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(Information)

COURT OF JUSTICE

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Decisions adopted by the Court at its meetings on 17 September and 1 October 2002

(2002/C 261/01)

The Court of Justice of the European Communities adopted the following decisions at its meeting on 17 September 2002

Appointment of Presidents of the Chambers

In accordance with Article 10(1) of the Rules of Procedure, the Court has appointed for a period of one year starting on 7 October 2002:

— Judge Wathelet as President of the First and Fifth Chambers,

— Judge Puissochet as President of the Third and Sixth Chambers,

— Judge Schintgen as President of the Second Chamber,

— Judge Timmermans as President of the Fourth Chamber.

Composition of the Chambers

1. The composition of the Chambers for the same period has been determined as follows:

First Chamber

Mr Wathelet, President of the Chamber,

Mr Jann and Mr Rosas, Judges.

Second Chamber

Mr Schintgen, President of the Chamber,

Mr Skouris and Ms Colneric, Judges.

Third Chamber

Mr Puissochet, President of the Chamber,

Mr Gulmann, Ms Macken and Mr da Cunha Rodrigues, Judges.

Fourth Chamber

Mr Timmermans, President of the Chamber,

Mr Edward, Mr La Pergola and Mr von Bahr, Judges.

Fifth Chamber

Mr Puissochet, President of the Chamber,

Mr Timmermans, Mr Edward, Mr La Pergola, Mr Jann, Mr von Bahr and Mr Rosas, Judges.

Sixth Chamber

Mr Puissochet, President of the Chamber,

Mr Schintgen, Mr Gulmann, Mr Skouris, Ms Macken, Ms Colneric and Mr da Cunha Rodrigues, Judges.

2. For each case assigned to them, the Third and Fourth Chambers (to each of which four judges are attached) shall be composed of the President of the Chamber, the Judge-Rapporteur and a third judge designated in accordance with a list of the judges in order of seniority. At each general meeting the starting-point on that list is to be moved down one name.

3. For each case assigned to a large Chamber, namely the Fifth and Sixth Chambers, to each of which seven judges are attached, the five judges who are to sit shall be determined on the basis of a list drawn up for the judicial year comprising all the judges of the Chamber, except the President, in the following order:

(a) the judges of the small Chamber to which four judges are attached, in order of seniority;

(b) the judges of the other small Chamber, in the same order.

For each case, the large Chamber shall be composed of:

— the President,

— the Judge-Rapporteur,

— three judges appointed in order from the list; the starting-point on that list shall be moved down one name at each general meeting.

Any judges prevented from sitting shall be replaced in order from the list. However, should the President of the large Chamber be prevented from sitting, he must be replaced if possible by the President of the small Chamber.

If the Court, or a Chamber, deems it appropriate to hear and determine two or more cases together (whether or not they are formally joined), the composition of the bench shall be that determined for the first of the cases discussed at a general meeting.

4. For the period ending on 6 October 2003, the lists referred to above are as follows:

Third Chamber

(President: Judge Puissochet)

Judge Gulmann, Judge Macken and Judge de Cunha Rodrigues.

Fourth Chamber

(President: Judge Timmermans)

Judge Edward, Judge La Pergola and Judge von Bahr.

Fifth Chamber

(President: Judge Wathelet)

Judge Edward, Judge La Pergola, Judge von Bahr, Judge Timmermans, Judge Jann and Judge Rosas.

Sixth Chamber

(President: Judge Puissochet)

Judge Gulmann, Judge Macken, Judge da Cunha Rodrigues, Judge Schintgen, Judge Skouris and Judge Colneric.

Appointment of the First Advocate General

At its meeting held on 1 October 2002, in accordance with Article 10(1) of the Rules of Procedure, the Court of Justice appointed Advocate General J. Mischo as First Advocate General for a period of one year starting on 7 October 2002.

Reference for a preliminary ruling by the Verwaltungsgericht Stuttgart by order of that Court of 11 July 2002 in the case of Engin Ayaz against Land Baden-Württemberg

(Case C-275/02)

(2002/C 261/02)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) of 11 July 2002, received at the Court Registry on 26 July 2002, for a preliminary ruling in the case of Engin Ayaz against Land Baden-Württemberg on the following question:

Is a stepson aged under 21 years of a Turkish worker who is duly registered as belonging to the labour force of a Member State a member of the family within the meaning of the first paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association?

Action brought on 31 July 2002 by the Commission of the European Communities against Ireland

(Case C-282/02)

(2002/C 261/03)

An action against Ireland was brought before the Court of Justice of the European Communities on 31 July 2002 by the Commission of the European Communities, represented by Michael Shotter, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

— declare that, in failing to take all the measures necessary to ensure a correct transposition and application of Council Directive 76/464/EEC [1] of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, Ireland has failed to comply with Directive 76/464/EEC and in particular Articles 7 and 9 thereof and with its obligations under the EC Treaty;

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission submits that, contrary to Articles 7 and 9 of the Directive, Ireland has generally failed to reduce pollution caused by phosphorus where this was already evident at the time of adoption of the Directive and to prevent its emergence and increase elsewhere. Furthermore, in the Commission's view, Ireland's quality objectives for phosphorus, introduced in 1998, and Irish measures with regard to authorisation of discharges do not comply with the requirements of Articles 7 and 9 of the Directive. In addition, the Commission considers that Ireland's adopted programmes for the reduction of phosphorous pollution suffer from significant shortcomings.

The Commission also submits that Ireland has failed to finalise and adequately implement pollution reduction programmes for List II substances other than phosphorus and/or to communicate programme summary results for these substances.

[1] OJ L 129, 18.5.1976, p. 23.

Reference for a preliminary ruling by the Bundesarbeitsgericht by order of that Court of 21 March 2002 in the case of the Land of Brandenburg against Ursula Sass

(Case C-284/02)

(2002/C 261/04)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesarbeitsgericht of 21 March 2002, received at the Court Registry on 2 August 2002, for a preliminary ruling in the case of the Land of Brandenburg against Ursula Sass on the following question:

Do Article 119 of the EC Treaty (now Article 141 EC) and Directive 76/207/EEC [1] prohibit, in a provision of a collective agreement under which periods during which an employment relationship is in abeyance do not count towards the qualifying period, the exclusion of the period during which the employment relationship was in abeyance because the employee concerned, on the expiry of the eligible eight-week period of protection pursuant to Paragraph 6 of the Mutterschutzgesetz (Maternity Protection Law), claimed maternity leave pursuant to Paragraph 244(1) of the Labour Code of the German Democratic Republic (AGB-DDR) of 16 June 1977 (GBl. I, p. 185) until the end of the 20th week after confinement?

[1] OJ L 39, p. 40.

