ISSN 1725-2423

Official Journal

of the European Union

C 44

Volume 46

22 February 2003

English edition

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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

of 7 January 2003

in Case C-306/99 (Reference for a preliminary ruling from the Finanzgericht Hamburg): Banque internationale pour l'Afrique occidentale SA (BIAO) v Finanzamt für Großunternehmen in Hamburg [1]

(Fourth Directive 78/660/EEC — Annual accounts of certain types of companies — Jurisdiction of the Court to interpret Community law in a context where it is not directly applicable — Provisions for risk under a loan guarantee — Taking into account of the individual situation of the debtor and of its State of establishment — Date on which the risk may or must be evaluated and entered on the balance sheet)

(2003/C 44/01)

(Language of the case: German)

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

In Case C-306/99: Reference to the Court under Article 234 EC by the Finanzgericht Hamburg (Germany) for a preliminary ruling in the proceedings pending before that court between Banque internationale pour l'Afrique occidentale SA (BIAO) and Finanzamt für Großunternehmen in Hamburg, on the interpretation of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (President of Chamber), D.A.O. Edward (Rapporteur), A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric and S. von Bahr, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, Registrar, has given a judgment on 7 January 2003, in which it has ruled:

1. *The questions appearing in the second and third parts of the reference for a preliminary ruling, concerning the interpretation of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, are admissible.*

2. *The Fourth Directive 78/660 does not preclude a provision intended to cover possible losses or debts arising from a commitment appearing at the foot of the balance sheet pursuant to Article 14 of that directive from being entered on the liabilities side of the balance sheet pursuant to Article 20(1), provided that the loss or debt in question may be characterised as 'likely or certain' at the balance-sheet date. Article 31(1)(e) of that directive does not exclude the possibility that, in order to ensure compliance with the principle of prudence and the principle that a true and fair view of the assets and liabilities be given, the most appropriate method of valuation might be to carry out a globalised assessment of all the relevant factors.*

3. *In circumstances such as those in point in the main proceedings, repayment of a loan, which takes place after the balance-sheet date (that being the relevant date for valuing balance-sheet items), does not constitute a fact necessitating retrospective revaluation of a provision relating to that loan entered on the liabilities side of the balance sheet. However, compliance with the principle that a true and fair view of the assets and liabilities be given requires that mention should be made in the annual accounts of the disappearance of the risk covered by that provision.*

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[1] OJ C 333 of 20.11.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 January 2003

in Case C-398/99 (Reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester): Yorkshire Co-operatives Ltd v Commissioners of Customs & Excise [1]

(Sixth VAT Directive — Reduction coupons issued by a manufacturer — Taxable amount in the hands of the retailer)

(2003/C 44/02)

(Language of the case: English)

In Case C-398/99: Reference to the Court under Article 234 EC by the VAT and Duties Tribunal, Manchester (United Kingdom) for a preliminary ruling in the proceedings pending before that tribunal between Yorkshire Co-operatives Ltd and Commissioners of Customs & Excise, on the interpretation of Articles 11(A)(1)(a) and 11(C)(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Sixth Chamber), composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric, Judges; C. Stix-Hackl, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 16 January 2003, in which it has ruled:

On a proper construction of Articles 11(A)(1)(a) and 11(C)(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, when, on the sale of a product, the retailer allows the final consumer to settle the sale price partly in cash and partly by means of a reduction coupon issued by the manufacturer of that product, and the manufacturer reimburses to the retailer the amount indicated on that coupon, the nominal value of that coupon must be included in the taxable amount in the hands of that retailer.

(1) OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 January 2003

in Case C-12/00: Commission of the European Communities v Kingdom of Spain [1]

(Failure by a Member State to fulfil obligations — Free movement of goods — Directive 73/241/EEC — Cocoa and chocolate products containing fats other than cocoa butter — Products lawfully manufactured and marketed in the Member State of production under the sales name 'chocolate' — Prohibition on marketing under that name in the Member State of marketing)

(2003/C 44/03)

(Language of the case: Spanish)

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

In Case C-12/00, Commission of the European Communities (Agent: G. Valero Jordana) v Kingdom of Spain (Agent: N. Díaz Abad): Application for a declaration that, by prohibiting cocoa and chocolate products to which vegetable fats other than cocoa butter have been added, and which are lawfully manufactured in Member States which authorise the addition of those fats, from being marketed in Spain under the name used for their marketing in the Member State of production, the Kingdom of Spain has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris (Rapporteur), N. Colneric and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 16 January 2003, in which it:

1. *Declares that, by prohibiting cocoa and chocolate products which comply with the requirements as to minimum content laid down in point 1.16 of Annex I to Council Directive 73/241/EEC of 24 July 1973 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption to which vegetable fats other than cocoa butter have been added, and which are lawfully manufactured in Member States which authorise the addition of those fats, from being marketed in Spain under the name used for their marketing in the Member State of production, the Kingdom of Spain has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC);*

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

(1) OJ C 149 of 27.5.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 January 2003

in Case C-14/00: Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil obligations — Free movement of goods — Directive 73/241/EEC — Cocoa and chocolate products containing fats other than cocoa butter — Products lawfully manufactured and marketed in the Member State of production under the sales name 'chocolate' — Prohibition on marketing under that name in the Member State of marketing— Requirement to use the name 'chocolate substitute')

(2003/C 44/04)

(Language of the case: Italian)

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

In Case C-14/00, Commission of the European Communities (Agents: G. Valero Jordana and G. Bisogni) v Italian Republic (Agent: U. Leanza, assisted by O. Fiumara): Application for a declaration that, by prohibiting chocolate products containing vegetable fats other than cocoa butter, and which are lawfully manufactured in Member States which authorise the addition of such fats, from being marketed in Italy under the name used in the Member State of origin, and by requiring that those products may only be marketed under the name 'chocolate substitute', the Italian Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris (Rapporteur), N. Colneric and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 16 January 2003, in which it:

1. *Declares that, by prohibiting cocoa and chocolate products which comply with the requirements as to minimum content laid down in point 1.16 of Annex I to Council Directive 73/241/EEC of 24 July 1973 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption to which vegetable fats other than cocoa butter have been added, and which are lawfully manufactured in Member States which authorise the addition of such fats, from being marketed in Italy under the name used in the Member State of production, and by requiring that those products may only be marketed under the name 'chocolate substitute', the Italian Republic has failed to fulfil its obligations under Article 30 of the Treaty (now, after amendment, Article 28 EC);*

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

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[1] OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 January 2003

in Case C-76/00 P: Petrotub SA and Republica SA [1]

(Appeal — Protection against dumping — Determination of the dumping margin — Choice of the 'asymmetrical' calculation method — Article 2.4.2 of the Agreement on Implementation of Article VI of the GATT — Statement of reasons — Determination of normal value — Taking into account of sales made using compensation — Statement of reasons)

(2003/C 44/05)

(Language of the case: English)

In Case C-76/00 P, Petrotub SA, established in Roman (Romania), and Republica SA established in Bucharest (Romania) (avocats: A. Merckx and P. Bentley): Two appeals against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 15 December 1999 in Joined Cases T-33/98 and T-34/98 Petrotub and Republica v Council [1999] ECR II-3837, seeking to have that judgment set aside, the other parties to the proceedings being: Council of the European Union (Agent: S. Marquardt, assisted by G. Berrisch), defendant at first instance, and Commission of the European Communities (Agents: V. Kreuschitz and S. Meany) intervener at first instance, the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, A. La Pergola (Rapporteur) and P. Jann, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 9 January 2003, in which it has ruled:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 15 December 1999 in Joined Cases T-33/98 and T-34/98 Petrotub and Republica v Council;*

2. *Annuls Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia in so far as it concerns Petrotub SA and Republica SA;*

3. *Orders the Council of the European Union to pay the costs incurred by Petrotub SA and Republica SA both in the present proceedings and in the proceedings at first instance which culminated in the judgment in Petrotub and Republica v Council, cited above;*

4. *Orders the Commission of the European Communities to bear its own costs both in the present proceedings and in the proceedings at first instance which culminated in the judgment in Petrotub and Republica v Council.*

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(1) OJ C 135 of 15.5.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 9 January 2003

in Case C-157/00: Hellenic Republic v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — 1996 to 1998 — Export refunds — Fruit and vegetables)

(2003/C 44/06)

(Language of the case: Greek)

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

In Case C-157/00, Hellenic Republic (Agents: V. Kontolaimos and I. K. Chalkias, also by C. Tsiavou) v Commission of the European Communities (Agent: M. Condou-Durande): Application for partial annulment of Commission Decision 2000/216/EC of 1 March 2000 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 2000 L 67, p. 37), in so far as it concerns the Hellenic Republic, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen (Rapporteur), C. Gulmann, F. Macken and N. Colneric, Judges; S. Alber, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 24 June 2000, in which it:

1. *Dismisses the application;*

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

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(1) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT OF JUSTICE

(Fifth Chamber)

of 9 January 2003

in Case C-177/00: Italian Republic v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — 1995 to 1998 financial years — Export refunds — Olive oil — Sale of intervention alcohol)

(2003/C 44/07)

(Language of the case: Italian)

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

In Case C-177/00: Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo) against Commission of the European Communities (Agents: E. de March and L. Visaggio, assisted by A. Dal Ferro) — application for partial annulment of the Commission's Decision 2000/216/EC of 1 March 2000 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 2000 L 67, p. 37) in so far as it made financial adjustments to certain expenses declared by Italy — the Court of Justice (Fifth Chamber), composed of M. Wathelet, President of the Chamber, and D.A.O. Edward, A La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 9 January 2003, in which it:

1. *Dismissed the action;*

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

(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT OF JUSTICE

(Fifth Chamber)

of 9 January 2003

in Case C-178/00: Italian Republic v Commission of the European Communities (1)

(EAGGF — Clearance of accounts — 1995 financial year — Cereals — Durum wheat — Soft wheat, barley and corn)

(2003/C 44/08)

(Language of the case: Italian)

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

In Case C-178/00: Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo) against Commission of the European Communities (Agents: E. de March and L. Visaggio, assisted by A. Dal Ferro) — application for partial annulment of the Commission's Decision 2000/197/EC of 1 March 2000 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 61, p. 15) in so far as it made financial adjustments to certain expenses declared by Italy — the Court of Justice (Fifth Chamber), composed of M. Wathelet, President of the Chamber, and D.A.O. Edward, A La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 9 January 2003, in which it:

1. *Dismissed the action;*

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

(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 January 2003

in Case C-257/00 (Reference for a preliminary ruling from the l'Immigration Appeal Tribunal): Nani Givane and Others v Secretary of State for the Home Department (1)

(Freedom of movement for workers — Regulation (EEC) No 1251/70 — Right of workers to remain in the territory of a Member State after having been employed in that State — Right of residence of members of the family of a deceased worker — Requirement of the worker's continuous residence for at least two years)

(2003/C 44/09)

(Language of the case: English)

In Case C-257/00: Reference to the Court under Article 234 EC by the Immigration Appeal Tribunal (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Nani Givane and Others and Secretary of State for the Home Department, on the interpretation of Article 3(2) of Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, P. Jann and A. Rosas (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 9 January 2003, in which it has ruled:

On a proper construction of the first indent of Article 3(2) of Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State the period of two years' continuous residence required by that provision must immediately precede the worker's death.

