commission of the European Communities.

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[1] OJ C 212 of 12.07.1997.

Removal from the register of Case T-218/99 [1]

(2002/C 156/71)

(Language of the Case: German)

By order of 28 January 2002 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-218/99: Anton Dürbeck GmbH v Commission of the European Communities.

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[1] OJ C 6 of 8.1.2000.

Removal from the register of Case T-34/01 [1]

(2002/C 156/72)

(Language of the Case: French)

By order of 15 April 2002 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-34/01: Anna Maria Roccato v Commission of the European Communities.

[1] OJ C 108 of 7.4.2001.

Removal from the register of Case T-37/01 [1]

(2002/C 156/73)

(Language of the Case: English)

By order of 14 March 2002 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-37/01: Takeda Chemical Industries Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs).

[1] OJ C 150 of 19.5.2001.

III

(Notices)

(2002/C 156/74)

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

OJ C 144, 15.6.2002

Past publications

OJ C 131, 1.6.2002

OJ C 118, 18.5.2002

OJ C 109, 4.5.2002

OJ C 97, 20.4.2002

OJ C 84, 6.4.2002

OJ C 68, 16.3.2002

These texts are available on:

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

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