Reference for a preliminary ruling by the Oberlandesgericht München by order of that Court of 25 July 2002 in the case of A.M.O.K. Verlags GmbH against A & R Gastronomie GmbH

(Case C-289/02)

(2002/C 261/05)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht München (Munich Higher Regional Court) of 25 July 2002, received at the Court Registry on 9 August 2002, for a preliminary ruling in the case of A.M.O.K. Verlags GmbH against A & R Gastronomie GmbH on the following question:

Are Articles 49 and 12 EC to be interpreted as precluding a decision of a national court in accordance with which, in a Member State (domestic territory), the maximum amount of a claim for reimbursement of the costs of the services of a lawyer of a different Member State in domestic proceedings and of an *Einvernehmensanwalt* (domestic lawyer acting in conjunction with the foreign lawyer) is the sum of the costs including VAT which would have been incurred in the case of representation by a domestic lawyer?

Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that Court of 25 July 2002 in the appeal by Rethmann Photo Recycling GmbH

(Case C-291/02)

(2002/C 261/06)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof of 25 July 2002, received at the Court Registry on 12 August 2002, for a preliminary ruling in the appeal by Rethmann Photo Recycling GmbH on the following questions:

1. Do the provisions of Regulation (EEC) No 259/93 [1] on the supervision and control of shipments of waste within, into and out of the European Community and Council Directive 75/442/EEC [2] of 15 July 1975 on waste display, with respect to the question whether a planned shipment of waste is to be assigned to recovery operation R1 in Annex II B or disposal operation D10 in Annex II A to Directive 75/442, sufficient clarity and definiteness to allow the person concerned (private parties as well as Member States) to assess the respective legal consequences of their conduct, or are those provisions invalid because of a lack of certainty and the resulting unenforceability?

2. Is the sole criterion, in assigning a waste treatment measure to recovery operation R1 (use principally as a fuel or other means to generate energy) in Annex II B to Directive 75/442, that the waste is used entirely to generate energy (energy use) and the energy generated is also in fact used?

3. Is it permissible for the competent authority of destination to proceed on the basis of the following criteria in deciding whether a planned waste shipment is to be assigned to recovery operation R1 or disposal operation D10:

   (a) Risk reduction

   (b) Conservation of natural resources

   (c) Conservation of energy resources

   (d) Conservation of landfill space

   (e) Ecological appropriateness of the operation

   (f) Economic appropriateness of the operation?

4. Is the following statement correct:

   Not all incineration with energy use constitutes recovery for the purposes of operation R1. Operation R1 does not relate just to the use of the heat released through incineration but also requires use as a fuel. A fuel is characterised by the fact that it satisfies certain criteria relating to thermal value, concentration of pollutants and combustion rate and is sufficiently homogeneous with regard to those characteristics for the process of incineration to be able to be controlled. Waste which cannot meet those criteria — that is to say, which possesses insufficient thermal value, whose composition is so variable that incineration (in a conventional incinerator) cannot be satisfactorily controlled or whose level of pollutants is such that their incineration gives rise to impermissible emissions — per se cannot be recovered in accordance with R1.

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[1] OJ L 030 [1993], p. 1.
[2] OJ L 194 [1975], p. 39.

Reference for a preliminary ruling by the Finanzgericht Düsseldorf by order of that Court of 6 August 2002 in the case of Meiland Azewijn B.V. against Hauptzollamt Duisburg

(Case C-292/02)

(2002/C 261/07)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) of 6 August 2002, received at the Court Registry on 13 August 2002, for a preliminary ruling in the case of Meiland Azewijn B.V. against Hauptzollamt Duisburg (Principal Customs Office, Duisburg) on the following questions:

1. Is Article 8a(1) of Directive 92/81/EEC [1] to be construed as quite simply exempting mineral oil intended to be used as motor fuel from excise duty in the Member State to which it is brought in a standard tank of a commercial motor vehicle after it has been released for consumption in another Member State?

2. If the answer to the first question should be in the affirmative, is Article 8a(1) of Directive 92/81/EEC directly applicable in relation to the claimant having regard to the rule in Paragraph 19(2) of the Mineralölsteuergesetz (Law on Excise Duty on Mineral Oils)?

3. Are the administrative and control procedures for the reduction in excise duty which is possible under Article 8(2)(f) of Directive 92/81/EEC governed by Article 8(8) of Directive 92/81/EEC without the application of a marker or by Article 1(1) of Directive 95/60/EC [2]?

4. If the third question should be answered to the effect that the Member States which exercise the power under Article 8(2)(f) of Directive 92/81/EEC are obliged, in an instance comparable to the present case, to grant reductions in duty also in the form of a refund of excise duty, is a reduction in excise duty for agricultural works contrary to the freedom to provide services if the reduction is linked to a marking procedure under Article 1(1) of Directive 95/60/EC that is not applied in this context by other Member States, which on the contrary impose excise-duty penalties in the case of markings for which no provision is made under their legal systems?

5. If the answer to the fourth question should be in the affirmative, does the breach of the freedom to provide services mean that liability to pay duty is expunged, or would the claimant, in order to achieve exemption from duty, be obliged to ask for unmarked mineral oil and apply for a refund of excise duty in the Member State in which it obtains marked gas oil at a reduced rate of duty?

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[1] OJ L 316, 31.10.1992, p. 12.
[2] OJ L 291, 6.12.1995, p. 46.

Reference for a preliminary ruling by the Niedersächsisches Oberverwaltungsgericht by order of that Court of 1 August 2002 in the administrative-law case of Mrs Gisela Gerken against Amt für Agrarstruktur Verden

(Case C-295/02)

(2002/C 261/08)

Reference has been made to the Court of Justice of the European Communities by order of the Niedersächsisches Oberverwaltungsgericht (Lower Saxony, Higher Administrative Court) of 1st August 2002, received at the Court Registry on 19 August 2002, for a preliminary ruling in the administrative-law case of Mrs Gisela Gerken against Amt für Agrarstruktur (Office for Agriculture) Verden on the following question:

Is the amount of aid also to be reduced under the second indent of Article 10(2)(a) of Regulation (EEC) No 3887/92 [1] where the special premium for male bovine animals applied for when this provision of Community law was in force cannot for legal reasons be granted to the farmer but where in the words of Article 44(1) of Regulation (EC) No 2419/2001 [2], the farmer submitted factually correct information or can show otherwise that he was not at fault?

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[1] OJ L 391, 31.12.1992, p. 36.
[2] OJ L 327, 12.12.2001, p. 11.

Action brought on 21 August 2002 by the Italian Republic against the Commission of the European Communities

(Case C-298/02)

(2002/C 261/09)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 August 2002 by the Commission of the European Communities, represented by Umberto Leanza, acting as Agent, assisted by Maurizio Fiorilli, avvocato dello Stato.