(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 9 January 2003

in Case C-292/00 (Reference for a preliminary ruling from the Bundesgerichtshof): Davidoff & Cie SA, Zino Davidoff SA v Gofkid Ltd [1]

(Directive 89/104/EEC — Articles 4(4)(a) and 5(2) — Well-known trade marks — Protection against use of a sign in respect of identical or similar products or services)

(2003/C 44/10)

(Language of the case: German)

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

In Case C-292/00: Reference to the Court under Article 234 EC by the Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between Davidoff & Cie SA, Zino Davidoff SA and Gofkid Ltd, on the interpretation of Articles 4(4)(a) and 5(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), V. Skouris, F. Macken and N. Colneric, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 9 January 2003, in which it has ruled:

Articles 4(4)(a) and 5(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks are to be interpreted as entitling the Member States to provide specific protection for well-known registered trade marks in cases where a later mark or sign, which is identical with or similar to the registered mark, is intended to be used or is used for goods or services identical with or similar to those covered by the registered mark.

[1] OJ C 302 of 21.10.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 January 2003

in Case C-315/00 (Reference for a preliminary ruling from the Bundesfinanzhof): Rudolf Maierhofer v Finanzamt Augsburg-Land [1]

(Sixth VAT Directive — Exemptions — Letting of immovable property — Prefabricated building which can be dismantled and reassembled)

(2003/C 44/11)

(Language of the case: German)

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

In Case C-315/00: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Rudolf Maierhofer and Finanzamt Augsburg-Land, on the interpretation of Article 13B(b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, P. Jann and S. von Bahr (Rapporteur), Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, Registrar, has given a judgment on 16 January 2003, in which it has ruled:

1. *The letting of a building constructed from prefabricated components fixed to or in the ground in such a way that they cannot be easily dismantled or easily moved constitutes a letting of immovable property for the purposes of Article 13B(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, even if the building is to be removed at the end of the lease and re-used on another site;*

2. *Whether the lessor makes available to the lessee both the building and the land on which it is erected or merely the building which he has erected on the lessee's land is irrelevant in determining whether a letting constitutes a letting of immovable property for the purposes of Article 13B(b) of the Sixth Directive 77/388.*

[1] OJ C 302 of 21.10.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 January 2003

in Case C-422/00 (Reference for a preliminary ruling from the VAT and Duties Tribunal, London): Capespan International plc v Commissioners of Customs & Excise [1]

(Community Customs Code — Fruit and vegetables — Calculation of customs value)

(2003/C 44/12)

(Language of the case: English)

In Case C-422/00: Reference to the Court under Article 234 EC by the VAT and Duties Tribunal, London (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Capespan International plc and Commissioners of Customs & Excise, first, on the interpretation of Articles 28 to 36 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), Articles 141 to 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), and Article 5 of Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables (OJ 1994 L 337, p. 66), and, secondly, on the validity of Commission Regulation (EC) No 1498/98 of 14 July 1998 amending Regulation No 3223/94 (OJ 1998 L 198, p. 4), the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, P. Jann and S. von Bahr, Judges; P. Léger, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 16 January 2003, in which it has ruled:

1. *The customs value of fruit and vegetables coming within the scope of Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables must, in respect of the period between 18 March 1997 and 17 July 1998 inclusive, be determined in accordance with the rules for calculating entry price provided for in Article 5 of that regulation.*

2. *Consideration of the third question referred has disclosed no factor capable of affecting the validity of Commission Regulation (EC) No 1498/98 of 14 July 1998 amending Regulation No 3223/94.*

3. *On a proper construction of Article 5 of Regulation No 3223/94, an importer who is not in a position to make a definitive declaration of customs value at the time of customs clearance of fruit and vegetables coming under the scope of that regulation may give a provisional indication of that value under Article 254 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code only where the value of the abovementioned products is determined according to the method provided for in Article 5(1)(b) of Regulation No 3223/94.*

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[1] OJ C 28 of 27.1.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 January 2003

in Case C-205/01: Commission of the European Communities v Kingdom of the Netherlands [1]

(Failure of a Member State to fulfil its obligations — Directive 86/609/EEC — Protection of animals used for experimental and other scientific purposes — Incomplete transposition)

(2003/C 44/13)

(Language of the case: Dutch)

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

In Case C-205/01, Commission of the European Communities (Agent: R. Wainwright, assisted by J. Stuyck, avocat) v Kingdom of the Netherlands (Agent: H.G. Sevenster): Application for a declaration that, by failing to adopt, or in any event to communicate to the Commission, all the laws, regulations and administrative provisions necessary in order to transpose into national law Articles 8(2), 11, 18(1) and 22(1) of Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (OJ 1986 L 358, p. 1), the Kingdom of the Netherlands has failed to fulfil its obligations under that directive, the Court (Fifth Chamber), composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola (Rapporteur), P. Jann and S. von Bahr, Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 16 January 2003, in which it:

1. *Declares that, by failing to adopt all the measures necessary to ensure the correct transposition of Articles 11 and 22(1) of Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT OF JUSTICE

(Sixth Chamber)

of 16 January 2003

in Case C-265/01 (reference for a preliminary ruling from the Tribunal de grande instance de Dinan): Annie Pansard and Others ([1])

(Origin of fishery products — Article 28 EC — National law periodically prohibiting the landing of certain fishery products — Competence of the Member States)

(2003/C 44/14)

(Language of the case: French)

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

In Case C-265/01: reference to the Court under Article 234 EC from the Tribunal de grande instance de Dinan, France, for a preliminary ruling in the criminal proceedings against Annie Pansard and Others, en présence du Comité Region pêches maritimes, a party to the main proceedings — on the interpretation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Article 28 EC — the Court of Justice (Sixth Chamber), composed of J.-P. Puissochet, President of the Chamber, and C. Gulmann, F. Macken (Rapporteur), N. Colneric, J. N. Cunha Rodrigues, Judges; S. Alber, Advocate General; M.-F. Contet, Administrator, for the Registrar, gave a judgment on 16 January 2003, in which it ruled that:

Community fishery law precludes a national law such as that in issue in the main proceedings, which prohibits, during a certain period, the landing, on a part of the coastline of the Member State concerned, of scallops fished in the territorial waters of another Member State.

([1]) OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 January 2003

in Case C-388/01: Commission of the European Communities v Italian Republic ([1])

(Failure to fulfil obligations — Free movement of services — Non-discrimination — Articles 12 EC and 49 EC — Admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments — Preferential rates granted by local or decentralised State authorities)

(2003/C 44/15)

(Language of the case: Italian)

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

In Case C-388/01, Commission of the European Communities (Agents: M. Patakia and R. Amorosi) v Italian Republic (Agent: U. Leanza, assisted by M. Fiorilli): Application for a declaration that, by allowing discriminatory, advantageous rates for admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments, granted by local or decentralised State authorities only in favour of Italian nationals and persons resident within the territory of those authorities running the cultural sites in question, who are aged over 60 or 65 years, and by excluding from such advantages tourists who are nationals of other Member States and non-residents who fulfil the same objective age requirements, the Italian Republic has failed to fulfil its obligations under Articles 12 EC and 49 EC, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 16 January 2003, in which it:

1. *Declares that, by allowing discriminatory, advantageous rates for admission to museums, monuments, galleries, archaeological digs, parks and gardens classified as public monuments, granted by local or decentralised State authorities only in favour of Italian nationals and persons resident within the territory of those authorities running the cultural sites in question, who are aged over 60 or 65 years, and by excluding from such advantages tourists who are nationals of other Member States and non-residents who fulfil the same objective age requirements, the Italian Republic has failed to fulfil its obligations under Articles 12 EC and 49 EC;*

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

([1]) OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 January 2003

in Case C-439/01 (Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat im Land Niederösterreich): Libor Cipra Vlastimil Kvasnicka v Bezirkshauptmannschaft Mistelbach ([1])

(Road transport — Social legislation — Regulation (EEC) No 3820/85 — Breaks and rest periods — Crew consisting of more than one driver — Jurisdiction of the Court to interpret the AETR Agreement — Principle of legal certainty)

(2003/C 44/16)

(Language of the case: German)

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

In Case C-439/01: Reference to the Court under Article 234 EC by the Unabhängiger Verwaltungssenat im Land Niederösterreich (Austria) for a preliminary ruling in the proceedings pending before that court between Libor Cipra Vlastimil Kvasnicka and Bezirkshauptmannschaft Mistelbach, on the interpretation and validity of Article 8(1) and (2) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, S. von Bahr and A. Rosas (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 16 January 2003, in which it has ruled:

1. *In the case of transport by more than one driver, Article 8(2) of Council Regulation (EEC) No 3820/85 on the harmonisation of certain social legislation relating to road transport applies as a lex specialis that prevails over paragraph 1 of that article. Consequently, those provisions are not to be applied cumulatively.*

2. *The same interpretation applies to Article 8(1) and (2) of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR).*

3. *It is for the national court to determine, having regard to the facts of the main proceedings, whether it is appropriate to apply the provisions of Regulation No 3820/85 or those of that agreement.*

4. *Examination of Article 8(1) and (2) of Regulation No 3820/85 in the light of the principle of legal certainty has failed to disclose any matters of such a kind as to affect its validity.*

([1]) OJ C 31 of 2.2.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 January 2003

in Case C-462/01 (Reference for a preliminary ruling from the Halmstads tingsrätt): Ulf Hammarsten ([1])

(Common organisation of the markets in the flax and hemp sector — Articles 28 EC and 30 EC — National legislation prohibiting all cultivation and possession of hemp without prior authorisation)

(2003/C 44/17)

(Language of the case: Swedish)

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

In Case C-462/01: Reference to the Court under Article 234 EC by the Halmstads tingsrätt (Sweden) for a preliminary ruling in criminal proceedings before it against Ulf Hammarsten on the interpretation of Articles 28 EC and 30 EC and of the Community legislation applicable to the cultivation and marketing of hemp, the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola (Rapporteur), P. Jann and A. Rosas, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 16 January 2003, in which it has ruled:

Regulation (EEC) No 1308/70 of the Council of 29 June 1970 on the common organisation of the market in flax and hemp, as amended by Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market and Regulation (EEC) No 619/71 of the Council of 22 March 1971 laying down general rules for granting aid for flax and hemp, as amended by Council Regulation (EC) No 1420/98 of 26 June 1998, must be interpreted so precluding national legislation which has the effect of prohibiting the cultivation and possession of industrial hemp covered by those regulations.

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(1) OJ C 84 of 6.4.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 16 January 2003

in Case C-29/02: Commission of the European Communities v Kingdom of Spain (1)

(Failure of a Member State to fulfil its obligations — Failure to transpose Directive 98/83/EC)

(2003/C 44/18)

(Language of the case: Spanish)

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

In Case C-29/02, Commission of the European Communities (Agent: G. Valero Jordana) v Kingdom of Spain (Agent: L. Fraguas Gadea): Application for a declaration that, by failing to adopt or, in any event, to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32), the Kingdom of Spain has failed to fulfil its obligations under that directive, the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 16 January 2003, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

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(1) OJ C 68 of 16.3.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 16 January 2003

in Case C-63/02: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (1)

Failure of a Member State to fulfil its obligations — Failure to implement Directive 98/83/EC)

(2003/C 44/19)

(Language of the case: English)

In Case C-63/02, Commission of the European Communities (Agent: M. Shotter) v United Kingdom of Great Britain and Northern Ireland (Agents: P. Ormond, assisted by M. Demetriou, barrister): Application for a declaration that, by failing to adopt for Northern Ireland and Wales all the laws, regulations and administrative provisions necessary to comply with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32) or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 17(1) and (2) of that directive, the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 16 January 2003, in which it:

1. *Declares that, by failing to adopt for Northern Ireland and Wales all the laws, regulations and administrative provisions necessary to comply with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 17(1) of that directive;*

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

(1) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 16 January 2003

in Case C-122/02: Commission of the European Communities v Kingdom of Belgium (1)

(Failure of a Member State to fulfil its obligations — Failure to transpose Directive 98/83/EC)

(2003/C 44/20)

(Language of the case: French)

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

In Case C-122/02, Commission of the European Communities (Agents: G. Valero Jordana and J. Adda) v Kingdom of Belgium (Agent: A. Snoecx): Application for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply fully with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32) or, at any rate, by failing fully to inform the Commission thereof, the Kingdom of Belgium has failed to fulfil its obligations under that directive, the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 16 January 2003, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply fully with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

(1) OJ C 131 of 1.6.2002.

ORDER OF THE COURT

(Sixth Chamber)

of 21 November 2002

in Case C-360/01: Italian Republic v Commission of the European Communities and Council of the European Union (1)

(Sugar — Pricing system — Marketing year 2001/2002 — Regionalisation — Non-deficit areas — Classification of Italy — Validity of Regulations (EC) Nos 1263/2001 and 1260/2001 — Action for annulment — Manifestly inadmissible in part)

(2003/C 44/21)

(Language of the case: Italian)

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

In Case C-360/01, Italian Republic (Agent: U. Leanza, and G de Bellis) v Commission of the European Communities (Agent: C. Cattabriga) and Council of the European Union (Agent: F. P. Ruggeri Laderchi) — application for the annulment of Article 1 of Commission Regulation (EC) No 1263/2001 fixing the derived intervention prices for white sugar for the 2001/02 marketing year (OJ 2001 L 178, p. 60), in so far as it fails to fix derived intervention prices for white sugar for all the areas of Italy and, in so far as necessary, the annulment of Article 2(1)(a) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1) — the Court (Sixth Chamber), composed of: J.-P. Puissochet (President of Chamber), R. Schintgen, C. Gulmann, V. Skouris and N. Colneric (Rapporteur), Judges; J. Mischo, Advocate General; R. Grass, Registrar, gave a judgment on 21 November 2002, the operative part of which is as follows:

1. *The application is dismissed as manifestly inadmissible inasmuch as it is directed against the Council.*

2. *The Italian Republic is ordered to pay the costs relating to that part of the application.*

(1) OJ C 331 of 24.11.2001.

Action brought on 16 October 2002 by the Commission of the European Communities against the Italian Republic

(Case C-374/02)

(2003/C 44/22)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 16 October 2002 by the Commission of the European Communities, represented by M. Konstantinidis and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/31/EC [1] of 26 April 1999 on the landfill of waste, or in any event by failing to inform the Commission thereof, the Italian Republic has failed to fulfil its obligations under Article 18 of that directive:

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 249 EC, 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, implies that Member States are required to comply with the time-limits for transposition laid down in directives. When the time-limit expired, the Italian Republic had not promulgated the provisions necessary to comply with the directive referred to in the Commission's claims.

[1] OJ L 182 of 16.7.1999, p. 1.

Reference for a preliminary ruling by the Verwaltungsgericht Minden by order of that Court of 14 November 2002 in the administrative judicial proceedings between Arnold André GmbH & Co. KG and the Landrat of the Herford Local Authority

(Case C-434/02)

(2003/C 44/23)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht Minden (Administrative Court Minden) of 14 November 2002, received at the Court Registry on 29 November 2002, for a preliminary ruling in the administrative judicial proceedings between Arnold André GmbH & Co. KG and the Landrat (Principal Officer) of the Herford Local Authority on the following question:

Is the provision in Article 8 of Directive 2001/37/EC [1], by which, with a view to the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, the placing on the market of tobacco for oral use is prohibited, without prejudice to Article 151 of the Act concerning the Accession of Austria, Finland and Sweden, compatible with the superior law of the European Communities?

[1] OJ L 194, p. 26.

Reference for a preliminary ruling by the Landgericht Essen by order of that Court of 25 November 2002 in proceedings relating to the commercial register between Axel Springer AG and Zeitungsverlag Niederrhein GmbH & Co. Essen KG

(Case C-435/02)

(2003/C 44/24)

Reference has been made to the Court of Justice of the European Communities by order of the Landgericht Essen (Regional Court Essen) of 25 November 2002, received at the Court Registry on 2 December 2002, for a preliminary ruling in proceedings relating to the commercial register between Axel Springer AG and Zeitungsverlag Niederrhein GmbH & Co. Essen KG on the following questions:

(1) Is Directive 90/605/EEC [1], in conjunction with Article 47 of Directive 78/660/EEC [2], compatible with the fundamental Community right of freedom to exercise a trade or profession in so far as Kommanditgesellschaften (limited partnerships) whose personally liable partner is a private limited company are obliged to publish their annual accounts and annual report, in particular without any restriction being imposed on the group of persons entitled to inspect those documents?

(2) Is Directive 90/605/EEC, in conjunction with Article 47 of Directive 78/660/EEC, compatible with the fundamental Community rights of freedom of the press and radio in so far as Kommanditgesellschaften whose personally liable partner is a private limited company and which are engaged in the press and publishing sector or the radio broadcasting sector are obliged to publish their annual accounts and annual report, in particular without any restriction being imposed on the group of persons entitled to inspect those documents?

(3) Is Directive 90/605/EEC compatible with the general principle of equality in so far as it places at a disadvantage those Kommanditgesellschaften whose personally liable partner is a private limited company as compared with Kommanditgesellschaften whose personally liable partner is a natural person, even though creditors of a GmbH & Co. KG (a limited partnership in which the unlimited partner is a private company) are better protected by the duty of disclosure imposed on private limited companies than are creditors of a Kommanditgesellschaft whose personally liable partner, as a natural person, is not under any duties of disclosure?

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(1) OJ L 317 of 16.11.1990, p. 60.
(2) OJ L 222 of 14.8.1978, p. 11.

Appeal brought on 13 December 2002 by Sgaravatti Mediterranea S.r.l. against the judgment delivered on 26 September 2002 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-199/99 between Sgaravatti Mediterranea S.r.l and the Commission of the European Communities

(Case C-455/02 P)

(2003/C 44/25)

An appeal against the judgment delivered on 26 September 2002 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-199/99 between Sgaravatti Mediterranea S.r.l and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 13 December 2002 by Sgaravatti Mediterranea S.r.l., a company with registered offices in Capoterra (CA), Italy, represented by Massimo Merola and Piero A.M. Ferrari, Lawyers.

The applicant claims that the Court should:

— annul the judgment of the Court of First Instance delivered on 26 September 2002 in Case T-199/99;

— annul Commission Decision C(1999) 1502 of 4 June 1990 or, in the alternative, refer the case back to the Court of First Instance in accordance with Article 54 of the EC Statute of the Court of Justice;

— in any event, order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

The applicant takes issue with the improper use of a statement made by the Customs Service as evidence, sufficient in itself, of certain alleged irregularities in its conduct. According to the applicant, the Customs Service merely has jurisdiction to record in its statements facts gathered during the course of its investigations. It is not competent to evaluate those facts and the Commission ought to have conducted its own investigation of the matter. The applicant says that, in finding the Customs Service's statement to be sufficient proof, the Court of First Instance erred in law and its judgment is thereby vitiated.

The applicant maintains that the judgment is also vitiated by the fact that the Court failed to give consideration to the subjective element as a decisive factor in determining whether a decision to withdraw a certain grant was permissible. The Court should have distinguished between the possible case of a culpable, but not fraudulent, breach of the financial conditions, such as would justify no more than the reduction or suspension of the grant, and a fraudulent breach of the financial conditions, entitling the Commission to withdraw the grant in its entirety.

Lastly, the applicant maintains that the Court's finding that there is no possibility of a breach of the principle of *ne bis in idem* is questionable, given that the sanction imposed by means of the injunction issued in Italy came after the Community decision. According to the applicant, when the Commission decided to withdraw the grant which was due it knew or ought to have known that an administrative sanction would be handed down in Italy.

Reference for a preliminary ruling by the Tribunal du Travail de Bruxelles by judgment of that Court of 21 November 2002 in the proceedings between Michel Trojani and Le Centre Public d'Aide Sociale de Bruxelles

(Case C-456/02)

(2003/C 44/26)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal du Travail de Bruxelles (Labour Court, Brussels) of 21 November 2002, received at the Court Registry on 18 December 2002, for a preliminary ruling in the proceedings between Michel Trojani and Le Centre Public d'Aide Sociale de Bruxelles on the following questions:

1. Can a citizen of the Union in the factual circumstances described in this order

   — who has temporary leave to remain,

   — does not have sufficient resources,

   — carries out work for the hostel where he lives to the extent of some 30 hours a week in the context of a personal reinsertion scheme, and

   — receives in return benefits in kind which cover his living expenses at the hostel itself

   claim a right of residence:

   — as a worker within the meaning of Article 39 EC or Article 7(1) of Regulation No 1612/68 [1],

   — or as a worker pursuing an activity as a self-employed person within the meaning of Article 43 EC,

   — or as a person providing a service, in view of the tasks he performs at the hostel, or as a person for whom the services are intended, in view of the benefits in kind granted to him by that hostel, within the meaning of Article 49 EC,

   — or merely because he participates in a scheme with a view to his social rehabilitation and access to employment?

2. Should the answer be in the negative, can he rely directly on Article 18 EC which guarantees the right to freedom of movement and to reside in the territory of another Member State of the Union, merely in his capacity as a European citizen?

   What then becomes of the requirements laid down by Directive 90/364/EEC [2] and/or the 'limitations and conditions' laid down in the EC Treaty, and in particular the minimum resources requirement which, if it were applied on entry to the host country, would deprive him of the substantive right of residence itself?

   If, conversely, the right of residence arises automatically on the basis of citizenship of the Union, could the host State subsequently refuse an application for the minimex or for social assistance (that is to say, non-contributory benefits), curtailing his right of residence on the ground that he does not have sufficient resources, when it grants those benefits to nationals of the host country provided they comply with requirements to which Belgian nationals are also subject (proof of their availability for work, proof that they are in need)?

   Must the host country comply with any other rules in order to avoid rendering meaningless the right of residence, such as a duty to assess the situation in the light of the fact that the application for the minimex or for social assistance is temporary, or taking into account the principle of proportionality (would the burden on the State in question be unreasonable)?

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[1] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257 of 19.10.1968, p. 2).

[2] Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ L 180 of 13.7.1990, p. 26).

Reference for a preliminary ruling by the Cour de cassation du Grand-duché de Luxembourg by judgment of that Court of 14 November 2002 in the case of 1. Willy Gerekens and 2. Association agricole PROCOLA against State of the Grand Duchy of Luxembourg

(Case C-459/02)

(2003/C 44/27)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour de cassation du Grand-duché de Luxembourg (Court of Cassation of the Grand Duchy of Luxembourg) of 14 November 2002, received at the Court Registry on 19 December 2002, for a preliminary ruling in the case of 1. Willy Gerekens and 2. Association agricole PROCOLA against State of the Grand Duchy of Luxembourg on the following question:

Do the general principles of Community law of legal certainty and non-retroactivity mean that, for the application of Community legislation establishing production quotas of the type introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10) and Council Regulation (EEC) No 857/84 of 31 March 1984 adopting down general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), a Member State is precluded from adopting, in place of initial rules held by the Court of Justice of the European Communities to be discriminatory, new rules which make it possible to penalise retroactively production in excess of production quotas introduced after the entry into force of the Community regulations but under the aegis of the national rules which have been replaced?

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

(Case C-461/02)

(2003/C 44/28)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 20 December 2002 by the Commission of the European Communities, represented by H. Støvlbæk and F. Simonetti, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by not reporting to the Commission every two years on the results of the measures taken to implement the programmes provided for in Council Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE) [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 9 of that directive;

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

Pleas in law and main arguments

In view of the period prescribed for transposing the directive, a first report on the results of the measures taken to implement the programmes provided for in the directive should have been submitted to the Commission on 31 December 1996 and a second report on 31 December 1998. The Luxembourg authorities' lack of resources cannot be used to justify breach of an obligation under a directive.

[1] OJ L 237 of 22.9.1993, p. 28.