The applicant claims that the Court should:

— annul Commission decision No 2281 [1] of 26 June 2002 in so far as it makes a financial correction of EUR 12 253 816 in respect of account headings B1-1512-001 and B1-1512-004 so far as concerns Italy.

Pleas in law and main arguments

Aid for peaches and pears intended for the production of fruit salad — financial correction

According to the Commission, during the 1995-96, 1996-97 and 1997-98 marketing years, aid was granted for a final product which did not conform to the definitions contained in Regulations (EEC) No 1558/91 [2] and (EC) No 504/97 [3]. The two regulations provided for the payment of aid for whole or sliced peaches and pears provided that they had undergone

heat treatment or had been packaged in airtight containers. The Commission claims that the peaches and pears intended for the production of fruit salad had not undergone adequate heat treatment (pasteurisation or sterilisation) and had been stored in open containers, irrespective of the fact that those products had been stored for only a few days before being included in fruit salads. The infringement of the regulations was in respect of the classification of those products as 'intermediate products for the production of fruit salad'. Such a product was not approved for aid until 1997-1998. The Commission's position is not valid. Payment of the aid to the processing industries was effected pursuant to Regulation (EC) No 504/97, which defines peaches in syrup and/or in natural fruit juice as whole peaches or pieces of peaches, without peel, having undergone a heat treatment, packed in hermetically sealed containers with a covering liquid of sugar syrup or natural fruit juice. The regulation does not specify the type of container, require that heat treatment should be applied, nor lay down the intended use. The Italian Government claims that the financial correction applied to 100 % of the products subsequently intended for the production of fruit salad contained in 200 kilogram containers is unlawful and should be annulled.

Inadequate checks on stocks

The Commission may claim that checks were inadequate only if it should be found that the objectives laid down in the regulation relating to the determination of the methods for applying the production aid scheme for such processed products containing fruit and vegetables had not been attained. In the present case, no evidence to that effect has even been proffered. It follows that the complaint is general, unsubstantiated and, therefore, unlawful. Moreover, it should be observed that the EAGGF has never given any indication as to what method to apply for inspecting stocks, nor is such a method mentioned in the regulations governing the sector. It follows that the Commission cannot claim that a prescribed accounting and verification method was infringed. Accordingly, the financial correction of 10 % by way of a penalty for the alleged inadequate implementation of checks is unlawful.

(1) OJ 2002 L 170, p. 77. Commission Decision excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF).
(2) OJ L 144, 8.6.1991, p. 31.
(3) OJ 1997 L 78, p. 14.

Reference for a preliminary ruling by the Commissione Tributaria di Primo Grado di Trento, Sezione No 6 by order of that Court of 6 June 2002 in the cases pending between Petrolvilla & Bortolotti Spa (previously S.C.D. Srl), Energy Service Srl, Panarotta 2002 Srl, Tumedei Spa, NTB Spa (previously Nuova Tessilbrenta Spa), Hotel Bellavista di Litterini Valter e Nadia Snc, Cattoni Hotel Plaza di Cartoni Giancarlo and C Snc, Villa Luti Srl, Pavarini Components Srl, Tecnopal Srl, Funivie Madonna di Campiglio Spa against Agenzia delle Entrate (previously Direzione delle Entrate) per la Provincia di Trento

(Case C-306/02)

(2002/C 261/10)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria di Primo Grado di Trento, Sezione No 6 (Tax Court of First Instance, Trento, Sixth Chamber) of 6 June 2002, received at the Court Registry on 27 August 2002, for a preliminary ruling in the cases pending between Petrolvilla & Bortolotti Spa (previously S.C.D. Srl), Energy Service Srl, Panarotta 2002 Srl, Tumedei Spa, NTB Spa (previously Nuova Tessilbrenta Spa), Hotel Bellavista di Litterini Valter e Nadia Snc, Cattoni Hotel Plaza di Cartoni Giancarlo and C Snc, Villa Luti Srl, Pavarini Components Srl, Tecnopal Srl, Funivie Madonna di Campiglio Spa against Agenzia delle Entrate (previously Direzione delle Entrate) per la Provincia di Trento on the following question:

'Does the annual assessment to tax at the rate of 0.75 % per annum of a company's net assets pursuant to Decree-Law No 324 of 30 September 1992 in so far as it relates solely to that part of the net assets consisting exclusively of the company's capital as disclosed annually in the balance sheet, constitute a tax having equivalent economic effect to capital duty already levied at the maximum rate of 1 %, thus rendering it incompatible with Community law and, in particular, Council Directive 69/335/EEC of 17 July 1969 (1)?'

(1) OJ L 249, 3.10.1969, p. 25.

Action brought on 5 September 2002 by the Kingdom of Sweden against the Commission of the European Communities

(Case C-312/02)

(2002/C 261/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European

Communities on 24 July 2002 by the Kingdom of Sweden, represented by A. Kruse and K. Renman, acting as Agents, with an address for service in Luxembourg.

Sweden claims that the Court should:

— first, on the basis of Article 230 EC, declare Commission Decision 2002/524/EC [1] void in so far as it excludes from Community financing expenditure of SEK 18 555 850 incurred in Sweden;

— in the alternative, reduce the amount to be excluded from Community financing to SEK 11 817 748;

— in the further alternative, reduce the amount to be excluded from Community financing to SEK 12 436 091;

— order the Commission to pay Sweden's costs.

Pleas in law and main arguments

(First claim)

The communication referred to in the first subparagraph of Article 8(1) of Commission Regulation (EC) No 1663/95 [2] of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section and received by Sweden on 24 October 2000 contained no assessment of the expenditure the Commission proposed to exclude from Community financing.

The collection of card fees cannot be regarded as an administrative fee for the handling of applications for aid and thus did not entail any breach of Article 15 of Council Regulation (EEC) No 1765/92 [3] of 30 June 1992 establishing a support system for producers of certain arable crops or of Article 30a of Regulation (EEC) No 805/68 [4] of the Council of 27 June 1968 on the common organisation of the market in beef and veal. The amount due to Swedish farmers under Community legislation was paid out in full to the recipients of aid. The fact that the Swedish card fee was not levied as consideration for the receipt of a card is of key importance. Payment of the card fee was not a pre-condition for the examination and approval of an application for aid. The cards were sent to all the farmers concerned and the card fees were then invoiced separately. Applications were considered and aid granted whether the card fee had been paid or not. Moreover farmers were also able to use the cards for other purposes than aid applications.

(Claim in the alternative)

The government considers that the card fees paid for forage areas cannot be taken as a basis for the calculation of the amount excluded from Community financing. The government also takes the view that card fees for areas in respect of which both area aid or livestock aid and environmental or regional aid is applied for cannot be included in the calculation of the amount excluded from Comunity financing. There was no provision requiring card fees to be calculated primarily from outside the area covered by an application for area aid. The Commission's position therefore has no basis in the Swedish legislation on the calculation of the fees and gives rise to unreasonable consequences. The Commission's reasoning would, moreover, imply that anyone who applied for environment aid would be liable to pay the card fee but would evade such liability by applying at the same time for area aid in respect of the same area.

(Claim in the further alternative)

In the event that the Court considers that forage areas can be taken as a basis for the calculation of the amount excluded from Community financing, the government takes the view that card fees for areas in respect of which both area aid or livestock aid and environmental or regional aid is applied for cannot be included in that calculation.

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[1] of 26 June 2002 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) OJ 2002 L 170, 29.6.2002, p. 77.
[2] OJ 1995 L 158, 8.7.1995, p. 6.
[3] OJ 1992 L 181, 1.7.1992, p. 12.
[4] OJ, English Special Edition 1968 (I), p. 187.

Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that Court of 27 August 2002 in the appeal brought by Annliese Lenz against Finanzlandesdirektion für Tirol (the regional finance authority for Tyrol)

(Case C-315/02)

(2002/C 261/12)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Administrative Court) of 27 August 2002, received at the Court Registry on 6 September 2002, for a preliminary ruling in the appeal brought by Annliese Lenz against Finanzlandesdirektion für Tirol (the regional finance authority for Tyrol) on the following questions:

1. Does Article 73b(1) in conjunction with Article 73d(1)(a) and (b) and (3) of the EC Treaty (now Article 56(1) in conjunction with Article 58(1)(a) and (b) and (3) EC) preclude a provision such as that in Paragraph 97(1) and (4) of the Einkommensteuergesetz 1988 (1988 Law on Income Tax) in conjunction with Paragraph 37(1) and (4) of the Einkommensteuergesetz 1988, under which a taxpayer in receipt of dividends from domestic shares may choose whether they should be subject to a tax rate of 25 % on flat-rate and final taxation or whether they should be taxed at a rate equivalent to half of the average tax rate applicable to the aggregate income, whereas dividends from foreign shares are always taxed at the normal rate of income tax?

2. Is the level of taxation of the revenue of a limited company which has its seat and head office in another EU Member State or a non-Member State in which shares are held of relevance to the answer to the first question?

3. If the answer to the first question is in the affirmative, can the situation described in Article 73b(1) of the EC Treaty (now Article 56(1) EC) arise as a result of the corporation tax paid in the countries in which they are established by companies limited by shares with seats and head offices in other EU Member States or non-Member States being credited pro rata against the Austrian income tax payable by the recipient of the dividends?

Action brought on 11 September 2002 by the Commission of the European Communities against Ireland

(Case C-317/02)

(2002/C 261/13)

An action against Ireland was brought before the Court of Justice of the European Communities on 11 September 2002 by the Commission of the European Communities, represented by Thomas van Rijn and Keir Fitch, acting as agents, with an address for service at the office of Luis Escobar Guerrero, Centre Wagner C-254, Luxembourg.

The Applicant claims that the Court should:

1. declare that

   — in not putting in place the criteria and detailed rules for the use of the fishing quota allocated to it,

   — by failing to ensure compliance with Community rules on the conservation of aquatic marine living resources by the monitoring of fishing activities, appropriate inspection of landings and the recording of catches, inspections and other controls as required by the relevant Community Regulations,

   — by failing to prohibit provisionally fishing by vessels flying its flag or registered in its territory when the quotas allocated to it were deemed to be exhausted, and

   — by failing to initiate administrative or criminal proceedings against the masters of vessels infringing the Regulations, or against such other person as was responsible for such infringement, Ireland has failed to carry out the obligations imposed on it by i) article 9 (2) of Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ([1]), ii) article 2 of Regulation (EEC) 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ([2]), iii) article 21 of Regulation 2847/93, iv) article 31 of Regulation No 2847/93.

2. order Ireland to pay the costs.

Pleas in law and main arguments

The Commission submits that:

— Ireland has infringed Article 9(2) of Regulation 3760/92 by failing to put in place appropriate detailed rules for proper utilisation of the quota allocated to it. The rules should have been such as to enable Ireland to ensure that overfishing did not take place and that quotas were always respected;

— Ireland did not ensure compliance with Community rules on control, contrary to Article 2 of Regulation 2847/93;

— Ireland did not respect its obligation under Article 21 of Regulation 2847/93 to prohibit fishery provisionally when the quota allocated to it was deemed to have been exhausted;

— by failing to institute criminal or administrative proceedings against the skipper or any other party responsible for preventing overfishing Ireland has not complied in full with the obligations imposed by Article 31 of Regulation 2847/93.

(1) OJ L 389, 31.12.1992, p. 1.
(2) OJ L 261, 20.10.1993, p. 1.

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

(Case C-325/02)

(2002/C 261/14)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 16 September 2002 by the Commission of the European Communities, represented by U. Wölker and F. Simonetti, acting as Agents.

The applicant claims that the Court should:

— Declare that, by restricting itself to transposing part of Article 1 of and Annexes IV and V of Council Directive 98/81/EC of 26 October 1998 on the contained use of genetically modified micro-organisms (1) or, in any event, by failing to communicate other implementing measures to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of that directive;

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

Pleas in law and main arguments

Under Article 249 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition.

The Commission finds that, despite the prescribed time-limit having expired, the Grand Duchy of Luxembourg has carried out only a partial transposition of the directive referred to in the Commission's pleadings, restricted to part of Article 1 thereof and Annexes IV and V thereto.

(1) OJ 1998 L 330, p. 13.

Action brought on 18 September 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-328/02)

(2002/C 261/15)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 11 September 2002 by the Commission of the European Communities, represented by Maria Kondou-Durande, Legal Adviser in its Legal Service, with an address for service in Luxembourg.

The Commission claims that the Court should:

— declare that, by failing to adopt all the necessary measures prescribed by Council Regulation No 3508/92 [1] establishing an integrated administration and control system for certain Community aid schemes, the Hellenic Republic has failed to fulfil its obligations under that regulation;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

Under the regulation at issue, the Member States were obliged to establish by 1 January 1997 an integrated system including a computerised data base, an alphanumeric identification system for agricultural parcels, an alphanumeric system for the identification and registration of animals, standardised processing of aid applications and an integrated control system (Article 2).

The Greek authorities have not yet established an integrated system of that kind, and the alternative system which they apply for checking areas and requests for payment has repeatedly been considered inadequate and has been the cause of corrections in the clearing of accounts.

(1) OJ L 355, 5.12.1992, p. 1.