Action brought on 23 December 2002 by the Commission of the European Communities against the Kingdom of Denmark

(Case C-464/02)

(2003/C 44/29)

An action against the Kingdom of Denmark was brought before the Court of Justice of the European Communities on 23 December 2002 by the Commission of the European Communities, represented by N. B. Rasmussen and D. Martin, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, in so far as it does not, under its legislation and administrative practice, allow employees who work outside Denmark and are resident in Denmark to use for commercial or private purposes a company car registered in a neighbouring country where the undertaking of their employer has its principal office, the Kingdom of Denmark has failed, within the terms of Article 226 EC, to fulfil its obligations under the combined provisions of Articles 39 EC and 10 EC;

— Declare that, in so far as, under its legislation and administrative practice, it allows employees who work in another EU Member State and are resident in Denmark to use for commercial and/or private purposes a motor vehicle, in particular a company car, which is registered in another Member State in which the undertaking of their employer has its principal office or seat, only subject to the conditions (i) that the work in the foreign undertaking is the main activity engaged in by the person concerned and (ii) that duty is paid on that vehicle, the Kingdom of Denmark has failed, within the terms of Article 226 EC, to fulfil its obligations under the combined provisions of Articles 39 EC and 10 EC;

— Order the Kingdom of Denmark to pay the costs of the present proceedings.

Pleas in law and main arguments

The Danish rules which form the basis of the present action were amended during the course of the administrative procedure. According to the 'previous scheme' (see Notice No 18 of the Ministry of Justice of 10 January 1992, which subsequently became Notice No 592 of the Ministry of Transport of 24 June 1996), Danish residents who used a motor vehicle that had been registered by an employer/undertaking outside Denmark could, as a main rule, do so only if the vehicle was registered in Denmark or if authorisation was granted. In the event of registration being required, registration duty was also payable under the terms of the Danish Law on registration duty. Under this legislation it was Danish administrative practice to refuse to issue authorisations requested for the purpose of 'commercial trips within Denmark, including visits to clients'. Authorisation could, however, be granted for vehicle use for the purpose of driving directly between the Danish-German border and the place of residence of the person concerned, but only with regard to weekends or holidays. Under no circumstances was it permitted to use company cars for private purposes, for example, outside of working time.

Under the 'amended scheme' (see the Notice of the Ministry of Transport of June 1999 on the registration and MOT-testing of vehicles), Danish workers resident in Denmark may use within Denmark a foreign registered vehicle without having to register it in Denmark, subject to compliance with the condition that the work for the undertaking or at the established place of operation outside Denmark constitutes the main activity of the person concerned. The full registration duty need not therefore be paid inasmuch as registration is not required. On the other hand, the Law on registration duty does require payment of a charge which is defined as a part payment calculated on the basis of the full registration duty or — following authorisation and subject to the further condition that the car is used solely for commercial purposes — as a periodic payment of a fixed amount.

Both the 'previous scheme' and the 'amended scheme' create barriers to the free movement of workers contrary to the combined provisions of Articles 39 EC and 10 EC. It is contrary to Article 39 EC to introduce or retain national provisions which give rise to obstacles to the free movement of workers, irrespective of whether the national provisions apply indiscriminately, if the provisions affect workers' access to the labour market. The Danish rules are precisely of such a character. A worker resident outside Denmark will, as a matter of course, be able to use a foreign company car within Denmark without having to obtain authorisation or to pay duty. There is thus clear discrimination of a person resident in Denmark vis-à-vis a person resident outside Denmark in respect of precisely the same use in Denmark of a foreign registered company car. In conclusion, a worker who does not perform his 'main activity' within the foreign undertaking — which might precisely point to an extremely limited use of the company car — is prohibited from using that company car within Denmark. It seems obvious that an employer will thereby be dissuaded from employing a person resident in Denmark in preference to a worker resident outside Denmark as the above obstacles exist even for purely commercial use of the vehicle. It is in this context of secondary importance whether the Danish rules can be regarded as constituting a barrier to a worker's right to seek employment outside of Denmark or a barrier to an employer's prospects of recruiting workers resident in Denmark. There will be a barrier irrespective of whether it is the employer or the employee who must pay the costs and obtain authorisation or effect registration.

With specific reference to ancillary private use, it should be noted at the outset that transport from one's place of residence to one's place of work cannot be treated as constituting 'private use'; this follows from the judgment in Case C-297/99 Skills Motor Coaches Ltd [1]. The possibility of ancillary private use of a company car is an obvious incentive when it comes to seeking employment and obstacles that prevent an employer from offering such use will have the result of discouraging Danish residents — in contrast to persons resident outside Denmark — from seeking employment in a foreign undertaking offering such ancillary private use of a company car.

The Danish Government has set out four principal grounds of justification: the interest in maintaining supervision (road safety and the monitoring and control of road users), the interest in preventing the erosion of tax revenue in Denmark, the fact that certain barriers resulting from differences in taxation levels must be accepted, and the interest in achieving equivalent conditions of competition as between Danish and non-Danish undertakings. None of these considerations can justify the Danish rules, whether by reference to the derogations from Article 39 EC authorised by the Treaty or to the case-law which states that national measures liable to restrict the exercise of the fundamental freedoms guaranteed by the Treaty or to make the exercise of those freedoms less attractive may be accepted under certain conditions.

Finally, the Commission disputes the contention that Council Directive 83/182/EEC [2] can be construed as meaning that the Danish rules may be treated as lawful, quite apart from the fact that provisions of secondary Community law cannot exempt a Member State from its obligations under the combined provisions of Articles 39 EC and 10 EC.

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[1] Case C-297/99 Skills Motor Coaches and Others [2001] ECR I-573.

[2] Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ L 105 of 23.4.1983, p. 59).

Action brought on 23 December 2002 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-469/02)

(2003/C 44/30)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 23 December 2002 by the Commission of the European Communities, represented by H. Michard, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that by making the granting and payment of a benefit under the career-break benefit scheme subject to the condition that the person concerned is habitually resident in Belgium, the Kingdom of Belgium has failed to fulfil its duties under Article 39 of the EC Treaty, Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1], and specifically, so far as concerns career breaks in the context of parental leave, Article 73 of Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [2];

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

(The residence clause) The Belgian authorities announced the removal of the clause relating to residence acknowledging thereby that the Commission's arguments were well founded. However, work on compliance has not been completed.

(The clauses relating to payment in Belgium) The requirement that the persons affected by the benefit should have a bank account in Belgium is, in certain cases, such as to call in question the effects of the amendments to the legislation at issue. Indeed, there are instances where, in order to open a bank account or to maintain it, certain banks require a certificate of residence.

(Procedure for dealing with previous refusals) It is essential, for the purpose of legal certainty, that the real rights of the individual are protected from the harmful consequences of conduct by the public authorities which is based on rules which are incompatible with Community law. Failure of a Member State to fulfil its obligations should not, in any event, result in a financial advantage for itself. However, although the Belgian authorities state that anyone whose career-break benefit was refused on the basis of the former rules may make a fresh application on the basis of the new rules, the cases concerned will be routinely re-examined; neither is there any information as to the dissemination of information or on the procedures which will be put in place for back-payment of the benefits to persons who have been denied them on the ground that they were not resident in Belgium.

[1] OJ, English Special Edition 1968 (II), p 475.
[2] OJ, English Special Edition 1972 (I), p 159.

Reference for a preliminary ruling by the Cour d'appel de Bruxelles by judgment of that Court of 20 December 2002 in the case of Siomab against Institut Bruxellois pour la Gestion de l'Environnement ('IBGE')

(Case C-472/02)

(2003/C 44/31)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'appel de Bruxelles (Court of Appeal, Brussels) of 20 December 2002, received at the Court Registry on 27 December 2002, for a preliminary ruling in the case of Siomab against Institut Bruxellois pour la Gestion de l'Environnement ('IBGE') on the following questions:

Where a Member State has recourse to the mechanism by which the competent authority of dispatch gives notice of a consignment note under Articles 3(8) and 6(8) of Council Regulation No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community [1], must Articles 3(8), 4(3), 6(8), 7(4) and 26 of the regulation be interpreted as meaning:

(a) that the competent authority of dispatch within the meaning of the regulation, which is empowered to verify whether a planned shipment classified in the notification as a 'shipment of waste for recovery' actually fits that classification, may, when it considers that the classification is incorrect,

(1) refuse to transmit the consignment note because of that incorrect classification and ask the notifier to transmit a new consignment note to it,

(2) transmit the consignment note after reclassifying the planned shipment as a 'shipment of waste for disposal',

(3) transmit the consignment note containing the incorrect classification, immediately accompanying its transmission with an objection based on that incorrect classification?

(b) or, on the contrary, that the competent authority of dispatch is required to send the notification as classified by the notifier to the competent authority of destination, while retaining the power, if it considers that the purpose of the shipment has been incorrectly classified, also to raise a reasoned objection on the basis of that erroneous classification, at the same time or subsequently?

(1) OJ L 30 of 6.2.1993, p. 1.

Reference for a preliminary ruling by the Cour d'Appel de Bruxelles, 11e Chambre, by judgment of that Court of 3 December 2002 in the case of Ministère public and the civil party: La Région de Bruxelles-Capitale against 1. Paul Van de Walle, 2. Daniel Laurent, 3. Thierry Mersch and the civil defendant: SA Texaco Belgium

(Case C-1/03)

(2003/C 44/32)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'Appel de Bruxelles, 11e Chambre, (The Court of Appeal, Brussels, 11th Chamber) of 3 December 2002, received at the Court Registry on 3 January 2003, for a preliminary ruling in the case of Ministère public and the civil party: La Région de Bruxelles-Capitale against 1. Paul Van de Walle, 2. Daniel Laurent, 3. Thierry Mersch and the civil defendant: SA Texaco Belgium on the following questions:

Are Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 (1) on waste, as amended by Directive 91/156/EEC of 18 March 1991 (2), which defines waste as meaning 'any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force', and Article 1(b) and (c) of that directive which define 'producer of waste' as 'anyone whose activities produce waste ("original producer") and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste', and 'holder' as 'the producer of the waste or the natural or legal person who is in possession of it', to be interpreted as being capable of applying to a petroleum company which produces hydrocarbons and sells them to a manager operating one of its service stations under a contract of independent management excluding any relationship of subordination to that company, if such hydrocarbons percolate into the ground, thus causing pollution of the earth and subterranean waters?

Or, must it be considered that the legal definition of waste within the meaning of the abovementioned provisions applies only if the polluted earth has been excavated?

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

Reference for a preliminary ruling by the Tribunal de Première Instance de Bruxelles by order of that Court of 24 December 2002 in the case of Banque Bruxelles Lambert S.A. ('BBL') against the Belgian State, Minister of Finance, Department of administration of value added tax, registration and public property

(Case C-8/03)

(2003/C 44/33)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal de Première Instance de Bruxelles (Regional Court, Brussels) of 24 December 2002, received at the Court Registry on 10 January 2003, for a preliminary ruling in the case of Banque Bruxelles Lambert S.A. ('BBL') against the Belgian State, Minister of Finance, Department of administration of value added tax, registration and public property, on the following questions:

Are Sociétés d'investissement à capital variable [open-end investment companies] (SICAVs) established in a Member State which have as their sole object the collective investment in transferable securities of capital raised from the public in accordance with Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (1), taxable persons for value-added-tax purposes within the meaning of Article 4 of the 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 (2), so that the services referred to in Article 9(2)(e) of that directive supplied to them are deemed to be provided at the place where the said SICAVs have established their seat?

If the answer to that question is in the negative, the resolution of the case entails determining what types of services provided to the SICAVs may benefit from the exemption under Article 13B(d)(6) of the Sixth Directive: Is it necessary in this context to distinguish between services which comprise the giving of assistance and management advice, on the one hand, and management services in the strict sense, on the other, the latter being said to differ from the former in that they imply a power on the manager's part to take decisions relating to the administration and disposal of the assets under management?