Action brought on 20 September 2002 by the Commission of the European Communities against the French Republic

(Case C-334/02)

(2002/C 261/16)

An action against the French Republic was brought before the Court of Justice of the European Communities on 20 September 2002 by the Commission of the European Communities, represented by R. Lyal and Ch. Giolito, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by excluding absolutely the application of the rate of levy in discharge to income arising from the investments and contracts referred to in Articles 125-0 A and 125 A of the Code général des impôts (General Tax Code), where the debtor is not resident or established in France, the French Republic has failed to fulfil its obligations under Articles 49 and 56 EC;

— Order the French Republic to pay the costs.

Pleas in law and main arguments

The income referred to in Article 125 A of the Code general des impôts (CGI) (income from interest arising from arrears and from all kinds of State bonds, stocks, participation share certificates, stocks and other certificates of indebtedness, deposits, guarantees and current accounts) and that referred to in Article 125-0 A of the CGI (income from certificates or bond investments and other similar investments), is subject to income tax. None the less, the levy in discharge (which is often attractive because its rate is generally lower than the marginal rate of tax resulting from the application of the progressive scale of tax on income and of splitting income) can be applied to it only if the debtor is resident or established in France.

The Commission takes the view that the above constitutes a restriction on the freedom to provide services and on the free movement of capitals contrary to Articles 49 and 56 of the EC Treaty, in that the more generally favourable levy in discharge is not applied to income collected by French residents from a debtor which is not resident or established in France, even if the person in question is able to provide evidence that it fulfils all the conditions in which the levy in discharge is applied to income obtained from a debtor resident or established in France.

Action brought on 20 September 2002 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-335/02)

(2002/C 261/17)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communi-

ties on 20 September 2002 by the Commission of the European Communities, represented by D. Martin and H. Kreppel, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to define the necessary capabilities and aptitudes for persons designated for activities relating to protective and preventive measures, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 10 and 249 EC and Article 7(8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ([1]);

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

Pleas in law and main arguments

The Luxembourg authorities do not deny that they have failed, to date, to adopt laws or regulations defining the necessary capabilities and aptitude for persons designated for activities relating to protective and preventive measures.

The Commission therefore takes the view that the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty and Directive 89/391.

([1]) OJ 1989 L 183, p. 1.

Action brought on 26 September 2002 by the Commission of the European Communities against the French Republic

(Case C-342/02)

(2002/C 261/18)

An action against the French Republic was brought before the Court of Justice of the European Communities on 26 September 2002 by the Commission of the European Communities, represented by A. Bordes, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations or administrative provisions necessary to comply with:

   a) Articles 4, 5, 6, 7, 8(3) and 9 of Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC ([1]), and

   b) Articles 9a(1), 9b, first indent, 13(b) and 15(2) of Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC, 91/664/EEC ([2]),

   France has failed to fulfil its obligations under the abovementioned directives and the third paragraph of Article 249 and the first paragraph of Article 10 of the EC Treaty;

2. Order the French Republic to pay the costs.

Pleas in law and main arguments

Under Article 249 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. That time-limit expired on 1 July 1997 without the French Republic having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

([1]) OJ 1996 L 125, p. 3.
([2]) OJ 1996 L 125, p. 10.

Action brought on 26 September 2002 by the Commission of the European Communities against the French Republic

(Case C-343/02)

(2002/C 261/19)

An action against the French Republic was brought before the Court of Justice of the European Communities on 26 September 2002 by the Commission of the European Communities, represented by A. Bordes, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations or administrative provisions necessary to comply:

  — Commission Directive 2001/32/EC of 8 May 2001 recognising protected zones exposed to particular plant health risks in the Community and repealing Directive 92/76/EEC [1],

  — Commission Directive 2001/33/EC of 8 May 2001 amending certain annexes to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [2], and

  in any event, by failing to communicate them to the Commission, the French Republic has failed to fulfil its obligations under those two directives;

— Order the French Republic to pay the costs.

Pleas in law and main arguments

Under Article 249 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. That time-limit expired without the French Republic having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

[1] OJ 2001 L 127, p. 38.
[2] OJ 2001 L 127, p. 42.

Action brought on 26 September 2002 by the Commission of the European Communities against the French Republic

(Case C-344/02)

(2002/C 261/20)

An action against the French Republic was brought before the Court of Justice of the European Communities on 26 September 2002 by the Commission of the European Communities, represented by A. Bordes, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations or administrative provisions necessary to comply with Directive 2000/16/EC of the European Parliament and the Council of 10 April 2000 amending Council Directive 79/373/EEC on the marketing of compound feedingstuffs and Council Directive 96/25/EC on the circulation of feed materials [1], the French Republic has failed to fulfil its obligations under that directive; and

— Order the French Republic to pay the costs.

Pleas in law and main arguments

Under Article 249 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. That time-limit expired on 3 May 2001 without the French Republic having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

[1] OJ 2000 L 105, p. 36.

COURT OF FIRST INSTANCE

ORDER OF THE COURT OF FIRST INSTANCE

of 10 July 2002

in Case T-146/00 DEP: S. Ruf and M. Stier v Office for the Harmonisation of the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Taxation of costs)

(2002/C 261/21)

(Language of the case: German)

In Case T-146/00 DEP: S. Ruf, residing in Ettlingen (Germany), and M. Stier, residing in Pfinztal (Germany), represented by V. Spitz, A.N. Klinger and A. Gaul, lawyers, with an address for service in Luxembourg, against Office for the Harmonisation of the Internal Market (Trade Marks and Designs) (OHIM) (Agent: E. Joly) — application for taxation of the costs to be paid by the applicants to the defendant following the judgment of the Court of First Instance of 20 June 2001 in Case T-146/00 Ruf and Stier v OHIM ('DAKOTA' Image) [2001] ECR II-1797 — the Court of First Instance (Second Chamber), composed of R.M. Moura Ramos, President, and J. Pirrung and A.W.H. Meij, Judges; H. Jung, Registrar, has made an order on 10 July 2002, in which it:

Fixes the total costs to be paid by the applicants to the Office in Case T-146/00 at EUR 2 692,63.