(1) OJ L 375 of 31.12.1985, p. 3.
(2) OJ L 145 of 13.6.1977, p. 1.

Action brought on 10 January 2003 by Commission of the European Communities against Republic of Finland

(Case C-10/03)

(2003/C 44/34)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 10 January 2003 by the Commission of the European Communities, represented by C. Tufvesson and M. Huttunen, with an address for service in Luxembourg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative measures required by Directive 1999/42/EC of the European Parliament and of the Council [1] of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications, or at least in failing to notify those measures to the Commission, the Republic of Finland has failed to fulfil its obligations, and

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

Pleas in law and main arguments

According to Article 249 of the EC Treaty, a directive is binding, as to the result to be achieved, upon each Member State, but leaves to the national authorities the choice of form and methods.

The Member States must adopt the measures necessary to incorporate the directive in the national legal system by the time limit fixed and must notify those measures to the Commission without delay.

The Commission finds that the Republic of Finland has not yet adopted those measures, or at least has not notified them to it.

It is settled law that the Member States may not plead internal circumstances or practical problems to justify a failure to implement by the date fixed.

[1] OJ L 201 of 31 July 1999, p. 77.

Action brought on 13 January 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-14/03)

(2003/C 44/35)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 13 January 2003 by the Commission of the European Communities, represented by J.C. Schieferer, of its Legal Service, and L. Escobar Guerrero, of its Legal Service, with an address for service at Wagner Centre C 254, Luxembourg-Kirchberg.

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

(a) declare that the Republic of Austria has failed to fulfil its obligations under Article 5 of Council Directive 92/72/EEC on air pollution by ozone [1], in conjunction with Annex I, points 3 and 4, thereto, in that it has laid down:

(1) a population information threshold (early warning stage) which is 20 µg/m^3 higher than that in Annex I, point 3, to the Directive,

(2) contrary to Article 5 of the Directive, the requirement that the thresholds value be exceeded at two measuring points at least before the public is informed, and

(3) a mean value over three hours instead of over one hour, as laid down in Annex I, points 3 and 4, to the Directive

and therefore has not fully ensured, in accordance with the circumstances provided for in the Directive, that the population will be informed or warned when thresholds are exceeded. The Republic of Austria has accordingly failed fully to comply with Directive 92/72/EEC;

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

Pleas in law and main arguments

The Republic of Austria has failed fully to implement in Austrian law the provisions in Directive 92/72/EEC concerning the level of the threshold for ozone concentrations in the air (Annex I, point 3, to the Directive), the requirement that the public be informed when values are exceeded at a single measuring point (Article 5 of the Directive) and the mean values used in setting thresholds (Annex I, points 3 and 4, to the Directive).

Population information threshold:

Article 5 of the Directive provides that public information is triggered by exceeding the threshold in Annex I, point 3, while the Austrian law on ozone (the Ozongesetz) does not differentiate between the three stages laid down therein (early warning, stage I warning and stage II warning) with respect to public information. While Annex I to the Austrian Ozongesetz provides that a preliminary warning is triggered only when a threshold value of 0,200 mg/m³ is exceeded (200 µg/m³), Article 5 of the Directive in conjunction with Annex I, point 3, thereto sets the threshold at 180 µg/m³ (0,180 mg/m³).

Threshold values exceeded at two measuring points:

Under the Austrian Ozongesetz, the early warning stage for an ozone monitoring area is triggered only when the warning value has been exceeded at at least two measuring points in an ozone monitoring area within the last 12 hours and is considered likely to remain at or exceed that level. The Directive does not provide for such a restrictive requirement.

Setting of thresholds as the mean value over one hour:

The Austrian Ozongesetz defines warning levels as a mean value in mg/m³ over three hours. In contrast, thresholds under Annex I, points 3 and 4, to the Directive are set as mean values over one hour. The Austrian definition can result in a substantially lower number of warnings, that is, cases of information being provided to the public, than required under the Directive.

Those three differences as regards the determination and establishment of threshold values can result in the Austrian public being informed to a lesser extent than provided for in Article 5 of the Directive, in conjunction with Annex I, points 3 and 4 thereto.

(1) OJ 1992 L 297, p. 1.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-119/99: Paul Edwin Hoyer v Commission of the European Communities [1]

(Temporary agents — Execution of a judgment of the Court of First Instance — Recommencement of internal competition COM/LA/2/89 — Omission from the list of suitable candidates)

(2003/C 44/36)

(Language of the case: Dutch)

In Case T-119/99: Paul Edwin Hoyer, formerly a temporary agent of the Commission of the European Communities, residing in Hoeilaart, Belgium, represented by G. van der Wal, Lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: initially G. Valsesia and C. Van der Hauwaert, subsequently F. Clotuche-Duvieusart and H.M.H. Speyart) — application for annulment of the Commission's competition COM/LA/2/89 or at least annulment of the jury's decision to omit the applicant from the list of suitable candidates in the competition, notified to the applicant by letter of the Commission of 15 February 1999 — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President, and V. Tiili and P. Mengozzi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 5 December 2002, in which it:

1. *Dismissed the application;*

2. *Ordered each of the parties to bear its own costs.*

[1] OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-209/99: Paul Edwin Hoyer v Commission of the European Communities [1]

(Temporary agents — Execution of a judgment of the Court of First Instance — Action for damages — Admissibility)

(2003/C 44/37)

(Language of the case: Dutch)

In Case T-209/99: Paul Edwin Hoyer, formerly a temporary agent of the Commission of the European Communities, residing in Hoeilaart, Belgium, represented by G. van der Wal, Lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: initially G. Valsesia and C. Van der Hauwaert, subsequently F. Clotuche-Duvieusart and H.M.H. Speyart) — application for compensation of material and psychological damage suffered as a result of the judgments delivered by the Court of First Instance on 17 March 1994 in Case T-43/91 Hoyer v Commission ECR-SC I-A-91 and II-297 and Case T-51/91 Hoyer v Commission ECR-SC I-A-103 and II-341 — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President, and V. Tiili and P. Mengozzi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 5 December 2002, in which it:

1. *Dismissed the application as inadmissible;*

2. *Ordered each of the parties to bear its own costs.*

[1] OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-70/00: Paul Edwin Hoyer v Commission of the European Communities [1]

(Temporary agents — Execution of a judgment of the Court of First Instance — Dismissal)

(2003/C 44/38)

(Language of the case: Dutch)

In Case T-70/00: Paul Edwin Hoyer, formerly a temporary agent of the Commission of the European Communities, residing in Hoeilaart, Belgium, represented by G. van der Wal, Lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: initially G. Valsesia and C. Van der Hauwaert, subsequently F. Clotuche-Duvieusart and H.M.H. Speyart) — application for annulment of the Commission's decision of 24 January 2000 terminating the applicant's contract of employment as temporary agent — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President, and V.Tiili and P. Mengozzi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 5 December 2002, in which it:

1. *Dismissed the application;*

2. *Ordered each of the parties to bear its own costs.*

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[1] OJ C 149 of 27.5.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-114/00: Aktionsgemeinschaft Recht und Eigentum eV v Commission of the European Communities [1]

(State aid — Scheme for the acquisition of agricultural and forestry land in the former German Democratic Republic — Failure to initiate the formal review procedure provided for in Article 88(2) EC — System of aid — Action for annulment — Association — Admissibility)

(2003/C 44/39)

(Language of the case: German)

In Case T-114/00, Aktionsgemeinschaft Recht und Eigentum eV, established in Borken (Germany), represented by M. Pechstein, professor, v Commission of the European Communities (Agents: D. Triantafyllou and K.-D. Borchardt), supported by Federal Republic of Germany (Agents: initially W.-D. Plessing and T. Jürgensen, and, subsequently, Plessing and M. Lumma): Application for the annulment of the Commission's decision of 22 December 1999 relating to proposed State Aid No 506/99, the Court of First Instance (Fourth Chamber, Extended Composition), composed of: M. Vilaras, President, V. Tiili, J. Pirrung, P. Mengozzi and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 5 December 2002, in which it:

1. *Dismisses the objection of inadmissibility;*

2. *Reserves costs.*

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[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 December 2002

in Case T-123/00: Dr. Karl Thomae GmbH v Commission of the European Communities [1]

(Medicinal products for human use — Regulation (EEC) No 2309/93 — Community marketing authorisation — Regulation (EC) No 542/95 — Variation of the terms of the authorisation — Name and package layout of the medicinal product)

(2003/C 44/40)

(Language of the case: English)

In Case T-123/00, Dr Karl Thomae GmbH, established in Biberach an der Riß (Germany), represented by D. Waelbroeck and D. Brinckman, Lawyers, with an address for service in Luxembourg, supported by European Federation of Pharmaceutical Industries and Associations (EFPIA), established in Brussels (Belgium), represented by D. Perkins, Solicitor, and M. Van Kerckhove, Lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agents: R. Wainwright and H. Støvlbæk), supported by Council of the European Union (Agents: M.-C. Giorgi and G. Houttuin): Application for annulment of the decision of 1 March 2000 of the European Agency for the Evaluation of Medicinal Products, rejecting an application for variation of certain terms of the marketing authorisation for the medicinal product, 'Daquiran', the Court of First Instance (Fifth Chamber), composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 10 December 2002, in which it:

1. *Annuls the decision of 1 March 2000 of the European Agency for the Evaluation of Medicinal Products, rejecting an application for variation of certain terms of the marketing authorisation for the medicinal product 'Daquiran';*

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

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

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(1) OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-135/00: Carmelo Morello v Commission of the European Communities (1)

(Officials — Procedure for filling vacant posts — Statement of reasons — Comparative examination of applicants and equal treatment of officials — Actions for annulment — Actions for damages)

(2003/C 44/41)

(Language of the case: French)

In Case T-135/00: Carmelo Morello, an official of the Commission of the European Communities, residing in Brussels, represented by J. Sambon and P.-P. Van Gehuchten, Lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and D. Waelbroeck) — application for annulment of the Commission's decision not to appoint the applicant to the post of Head of Unit 1 'Post and telecommunications, information society coordination' within Directorate C 'Information, communication and multimedia' within the Directorate-General for Competition (COM/069/99) and of its decision to appoint a different applicant to the post and an application for damages — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azzizi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 12 December 2002, in which it:

1. *Ordered the Commission to pay the applicant EUR 5 000;*

2. *Dismissed the remainder of the action;*

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

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(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-136/00: Carmelo Morello v Commission of the European Communities (1)

(Officials — Procedure for filling vacant posts — Statement of reasons — Comparative examination of applicants and equal treatment of officials — Actions for annulment — Actions for damages)

(2003/C 44/42)

(Language of the case: French)

In Case T-136/00: Carmelo Morello, an official of the Commission of the European Communities, residing in Brussels, represented by J. Sambon and P.-P. Van Gehuchten, Lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and D. Waelbroeck) — application for annulment of the Commission's decision not to appoint the applicant to the post of Head of Unit 2 'Motor vehicles and other means of transport' within Directorate F 'Consumer goods and capital goods industries' within the Directorate-General for Competition (COM/070/99) and of its decision to appoint a different applicant to the post and an application for damages — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azzizi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 12 December 2002, in which it:

1. *Ordered the Commission to pay the applicant EUR 5 000;*

2. *Dismissed the remainder of the action;*

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

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(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-164/00: Carmelo Morello v Commission of the European Communities [1]

(Officials — Procedure for filling vacant posts — Statement of reasons — Comparative examination of applicants and equal treatment of officials — Actions for annulment — Actions for damages)

(2003/C 44/43)

(Language of the case: French)

In Case T-164/00: Carmelo Morello, an official of the Commission of the European Communities, residing in Brussels, represented by J. Sambon and P.-P. Van Gehuchten, Lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and D. Waelbroeck) — application for annulment of the Commission's decision not to appoint the applicant to the post of Head of Unit 2 'Basic industries' within Directorate E 'Cartels, basic industries and energy' within the Directorate-General for Competition (COM/091/00) and of its decision to appoint a different applicant to the post and an application for damages — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azzizi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 12 December 2002, in which it:

1. *Ordered the Commission to pay the applicant EUR 5 000;*

2. *Dismissed the remainder of the action;*

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

(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-181/00: Carmelo Morello v Commission of the European Communities [1]

(Officials — Procedure for filling vacant posts — Statement of reasons — Comparative examination of applicants and equal treatment of officials — Actions for annulment — Actions for damages)

(2003/C 44/44)

(Language of the case: French)

In Case T-181/00: Carmelo Morello, an official of the Commission of the European Communities, residing in Brussels, represented by J. Sambon and P.-P. Van Gehuchten, Lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and D. Waelbroeck) — application for annulment of the Commission's decision not to appoint the applicant to the post of Head of Unit 1 'Post and telecommunications, information society coordination' within Directorate C 'Information, communication and multimedia' within the Directorate-General for Competition (COM/090/99) and of its decision to appoint a different applicant to the post and an application for damages — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azzizi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 12 December 2002, in which it:

1. *Ordered the Commission to pay the applicant EUR 5 000;*

2. *Dismissed the remainder of the action;*

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

(1) OJ C 273 of 23.9.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-249/00: Paul Edwin Hoyer v Commission of the European Communities [1]

(Members of the temporary staff — Termination of contract — Calculation of notice — Leave not taken)

(2003/C 44/45)

(Language of the case: Dutch)

In Case T-249/00: Paul Edwin Hoyer, a former member of the temporary staff of the Commission of the European Communities, residing in Hoeilaart (Belgium), represented by G. van der Wal, lawyer, with an address for service in Luxembourg, against the Commission of the European Communities (Agents: initially G. Valsesia and C. Van der Hauwaert, and subsequently F. Clotuche-Duvieusart and H.M.H. Speyart) — application for the annulment of the Commission's decisions of 14 June 2000 concerning the calculation of the final date of notice when the applicant's contract as a member of the temporary staff was terminated (Decision No R/78/2000) and determining the number of days' leave not taken when he left (Decision No R/26/2000 — the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 5 December 2002, the operative part of which is as follows:

1. *The application is dismissed.*

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

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[1] OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Joined Cases T-338/00 and T-376/00: Carmelo Morello v Commission of the European Communities [1]

(Officials — Procedure for filling vacant posts — Statement of reasons — Comparative examination of applicants and equal treatment of officials — Actions for annulment — Actions for damages)

(2003/C 44/46)

(Language of the case: French)

In Joined Cases T-338/00 and T-376/00: Carmelo Morello, an official of the Commission of the European Communities, residing in Brussels, represented by J. Sambon and P.-P. Van Gehuchten, Lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and D. Waelbroeck) — application for annulment of the Commission's decision not to appoint the applicant to the post of Head of Unit 2 'Motor vehicles and other means of transport' within Directorate F 'Consumer goods and capital goods industries' within the Directorate-General for Competition (COM/113/99) and of its decision to appoint a different applicant to the post and an application for damages — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azzizi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 12 December 2002, in which it:

1. *Joined Cases T-338/00 and T-376/00;*

2. *Dismissed the action in Case T-376/00 as inadmissible;*

3. *In case T-338/00 ordered the Commission to pay the applicant the sum of EUR 2 500;*

4. *Dismissed the remainder of the action in Case T-338/00;*

5. *Ordered each of the parties in Case T-376/00 to bear their own costs;*

6. *Ordered the Commission to bear the costs in Case T-338/00.*

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[1] OJ C 372 of 23.12.2000 and C 61 of 24.2.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-378/00: Carmelo Morello v Commission of the European Communities [1]

(Officials — Procedure for filling vacant posts — Statement of reasons — Comparative examination of applicants and equal treatment of officials — Actions for annulment — Actions for damages)

(2003/C 44/47)

(Language of the case: French)

In Case T-378/00: Carmelo Morello, an official of the Commission of the European Communities, residing in Brussels, represented by J. Sambon and P.-P. Van Gehuchten, Lawyers,

with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and D. Waelbroeck) — application for annulment of the Commission's decision not to appoint the applicant to the post of Head of Unit 3 'Distributive trade and other services' within Directorate D 'Services' within the Directorate-General for Competition (COM/001/00) and of its decision to appoint a different applicant to the post and an application for damages — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azzizi, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 12 December 2002, in which it:

1. *Annulled the Commission's decisions of 4 March 2000 appointing Mrs Evans to the post of Head of Unit 3 'Distributive trade and other services' within Directorate D 'Services' within the Directorate-General for Competition and dismissing the applicant's application for that post;*

2. *Ordered the Commission to pay the applicant EUR 2 500;*

3. *Dismissed the remainder of the action;*

4. *Ordered the Commission to pay the costs.*

([1]) OJ C 45 of 10.2.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-39/01: Kabushiki Kaisha Fernandes v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition procedure — Earlier word mark HIWATT — Application for Community word mark HIWATT — Proof of genuine use of earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 and Rule 22 of Regulation (EC) No 2868/95)

(2003/C 44/48)

(Language of the case: English)

In Case T-39/01, Kabushiki Kaisha Fernandes, established in Tokyo (Japan), represented by R. Hacon, N. Phillips and I. Wood, lawyers, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: S. Laitinen), the other party before the Court being Richard John Harrison, of Doncaster, South Yorkshire (United Kingdom), represented by M. Edenborough, Barrister, and S. Pilling, Solicitor: Action brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 December 2000 (Case R 116/2000-1), the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 12 December 2002, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 November 2002

in Case T-40/01: Scan Office Design SA v Commission of the European Communities ([1])

(Public procurement — Supply of office furniture — Actions for damages)

(2003/C 44/49)

(Language of the case: French)

In Case T-40/01: Scan Office Design SA, a company established in Brussels, represented by B. Mertens and C. Steyaert, Lawyers, against Commission of the European Communities (Agents: L. Parpala and D. Martin) — application for compensation of damages allegedly sustained by the applicant as a result of the Commission's decision to award to a third party the contract which was the subject of its call for tenders No 96/31/IX.C1 for the supply of office furniture — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azizi, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 28 December 2002, in which it:

1. *Dismissed the action;*

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

([1]) OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-63/01: The Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Soap bar shape — Compliance with a judgment of the Court of First Instance — Rights of defence — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2003/C 44/50)

(Language of the case: French)

In Case T-63/01, The Procter & Gamble Company, established in Cincinnatti, Ohio (United States of America), represented by T. van Innis, lawyer, with an address for service in Luxembourg, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: O. Montalto and E. Joly): 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 14 December 2000 (Case R 74/1998-3), which was notified to the applicant on 11 January 2001, the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 12 December 2002, in which it:

1. *Dismisses the action;*

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

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[1] OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-91/01: BioID AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Figurative mark containing the abbreviation BioID — Absolute grounds for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2003/C 44/51)

(Language of the case: German)

In Case T-91/01, BioID AG, established in Berlin (Germany), in judicial liquidation, represented by A. Nordemann, lawyer, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: S. Bonne and G. Schneider): Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 February 2001 (Case R 538/1999-2) concerning the registration of a figurative mark containing the abbreviation BioID, the Court of First Instance (Second Chamber), composed of: R. M. Moura Ramos, President, J. Pirrung and A. W. H. Meij, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 5 December 2002, in which it:

1. *Dismisses the action;*

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

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[1] OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-130/01: Sykes Enterprises, Incorp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — REAL PEOPLE, REAL SOLUTIONS — Absolute ground for refusal — Distinctive character — Article (7)(1)(b) of Regulation No 40/94)

(2003/C 44/52)

(Language of the case: English)

In Case T-130/01, Sykes Enterprises, Incorp., established in Tampa, Florida (United States), represented by E. Körner, lawyer, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: J. Crespo Carrillo): 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 7 March 2001 (Case R 504/2000-3), relating to registration of REAL PEOPLE, REAL SOLUTIONS, the Court of First Instance (Second Chamber), composed of: R. M. Moura Ramos, President, J. Pirrung and A. W. H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 5 December 2002, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 December 2002

in Case T-247/01: eCopy Inc v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — ECOPY — Misuse of powers — Distinctiveness acquired through use after the date of filing — Article 7(3) of Regulation (EC) No 40/94)

(2003/C 44/53)

(Language of the case: English)

In Case T-247/01, eCopy Inc, established in Nashua, New Hampshire (United States), represented by B. Reid, Barrister, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: E. Joly): Action brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 July 2001 (Case R 47/2001-1) relating to registration of the word ECOPY as a Community trade mark, the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 12 December 2002, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 17 of 19.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 December 2002

in Case T-277/01: Romuald Stevens v Commission of the European Communities [1]

(Officials — Disciplinary proceedings — Criminal conviction — Removal from post with no loss of pension rights — Hearing provided for by the third paragraph of Article 7 of Annex IX to the Staff Regulations)

(2003/C 44/54)

(Language of the case: French)

In Case T-277/01: Romuald Stevens, a former official of the Commission of the European Communities, residing in Bertem, Belgium, represented by J.-N. Louis and V. Peere, Lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agent: M. J. Currall) — application for annulment of the Commission's decision of 14 December 2000 removing the applicant from his post with no loss of pension rights — the Court of First Instance (Fifth Chamber), composed of J. D. Cooke, President, and K. Lenaerts and P. Lindh, Judges; D. Christensen, Administrator, for the Registrar, gave a judgment on 5 December 2002, in which it:

1. *Dismissed the application;*

2. *Ordered each of the parties to bear its own costs.*

([1]) OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 November 2002

in Case T-332/01: José Maria Pujals Gomis v Commission of the European Communities [1]

(Officials — Open competition — Application rejected after written tests)

(2003/C 44/55)

(Language of the case: Spanish)

In Case T-332/01: José Maria Pujals Gomis, residing in Barcelona, Spain, represented by J. Pujals Gomis, Lawyer, against Commission of the European Communities (Agents: L. Lozano Palacios, F. Clotuche-Duvieusart, J. Rivas-Andres and J. Gutiérrez Gisbert) — application for annulment of the jury's decision of 28 September 2001 in open competition COM/B/1/01 rejecting the applicant's application in the competition and refusing to correct his written papers — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, and K. Lenaerts and J. Azzizi, Judges; B. Pastor, Assistant Registrar, gave a judgment on 28 November 2002, in which it:

1. *Dismissed the application;*

2. *Ordered each of the parties to bear its own costs.*

([1]) OJ C 44 of 16.2.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 4 November 2002

in Case T-90/99: Salzgitter AG v Commission of the European Communities [1]

(ECSC — State aid — Decision to initiate the procedure provided for in Article 6(5) of Decision 2496/96/ECSC — No need to adjudicate)

(2003/C 44/56)

(Language of the case: German)

In Case T-90/99: Salzgitter AG, established in Salzgitter (Germany), represented by J. Sedemund, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: D. Triantafyllou and P. Nemitz) — application for the annulment of Commission Decision SG (99) D/1542 of 3 March 1999 to initiate the procedure provided for under Article 6(5) of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (OJ 1996 L 338, p. 42) with regard to aid under the German Zonal Border Development Areas Act to Salzgitter AG, Preussag Stahl AG and iron and steel subsidiaries of the 'SAG — Stahl und Technologie' Group (OJ 1999 C 113, p. 9) — the Court of First Instance (Fourth Chamber, Extended Composition), composed of V. Tiili, President, J. Pirrung, P. Mengozzi, A.W.H. Meij and M. Vilaras, Judges; H. Jung, Registrar, made an order on 4 November 2002, the operative part of which is as follows:

1. *There is no longer any need to adjudicate on the application.*

2. *Each of the parties will bear its own costs.*

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[1] OJ C 174 of 19.6.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 18 November 2002

in Case T-190/99 DEP: Sniace SA v Commission of the European Communities [1]

(Taxation of costs)

(2003/C 44/57)

(Language of the case: Spanish)

In Case T-190/99 DEP: Sniace SA, established in Madrid, represented by J.L. Baró Fuentes, M.A. Gómez de Liaño y Botella and F. Rodriguez Carretero, Lawyers, against Commission of the European Communities (Agents: G. Rozet and J.L. Buendia Sierra) — application for taxation of the costs to be paid by the defendant to the applicant following the order of the President of the Fifth Chamber, Enlarged Composition, of the Court of First Instance of 4 April 2001 in Case T-190/99 Sniace v Commission — the Court of First Instance (Fifth Chamber), composed of M.R. García-Valdecasas, President, and P. Lindh. R.M. Moura Ramos, J.D. Cooke and H. Legal, Judges; H. Jung, Registrar, has made an order on 18 November 2002, in which it:

Fixes the total costs to be paid by the Commission to the applicant in Case T-199/99 at EUR 14 300.