([1]) OJ C 233, 12.8.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 July 2002

in Case T-387/00 Comitato organizzatore del convegno internazionale 'Effette degli inquinamenti atmosferici sul clima e sulla vegetazione' v Commission of the European Communities [1]

(Action for annulment — Application actually concerning a contractual dispute — Lack of jurisdiction of the Community judicature — Inadmissibility)

(2002/C 261/22)

(Language of the case: Italian)

In Case T-387/00: Comitato organizzatore del convegno internazionale 'Effette degli inquinamenti atmosferici sul clima e sulla vegetazione' having its registered office in Rome, Italy, represented by P. Grassi and G. Russo, lawyers, with an address for service in Luxembourg against Commission of the European Communities (Agents: G. Valero Jordana and R. Amorosi) — application for the annulment of the measure allegedly contained in a letter from the Commission requesting the applicant to repay part of the sums granted under financing contract B4/91/3046/11396 concluded between the Commission and the applicant to enable the organisation of a conference to study the effects of atmospheric pollutants on climate and vegetation — the Court of First Instance (Fourth Chamber), composed of M, Vilaras, President of the Chamber, V. Tiili and P. Mengozzi, Judges; H. Jung, for the Registrar, has made an order on 10 July 2002, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

2. *The applicant is ordered to pay the costs.*

([1]) OJ C 61 of 24.2.2001.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 11 July 2002

in Cases T-107/01 R and T-175/01 R, Société des mines de Sacilor — Lormines v Commission of the European Communities

(Interlocutory proceedings — Suspension of operation — Interim measures — Article 88 ECSC)

(2002/C 261/23)

(Language of the case: French)

In Cases T-107/01 R and T-175/01 R, Société des mines de Sacilor — Lormines, established in Puteaux, France, represented by R. Schmitt, avocat against Commission of the European Communities (Agents: G. Rozet and L. Ström) — application for suspension of the operation of the Commission_s decisions of 30 March, 21 April, 9 and 10 July 2001, and for interim measures ordering the Commission to uphold the complaints submitted to it by the applicant on 9 February and 9 May 2001 — the President of the Court of First Instance has made an order on 11 July 2002, the operative part of which is as follows:

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

2. *Costs are reserved.*

ORDER OF THE COURT OF FIRST INSTANCE

of 9 July 2002

in Case T-127/01: Carlo Ripa di Meana v European Parliament [1]

(Members of the European Parliament — Provisional retirement pension scheme — Suspension of payment — Confirmatory act — Admissibility)

(2002/C 261/24)

(Language of the case: Italian)

In Case T-127/01: Carlo Ripa di Meana, former Member of the European Parliament, residing in Montecastello di Vibio (Italy), represented by W Viscardini Donà and G. Donà, lawyers, against European Parliament (Agents: A. Caiola and G. Ricci) — application for annulment of the decision of the European Parliament of 26 March 2001 suspending payment of the pension of the applicant following his election to the Regional Council for the Region of Umbria (Italy) — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; H. Jung, Registrar, made an order on 9 July 2002, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

2. *The applicant shall pay the costs.*

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[1] OJ 2001 C 245.

ORDER OF THE COURT OF FIRST INSTANCE

of 9 July 2002

in Case T-312/01: Jungbunzlauer AG v Commission of the European Communities [1]

(Action for annulment — Action which has become devoid of purpose — No need to adjudicate — Order for costs)

(2002/C 261/25)

(Language of the case: German)

In Case T-312/01: Jungbunzlauer AG, established in Basel (Switzerland), represented by R. Bechtold and M. Karl, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: W. Mölls and A. Whelan) — application for annulment of Commission Decision C(2001) 2931 final of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.756 — Sodium gluconate) or, alternatively, for the reduction of the fine imposed on the applicant by Article 3 of that decision — 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 July 2002, the operative part of which is as follows:

1. *There is no need to adjudicate on this action.*

2. *The Commission shall pay the costs.*

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[1] OJ 2002 C 68.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 8 August 2002

in Case T-155/02 R: VVG International Handelsgesellschaft mbH v Commission of the European Communities

(Application for interim measures — Regulation (EC) No 560/2002 — Admissibility of main action)

(2002/C 261/26)

(Language of the case: German)

In Case T-155/02 R: VVG International Handelsgesellschaft mbH, established in Salzburg (Austria), VVG (International) Ltd, established in Europort Gibraltar (Gibraltar), Metalsivas Metallwarenhandelsgesellschaft mbH, established in Vienna (Austria), represented by W. Schuler, lawyer, against Commission of the European Communities (Agents: G. zur Hausen and B. Eggers,) — application for suspension of the operation of Commission Regulation (EC) No 560/2002 of 27 March 2002 imposing provisional safeguard measures against imports of certain steel products (OJ 2002 L 85, p. 1) or of any other provisional measure likely to permit the applicants to import into the Community, in addition to the tariff quota and free of additional duties, 95 129 tonnes of alloy hot rolled flat products covered by reference 4 of the said Regulation — the President of the Court of First Instance, has made an order on 8 August 2002, the operative part of which is as follows:

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

2. *The costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 12 July 2002

in Case T-163/02 R: Montan Gesellschaft Voss mbH Stahlhandel and Others v Commission of the European Communities

(Application for interim measures — Regulation (EC) No 560/2002 — Admissibility of main action — Urgency)

(2002/C 261/27)

(Language of the case: German)

In Case T-163/02 R: Montan Gesellschaft Voss mbH Stahlhandel, established in Planegg (Germany), Jepsen Stahl GmbH, established in Nittendorf (Germany), LNS — Lothar Niemeyer Stahlhandel GmbH & Co. KG, established in Essen (Germany), Metal Traders Stahlhandel GmbH, established in Düsseldorf (Germany), represented by K. Friedrich, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Forman and R. Raith) — application for, first, suspension of the operation of Commission Regulation (EC) No 560/2002 of 27 March 2002 imposing provisional safeguard measures against imports of certain steel products (OJ 2002 L 85, p. 1), and, secondly, any other interim measures deemed necessary — the President of the Court of First Instance, has made an order on 12 July 2002, the operative part of which is as follows:

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

2. *The costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 31 July 2002

in Case T-191/02 R: Giorgio Lebedef v Commission of the European Communities

(Procedure for interim relief — Framework agreement of 1974 between the Commission and trade union and professional organisations — Repudiation — Admissibility — prima facie case)

(2002/C 261/28)

(Language of the case: French)

In Case T-191/02 R: Giorgio Lebedef, official of the Commission of the European Communities, residing in Senningenberg (Luxembourg), represented by G. Bounéou, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall) — application for suspension of operation of the decision of the Commission of 5 December 2001 by which, amongst other things, it resiled from the framework agreement of 20 September 1974 concerning relations between the Commission and trade union and professional organisations and adopted the operational rules concerning the levels, process and procedures of consultation agreed between the Commission and the majority of trade union and professional organisations on 19 January 2000 — the President of the Court of First Instance has made an order on 31 July 2002, in which he:

1. *Dismisses the application for interim measures;*

2. *Orders that costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 14 August 2002

in Case T-198/02 R: N v Commission of the European Communities

(Procedure for interim relief — Suspension of operation of a measure — Disciplinary procedure — Removal from post)

(2002/C 261/29)

(Language of the case: French)

In Case T-198/02 R: N, a former official of the Commission of the European Communities, residing in Asse (Belgium), represented by N. Lhoëst, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall) — application for suspension of operation of the decision of 25 February 2002 by which the appointing authority imposed on the applicant the disciplinary measure of removal from post without reduction or withdrawal of entitlement to retirement pension, provided for by

Article 86(2)(f) of the Staff Regulations for officials of the European Communities — the President of the Court of First Instance has made an order on 14 August 2002, in which he:

1. *Dismisses the application for interim measures;*

2. *Orders that costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 16 July 2002

in Case T-207/02 R: Nicoletta Falcone v Commission of the European Communities

(Procedure for interim relief — Competition procedure — Interim measures — Urgency — None)

(2002/C 261/30)

(Language of the case: Italian)

In Case T-207/02 R: Nicoletta Falcone, residing in Florence (Italy), represented by M. Condinanzi, lawyer, against Commission of the European Communities (Agents: J. Currall and A. Dal Ferro) — application for an interim measure requiring the Commission to invite the applicant to complete her application for admission to the second set of tests in general competition COM/A/10/01, in the field of law, fixed for 19 July 2002, from which she was excluded by decision of the jury of 2 May 2002 informing her that she had not been admitted to the written tests in the said competition — the President of the Court of First Instance has made an order on 16 July 2002, in which he:

1. *Dismisses the application;*

2. *Orders that costs are reserved.*

Action brought on 29 June 2002 by José Lloris Maeso against Commission of the European Communities

(Case T-165/02)

(2002/C 261/31)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 June 2002 by José Lloris Maeso, residing in Valencia (Spain), represented by Julián Bosch Abarca, lawyers.

The applicant claims that the Court should:

— annul the decision of the selection board for competition COM/A/10/01 (Law) of 2 May 2002, and that he be admitted to the next stage of that competition.

Pleas in law and main arguments

The applicant in the present case is challenging the decision of the selection board for COM/A/10/01 (Law), notified by letter dated 2 May 2002, awarding him in respect of one of the selection tests in that competition, specifically test (a), marks below the minimum required to be admitted to the remainder of the tests for that competition.

In support of his claim, the applicant alleges error in the marking of the abovementioned test (a).

Action brought on 14 August 2002 by Sunrider Corporation against the Office for Harmonisation in the Internal Market

(Case T-242/02)

(2002/C 261/32)

(Language of the case: Greek)

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 August 2002 by Sunrider Corporation, whose registered office is in Torrance, California (USA), represented by Nikolaos Dontas and Maria Bra, Lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— allow the present action;

— annul the contested decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 May 2002; and

— order the Office in any event to pay, first, the applicant's costs both before the Board of Appeal and before the Court of First Instance, together with the fees of the lawyers instructed by it, and second, the translation costs incurred by the applicant in the procedures for examination of its application and consideration of its appeal before the Board of Appeal.

Pleas in law and main arguments

Community trade mark:	the word mark 'TOP' — Application 604 975
Goods or services concerned:	herbal food capsule or powder; herbal nutritional supplement. (Classes 5 and 29)
Decision of the examiner:	refusal of the application for registration
Decision of the Board of Appeal:	dismissal of the appeal
Grounds put forward:	1. infringement of the *audi alteram partem* rule and of the rights of the defence 2. impermissibly long procedure before the Office's Boards of Appeal from the lodging of the appeal to notification of the decision to the applicant 3. non-notification of matters upon which the contested decision was based 4. insufficient and unclear grounds of the contested decision 5. suitability for registration of the mark 6. distinctive character of the mark

Action brought on 19 August 2002 by Antonia de Jong against Europol

(Case T-245/02)

(2002/C 261/33)

(Language of the case: Dutch)

An action against Europol was brought before the Court of First Instance of the European Communities on 19 August 2002 by Antonia de Jong, residing in The Hague (Netherlands), represented by Pauline de Casparis and Maria Franciscus Baltussen.

The applicant claims that the Court should:

1. Set aside Europol's rejection of the applicant's complaint brought against the Decision of 23 November 2001 and at the same time annul the contested Decision of 23 November 2001;

2. Principally, order Europol to grant the applicant two additional salary increments with effect from 1 July 2001, and, in the alternative, order Europol to grant the applicant one additional salary increment with effect from 1 July 2001;

3. Order Europol to pay to the applicant the amounts due under (2) within 48 hours of pronouncement of the judgment to be delivered in this case, plus such statutory interest as is due on those amounts in accordance with Netherlands law;

4. Order Europol to pay to the applicant, within 48 hours of pronouncement of the judgment to be delivered in this case, the sum of EUR 1 000 as compensation for the non-material damage which she has suffered;

5. Order Europol to pay the costs incurred by the applicant in the present proceedings.

Pleas in law and main arguments

The applicant works for Europol. In the contested decision, the defendant refused to grant a salary increase to the applicant on the basis of her report.

The applicant contends that this decision is contrary to Article 29 of the Europol Staff Regulations. According to the applicant, the Management Board has failed to lay down the necessary rules for the award of salary increases in accordance with that article. The applicant further pleads that the Director exceeded his discretionary powers, inasmuch as the decision-making procedure does not satisfy the requirements of due care and impartiality. Lastly, the applicant pleads infringement of the principles of equal treatment and protection of legitimate expectations.

Action brought on 21 August 2002 by the Brighton Marine and Palace Pier Company against the Commission of the European Communities

(Case T-252/02)

(2002/C 261/34)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 August 2002 by the Brighton Marine and Palace Pier Company, Jarrow, Tyne and Wear (United Kingdom), represented by C. Vajda QC and T. Usher, Solicitor.

The applicant claims that the Court should:

— annul the Decision of 9 April 2002 both in respect of the conclusions under Article 87(1) and Article 87(3)(d) of the EC Treaty;

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

Pleas in law and main arguments

The applicant operates the Brighton Palace Pier. In the contested Decision, the Commission held that the restoration of the Brighton West Pier did not involve state aid and declared, in the alternative, any aid to be compatible with the common market. The applicant points out that the restoration of the Brighton West Pier involves the participation of a private partner, St. Modwen. This partner will, after the restoration, exploit the pier and adjacent lands commercially. This would create a direct competitor for the applicant since the West Pier, which is situated only 1,2 kilometres away from the Palace Pier, would then offer the same services and attractions as the applicant currently offers.

The applicant submits that the Commission erred in concluding that the measures did not favour St. Modwen. According to the applicant, the funding of the restoration gives St. Modwen the opportunity to carry out a large commercial development of a scale and in a locality which would not otherwise be possible. This gives St. Modwen a competitive advantage over the applicant.

The applicant furthermore submits that the Commission erred in concluding that the measures in issue would have no effect on competition and intra community trade. The applicant claims that the Decision would erred in taking into account only the effect on competition that could arise from the operation of the heritage centre on the West Pier. Instead, the Decision should also take into account the effect on competition and trade that could arise from the management and use of the new shore end commercial buildings and the commercial space on the West Pier. According to the applicant, these new commercial developments would not take place without the funded restoration of the West Pier.