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[1] OJ C 333 of 20.11.1999.

ORDER OF THE COURT OF FIRST INSTANCE

of 27 November 2002

in Case T-291/01: Dessauer Versorgungs- und Verkehrsgesellschaft mbH and Others v Commission of the European Communities [1]

(Actions for failure to act — Action devoid of purpose — No need to give judgment — Payment of costs)

(2003/C 44/58)

(Language of the case: German)

In Case T-291/01: Dessauer Versorgungs- und Verkehrsgesellschaft mbH, a company established in Dessau, Germany, Neubrandenburger Stadtwerke GmbH, established in Neubrandenburg, Germany, Stadtwerke Tübingen GmbH, established in Tübingen, Germany, Stadtwerke Uelzen GmbH,

established in Uelzen, Germany, represented by D. Fouquet, Lawyer, against Commission of the European Communities (Agents: V. Kreuschitz and J.L. Buendia Sierra) — application for a declaration that the Commission unlawfully failed to examine non-notified aid granted by the Federal Republic of Germany to nuclear power station operators — the Court of First Instance (First Chamber, Enlarged Composition), composed of B. Vesterdorf, President, J. Azizi. R.M. Moura Ramos, M. Jaeger and H. Legal, Judges; H. Jung, Registrar, made an order on 27 November 2002, in which it:

1. *Held that there was no need to give judgment in the action;*

2. *Ordered each party to bear its own costs.*

([1]) OJ C 44 of 16.2.2002.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 6 December 2002

in Case T-275/02 R: D v European Investment Bank

(Procedure for interim relief — Extension of probationary period — Admissibility of the main action — Urgency — None)

(2003/C 44/59)

(Language of the case: French)

In Case T-275/02 R: D, an agent of the European Investment Bank, residing in Luxembourg, represented by J. Choucroun, Lawyer, with an address for service in Luxembourg, against European Investment Bank (Agents: J.-P. Minnaert and P. Mousel) — application for suspension of operation of the decisions of the European Investment Bank first extending the applicant's period of probation and second dismissing him — the President of the Court of First Instance has made an order on 6 December 2002, in which he:

1. *Dismisses the application for interim measures;*

2. *Orders that costs are reserved.*

Action brought on 18 November 2002 by Duarte y Beltrán S.A. against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-353/02)

(2003/C 44/60)

(Language of the case: to be determined in accordance with Article 131(2) of the Rules of Procedure — Application in 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 18 November 2002 by Duarte y Beltrán S.A. of Santander (Spain), represented by Natalia Moya Fernández.

The applicant claims that the Court should:

— annul the decision of 6 August 2002 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) in Case R-407/2001 and the corrigendum of 16 September 2002 thereto;

— reject Opposition B 35073 in its entirety;

— uphold the claims of the applicant and direct the relevant Opposition Division of OHIM to proceed to register the mark in question;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	Duarte y Beltrán S.A.
Community trade mark applied for:	INTEA — application no 99 747 for certain goods in classes 3, 16 and 21
Proprietor of the trade mark or sign invoked in the opposition procedure:	MIRATO S.p.A.

Trade mark or sign opposed:	Word marks INTESA (two Italian marks, one international mark and a Greek, a Finnish, a Swedish, a UK and an Irish mark), for goods in classes 9, 14, 18 and 21, in the case of one of the two Italian marks, and class 3 in the case of the others. The opposition was directed against the goods mentioned in the application as being in classes 3 and 21.
Ruling of the Opposition Division:	opposition partially upheld (risk of confusion in the case of goods of class 3).
Decision of the Board of Appeal:	appeal dismissed.
Pleas in law:	— relevance of the phonetic difference between the conflicting marks — conceptual difference between the marks — no risk of confusion between the conflicting marks.

Action brought on 25 November 2002 by Bristol-Myers Squibb International Corporation against the Commission of the European Communities

(Case T-354/02)

(2003/C 44/61)

(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 25 November 2002 by Bristol-Myers Squibb International Corporation, Brussels, Belgium, represented by David Anderson QC, Kelyn Bacon, Barrister and Ian Dodds-Smith, Solicitor.

The applicant claims that the Court should:

— annul Commission Decision C(2002) 3370 dated 9 September 2002;

— order that the Commission pays the applicant's costs

Pleas in law and main arguments

The contested decision requires the Member States to amend the national marketing authorisations as listed in annex I to the Decision. The amendments concern the marketing authorisations for Capoten and associated names, to produce a harmonised summary of product characteristics.

The applicant represents the various subsidiary companies that are the marketing holders for Capoten throughout the EU. Capoten, based on the active substance captopril, is a medicinal product commonly know as an ACE-inhibitor. The product was first authorised in the EU in 1980.

The authorisations for Capoten in the EU were obtained under national marketing authorisation procedures, pursuant to Directive 65/65/EEC [1]. As a result, some differences existed between the authorisations in the EU Member States as regards the wording and extent of information given. According to the applicant, the therapeutic indications were similar in all Member States.

Following patent expiry in the individual Member States, generic captopril products have been authorised in those states. The applicant believes that after an attempt to achieve mutual recognition in Italy of the authorisation by France of one of those generic products, Italy referred the matter to the Committee for Proprietary Medicinal Products. The rationale of the referral was that the therapeutic indications in the summary of product characteristics were different and that a harmonisation was necessary for public health reasons. The contested decision was adopted following the referral.

In support of its application, the applicant submits that the contested decision is invalid on the ground of lack of competence of the European Agency for the Evaluation of Medicinal Products, the Committee for Proprietary Medicinal Products and the Commission. According to the applicant, the referral to the Committee for Proprietary Medicinal Products was not in accordance with Article 30 of Directive 2001/83/EC on the Community code relating to medicinal products for human use [2]. The existence of divergent national decisions regarding the authorisation of a product is a necessary, but not a sufficient condition for such a referral. According to the applicant, the referring body must additionally identify the

question to be considered and that question must relate to the quality, safety or efficacy of the product. The applicant claims that these conditions were not satisfied.

The applicant furthermore claims that the contested decision infringed essential procedural requirements. According to the applicant, the procedure breached the applicant's rights of defence and its right to be heard. The applicant was not given the opportunity to comment on the key amendments to the Capoten Summary of Product Characteristics. The procedure also infringed the timetable provided for in Article 32 of Directive 12001/83 and in the Commission's Notice to Applicants (1998 version).

The applicant invokes also the infringement of rules of Community law, like the principle of equal treatment, the duty to give reasons, the principle of legitimate expectations and the principle of proportionality.

Finally, the applicant claims that the contested decision is vitiated by manifest errors of assessment.

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(1) Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by Law, Regulation or Administrative Action relating to proprietary medicinal products (OJ 1965, p. 369).

(2) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, p. 67).

Action brought on 5 December 2002 by Deutsche Post AG and DHL International S.r.l. against the Commission of the European Communities

(Case T-358/02)

(2003/C 44/62)

(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 5 December 2002 by Deutsche Post AG, established in Bonn (Germany), and DHL International S.r.l., established in Rozzano (Italy), represented by J. Sedemund and T. Lübbig, lawyers.

The applicants claim that the Court should:

— annul Commission Decision 2002/782/EC of 12 March 2002 on the aid granted by Italy to Poste Italiane SpA (1);

— order the defendant to pay the costs.

Pleas in law and main arguments

In the applicants' submission, it is apparent from the contested decision that Poste Italiane SpA was continuously in deficit in the postal services sector from 1994 to 1999 and that it received State resources which served to offset the deficits. In Article 2 of the decision, the Commission decided that that State subsidy to Poste Italiane SpA did not constitute State aid under Article 87(1) EC.

The applicants submit that, so far as concerns the offsetting of losses of those postal services which, although forming part of the universal service, have been opened up to competition, the decision is incompatible with Article 87(1) EC as interpreted in the Commission decision of 19 June 2002 (2). By that decision the Commission established that the use of State resources to offset losses recorded by a postal undertaking in the sector of postal services that form part of the universal service but are opened up to competition infringes Article 87(1) of the Treaty as a cross-subsidy not capable of being approved where the losses are caused by rates of charges which do not cover costs and which the postal undertaking is not required to apply by a State measure.

The applicants contend that the decision is all the less compatible with Article 87(1) EC in so far as it relates to loss-making postal services which do not form part of the universal service and have been opened up to competition for a long time. Since the Italian postal operator has been recording only losses for 50 years and those losses can therefore only have been covered by State resources, the Commission should not have 'neglected' the offsetting in respect of those postal services from State resources but would have been obliged in that respect too to examine whether there was a cross-subsidy incompatible with Article 87(1) EC.

The applicants further submit that no reason is stated as to why the Commission in the contested decision, in contrast to its decision of 19 June 2002, recognised the cross-subsidy as involving a net extra cost which could be offset in the 'general economic interest'. At the same time, therefore, there is an infringement of the duty to state reasons under Article 253 EC.

Finally, the decision infringes the general prohibition of discrimination under Article 12 EC, since the Commission has

accorded the Italian postal operator preferential treatment vis-à-vis the applicants, which are in competition with it in the very sector of postal services which have been opened up to competition.

(1) OJ L 282, 19.10.2002, p. 29.
(2) Commission Decision on measures implemented by the Federal Republic of Germany for Deutsche Post AG (OJ L 247, 14.9.2002, p. 27).

Action brought on 5 December 2002 by Deutsche Bahn AG against the Commission of the European Communities

(Case T-361/02)

(2003/C 44/63)

(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 5 December 2002 by Deutsche Bahn AG, Berlin, Germany, represented by M. Schütte, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— find that the Commission infringed its obligations under Article 87 and Article 88(1) EC in failing to adopt a decision on the matters submitted to it by the applicant in its complaint of 5 July 2002, and in any event, in failing to initiate an investigation of State aid;

— order the Commission to pay the costs.

Pleas in law and main arguments

The action has the same origin as that in Case T-351/02 (Deutsche Bahn v Commission).

In the present action the applicant submits that the Commission infringed its obligations under Article 87 and Article 88(1) EC because, despite having been called upon to act in accordance with paragraphs 2 and 3 of Article 232 EC, it failed to investigate the compatibility of Paragraph 4(1), Head 3(a), of the German Law on the taxation on mineral oil with the State-aid provisions of the EC Treaty and to adopt a binding decision in that regard. No such decision can be discerned in the Commission's letter of 21 September 2002 and the Commission's failure to act is not justified by objective reasons.

The applicant's other pleas in law and arguments are the same as those set out in Case T-351/02.