Finally, the applicant claims that the Commission erred in concluding that if there was aid, it was compatible with the common market under Article 87(3)(d) of the EC Treaty. According to the applicant, the Commission failed to weigh up the benefits of any cultural or heritage objective against the much larger purely commercial aspects. Furthermore, it failed to take into account the potential disadvantages for the applicant, Palace Pier, which is also an English Heritage listed building, and relies solely on its commercial viability.

Action brought on 23 August 2002 by L against Commission of the European Communities

(Case T-254/02)

(2002/C 261/35)

(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 23 August 2002 by L, residing in Brussels, represented by Jean Van Rossum, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission of 30 April 2002 and the implied rejection of the applicant's complaint of 4 February 2002;

— order the defendant to compensate the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests, first, the Commission's rejection of the applicant's request that it institute legal proceedings with regard to the harassment complained of. Secondly, the applicant contests the implied decision not to recognise the illness suffered by the applicant, following such harassment, as an occupational disease.

In support of the action in respect of the first act, the applicant alleges infringement of Article 25(2) of the Staff Regulations. In the applicant's view, the reasons for the decision are inconsistent.

Moreover, the applicant alleges infringement of Article 24(1) and (2) of the Staff Regulations in that the Commission refuses to take legal action and in that it refuses to grant the applicant access to information which it has available to it regarding the harassing conduct.

In support of the action in respect of the second act, the applicant alleges infringement of Article 25(2) of the Staff Regulations. The applicant claims not to have received any reasons for the implied rejection of the request submitted.

Action brought on 2 September 2002 by Pepsico Inc. against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM)

(Case T-269/02)

(2002/C 261/36)

(Language of the case: Spanish)

An action against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM) was brought before the Court of First Instance of the European Communities on 2 September 2002 by Pepsico Inc., whose registered office is in New York (United States of America), represented by Enrique Armijo Chávarri.

The applicant claims that the Court should:

— annul decision No 114/2000-1 of the OHIM of 10 June 2002;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	The applicant
The Community trade mark concerned:	Word mark 'RUFFLES' — Application No 000096875, for goods in Classes 29 and 30 (food and condiments)
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Convent Knabber-Gebäck GmbH.
Trade mark or sign asserted by way of opposition in the opposition proceedings:	German mark 'RIFFELS' registered for goods in Class 29 (potato chips)
Decision of the Opposition Division:	Application upheld as regards 'dried vegetables' (Class 29) and 'fine pastry and confectionery' (Class 30). Application dismissed as regards 'cereal preparations' (Class 30).
Decision of the Board of Appeal:	Appeal dismissed.
Grounds of claim:	Breach of the principles that the rights of the defence are to be observed and that reasons must be provided, in accordance with Articles 73 and 74 of Regulation No 40/94, and of co-existence and comparability between Community trade marks and national trade marks

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Action brought on 4 September 2002 by Comune di Napoli against Commission of the European Communities

(Case T-272/02)

(2002/C 261/37)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 September 2002 by the Municipality of Naples, represented by Massimo Merola, Claudio Tesauro, Giuseppe Tarallo and Edoardo Barone, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission notified in a letter of 11 June 2002 concerning ERDF action No 66 and the correction of the accounts relating to ERDF action No 67;

— order the Commission to pay the expenditure incurred by the Comune di Napoli in these proceedings, including in respect of lawyers' fees.

Pleas in law and main arguments

The present action seeks the annulment of the decision of 11 June 2002 closing ERDF file 85 05 03 066 (hereafter 'ERDF No 66') — 'Metropolitan link between Museo and Dante' — by which the European Commission reduced the amount of the contribution initially granted for completion of the project in question and implicitly rejecting the request for adjustment of the balance relating to earlier related ERDF action No 85 05 03 067 (hereafter 'ERDF No 67') — 'Rail link — Naples Town Centre'. The contested decision accepted a level of expenditure lower than the amount initially provided for and actually incurred, and accordingly reduced the contribution initially agreed by the defendant.

In support of its claims, the applicant alleges breach of the principle that legitimate expectations be protected and of fairness, as well as failure to provide reasons.

The applicant claims in that regard that the Commission:

— gave rise, by its own previous conduct, to legitimate expectations on the part of the applicant regarding the possibility that it might receive the full agreed amount, since the work covered by the intervention had been completed as planned, and the eligible expenditure — actually incurred and properly accounted for — were on the whole not less than the initial planned investment.

— rejected the request for adjustment of the balance of ERDF intervention No 67 and reduced the contribution provided for in the context of ERDF No 66 on the ground that the eligible expenditure was of a lower amount (in that it was erroneously already attributed to the new intervention), despite the fact the expenditure incurred was on the whole greater and the acknowledgment, by the defendant, that the work had been completed in accordance with the project.

Action brought on 9 September 2002 by D against European Investment Bank

(Case T-275/02)

(2002/C 261/38)

(Language of the case: French)

An action against the European Investment Bank was brought before the Court of First Instance of the European Communities on 9 September 2002 by D, represented by Joëlle Choucroun, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare the present action admissible and well founded;

— annul the unilateral decision of the European Investment Bank dated 26 March 2002 concerning the four-month extension of the six-month trial-period agreed between the parties;

— annul the decision of the European Investment Bank dated 25 June 2002, reproduced on 28 June 2002, unilaterally terminating outside the trial period and with effect from 15 July 2002 the fixed-period employment contract with the applicant signed on 2 October 2001;

— order the European Investment Bank to pay to the applicant EUR 45 000 (forty-five thousand euros) by way of damages;

— order the European Investment Bank to pay the costs.

Pleas in law and main arguments

The applicant in the present case contests the extension of the probation period to be worked for the defendant, together with its unilateral termination of the applicant's employment contract at the end of that period.

In support of the arguments put forward, the applicant alleges:

— Infringement of the principle of legality, in that neither the letter engaging him nor the Staff Regulations of the

Bank provide for any extension of the probation period; the bank cannot claim that there has been an amendment in that regard.

— Infringement of the principle *pacta sunt servanda*, in that the Bank did not exercise, within the probation period, its right of termination without requiring to give reasons and with 15 days' notice and the defendant cannot unilaterally modify the terms of the contract.

The applicant further alleges breach of the duty to have regard for the welfare of officials and breach of the principle that legitimate expectations be protected.

Removal from the register of Case T-50/01 [1]

(2002/C 261/39)

(Language of the Case: English)

By order of 11 July 2002 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-50/01: Saffron Investments N.V. v Commission of the European Communities.

[1] OJ C 200, 14.7.2001.

III

(Notices)

(2002/C 261/40)

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

OJ C 247, 12.10.2002

Past publications

OJ C 233, 28.9.2002

OJ C 219, 14.9.2002

OJ C 202, 24.8.2002

OJ C 191, 10.8.2002

OJ C 180, 27.7.2002

OJ C 169, 13.7.2002

These texts are available on:

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

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