Action brought on 5 December 2002 by Muswellbrook Limited against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-362/02)

(2003/C 44/64)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 5 December 2002 by Muswellbrook Limited, established in Dublin (Ireland), represented by J. Casulá Oliver, lawyer.

The applicant claims that the Court should:

— declare incompatible with Regulation (EC) No 40/94 on the Community trade mark, in particular Article 15(2)(a) and/or Article 42(2) and (3) thereof, the decision of the First Board of Appeal of the OHIM of 30 September 2002 in case No R 16/2000-1, inasmuch as it declares that the opponent has failed to prove genuine use in the Community of the Spanish trade mark No 88222 to distinguish ready-to-wear and other items of clothing in Class 25 during the five years preceding the publication of the application for a Community trade mark;

— annul that decision in its entirety;

— agree to vary that decision so as to declare that an assessment of and a ruling on the merits of the opposition to registration of Community trade mark No 278028 is appropriate, to which end the Court's judgment should declare that Community trade mark No 278028 is refused, or, in the alternative, refer the case back to the First Board of Appeal of the OHIM;

— order the defendant and, where appropriate, the intervener to pay all the costs of the proceedings and those incurred at the administrative stages of the opposition and appeal proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	NIKE INTERNATIONAL Ltd.
Community trade mark sought by the application:	The word mark 'NIKE' — application No 278028 for goods in Class 25 'clothing, footwear, headgear'.
Proprietor of mark or sign right asserted in the opposition proceedings:	The applicant.
Mark or sign right asserted in opposition:	The Spanish mixed trade mark No 88222, composed of the word 'NIKE' together with the image of the Greek goddess of victory of Samothrace, for products in Class 25.
Decision of Opposition Division:	Refusal of application.
Decision of Board of Appeal:	Annulment of the decision of the Opposition Division and rejection of the opposition.
Pleas in law:	Improper or erroneous application of Article 15(2)(a) and Article 43(2) and (3) and of other relevant provisions of Regulation No 40/94 on the Community trade mark.

Action brought on 5 December 2002 by Muswellbrook Limited against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-363/02)

(2003/C 44/65)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 5 December 2002 by Muswellbrook Limited, established in Dublin (Ireland), represented by J. Casulá Oliver, lawyer.

The applicant claims that the Court should:

— declare incompatible with Regulation (EC) No 40/94 on the Community trade mark, in particular Article 15(2)(a) and/or Article 42(2) and (3) thereof, the decision of the First Board of Appeal of the OHIM of 30 September 2002 in case No R 19/2000-1, inasmuch as it declares that the opponent has failed to prove genuine use in the Community of the Spanish trade mark No 88222 to distinguish ready-to-wear and other items of clothing in Class 25 during the five years preceding the publication of the application for a Community trade mark;

— annul that decision in its entirety;

— agree to vary that decision so as to declare that an assessment of and a ruling on the merits of the opposition to registration of Community trade mark No 278093 is appropriate, to which end the Court's judgment should declare that Community trade mark No 278093 is refused, or, in the alternative, refer the case back to the First Board of Appeal of the OHIM;

— order the defendant and, where appropriate, the intervener to pay all the costs of the proceedings and those incurred at the administrative stages of the opposition and appeal proceedings.

Pleas in law and main arguments

The applicant seeking the Community trade mark, the proprietor of the mark cited in opposition, the tenor of the decisions of the Opposition Division and the Board of Appeal and the pleas in law and main arguments are the same as those in Case T-362/02 (MUSWELLBROOK LIMITED v OHIM).

The Community trade mark in respect of which registration is sought is the word mark 'NIKE TOWN' — application No 278093 in respect of goods in Class 25 'clothing, footwear and headgear'.

Action brought on 5 December 2002 by Muswellbrook Limited against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-364/02)

(2003/C 44/66)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance

of the European Communities on 5 December 2002 by Muswellbrook Limited, established in Dublin (Ireland), represented by J. Casulá Oliver, lawyer.

The applicant claims that the Court should:

— declare incompatible with Regulation (EC) No 40/94 on the Community trade mark, in particular Article 15(2)(a) and/or Article 42(2) and (3) thereof, the decision of the First Board of Appeal of the OHIM of 30 September 2002 in case No R 73/2000-1, inasmuch as it declares that the opponent has failed to prove genuine use in the Community of the Spanish trade mark No 88222 to distinguish ready-to-wear and other items of clothing in Class 25 during the five years preceding the publication of the application for a Community trade mark;

— annul that decision in its entirety;

— agree to vary that decision so as to declare that an assessment of and a ruling on the merits of the opposition to registration of Community trade mark No 277889 is appropriate, to which end the Court's judgment should declare that Community trade mark No 277889 is refused, or, in the alternative, refer the case back to the First Board of Appeal of the OHIM;

— order the defendant and, where appropriate, the intervener to pay all the costs of the proceedings and those incurred at the administrative stages of the opposition and appeal proceedings.

Pleas in law and main arguments

The applicant seeking the Community trade mark, the proprietor of the mark cited in opposition, the tenor of the decisions of the Opposition Division and the Board of Appeal and the pleas in law and main arguments are the same as those in Case T-362/02 (MUSWELLBROOK LIMITED v OHIM).

The Community trade mark in respect of which registration is sought is the mixed mark 'NIKE' with 'swoosh' graphic — application No 277889 in respect of goods in Class 25 'clothing, footwear and headgear'.

Action brought on 5 December 2002 by Muswellbrook Limited against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-365/02)

(2003/C 44/67)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 5 December 2002 by Muswellbrook Limited, established in Dublin (Ireland), represented by J. Casulá Oliver, lawyer.

The applicant claims that the Court should:

— declare incompatible with Regulation (EC) No 40/94 on the Community trade mark, in particular Article 15(2)(a) and/or Article 42(2) and (3) thereof, the decision of the First Board of Appeal of the OHIM of 30 September 2002 in case No R 833/1999-1, inasmuch as it declares that the opponent has failed to prove genuine use in the Community of the Spanish trade mark No 88222 to distinguish ready-to-wear and other items of clothing in Class 25 during the five years preceding the publication of the application for a Community trade mark;

— annul that decision in its entirety;

— agree to vary that decision so as to declare that an assessment of and a ruling on the merits of the opposition to registration of Community trade mark No 277731 is appropriate, to which end the Court's judgment should declare that Community trade mark No 277731 is refused, or, in the alternative, refer the case back to the First Board of Appeal of the OHIM;

— order the defendant and, where appropriate, the intervener to pay all the costs of the proceedings and those incurred at the administrative stages of the opposition and appeal proceedings.

Pleas in law and main arguments

The applicant seeking the Community trade mark, the proprietor of the mark cited in opposition, the tenor of the decisions of the Opposition Division and the Board of Appeal and the pleas in law and main arguments are the same as those in Case T-362/02 (MUSWELLBROOK LIMITED v OHIM).

The Community trade mark in respect of which registration is sought is the word mark 'NIKE F.I.T.' — application No 277731 in respect of goods in Class 25 'clothing, footwear and headgear'.

Action brought on 5 December 2002 by Muswellbrook Limited against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-366/02)

(2003/C 44/68)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 5 December 2002 by Muswellbrook Limited, established in Dublin (Ireland), represented by J. Casulá Oliver, lawyer.

The applicant claims that the Court should:

— declare incompatible with Regulation (EC) No 40/94 on the Community trade mark, in particular Article 15(2)(a) and/or Article 42(2) and (3) and/or Article 8(1)(b) thereof, the decision of the First Board of Appeal of the OHIM of 30 September 2002 in case No R 880/1999-1, inasmuch as it declares that the opponent has failed to prove genuine use in the Community of the Spanish trade mark No 88222 to distinguish ready-to-wear and other items of clothing in Class 25 during the five years preceding the publication of the application for a Community trade mark;

— annul that decision in its entirety;

— agree to vary that decision so as to declare that an assessment of and a ruling on the merits of the opposition to registration of Community trade mark No 252411 is appropriate, to which end the Court's judgment should declare that Community trade mark No 252411 is refused, or, in the alternative, refer the case back to the First Board of Appeal of the OHIM;

— order the defendant and, where appropriate, the intervener to pay all the costs of the proceedings and those incurred at the administrative stages of the opposition and appeal proceedings.

Pleas in law and main arguments

The applicant seeking the Community trade mark, the proprietor of the mark cited in opposition, the tenor of the decisions of the Opposition Division and the Board of Appeal and the pleas in law and main arguments are the same as those in Case T-362/02 (MUSWELLBROOK LIMITED v OHIM).

The Community trade mark in respect of which registration is sought is the mixed mark 'TRIAX NIKE SERIES' with graphic — application No 252411 in respect of goods in Class 25 'clothing, footwear and headgear'.

Action brought on 10 December 2002 by Bernard Barbé against the European Parliament

(Case T-371/02)

(2003/C 44/69)

(Language of the Case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 10 December 2002 by Bernard Barbé, resident at Luxembourg, represented by Alain Loraing, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— rule that the Parliament wrongly has not passed on to him the deductions from Mrs Boez's salary which fell due up until 11 November 1998;

— order payment to him of the deductions made in respect of the months from March 1998 to November 1998 inclusive;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant challenges the decision of the appointing authority not to grant his request that the judgment of the Tribunal de Paix de Luxembourg (Magistrates' Court, Luxembourg) of 26 November 1998 be correctly implemented and that, consequently, the termination of attachment which was ordered, with effect from 11 November 1998, in respect of sums deducted by way of attachment from the salary of an official of the defendant institution take effect on that date and not in March 1998.

In support of his claims, the applicant pleads:

— the principle under which the institutions are bound by a duty to cooperate in good faith with national institutions;

— that the attachment procedure is entirely legal as regards Community law.

Action brought on 17 December 2002 by Alessandro Cavallaro against the Commission of the European Communities

(Case T-375/02)

(2003/C 44/70)

(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 17 December 2002 by Alessandro Cavallaro, represented by C. Forte, lawyer.

The applicant claims that the Court should:

— annul the decision of the Appointing Authority of 11 September 2002 to give him insufficient marks for written test (e) of the Open Competition for the recruitment of administrators (Grade A 7/A 6) COM/A/6/01 and, in consequence, not to admit him to the oral tests in that competition;

— annul the subsequent stages of that competition, in so far as is necessary to restore the applicant's rights;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in this case, who had applied to take Open Competition COM/A/6/01 for the constitution of a reserve list for the recruitment of administrators (Grade A 7/A 6) in the field of External Relations and Management of Aid to Third Countries, selecting 'External Relations', challenges the decision of the Commission, the examining body, to assess his test (e) — written test — at one point below that necessary (19/40) for admission to the oral test.

In support of his claims the applicant alleges:

— Misuse of powers, insufficient statement of reasons and breach of the rights of the defence as regards the refusal to give him information as to the marking criteria let alone the marking procedure and the marks of the individual examiners.

— Breach of Article 3 of the Staff Regulations, insufficient statement of reasons and breach of the rights of the defence as regards the refusal to provide information as to the linguistic knowledge of the third examiner.

— Breach of the principle of equal treatment in the test and of the principle of sound administration. In that respect it is stated that the material distributed to the candidates in Italian was not prepared with sufficient care. It should also be noted that there was inconsistency in the grounds relating to the interpretation of the 'instructions to candidates'.

— Clear error of fact in the marking of the first answer in written test (e) of the competition.

— Misrepresentation of the truth, illogicality and contradictory grounds as regards the marking of the second answer in written test (e) of the competition.

Action brought on 9 December 2002 by 'O' against the Commission of the European Communities

(Case T-376/02)

(2003/C 44/71)

(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 9 December 2002 by 'O', represented by Jean Van Rossum, Lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision of 14 January 2002 to retire the applicant on an invalidity pension set in accordance with the third paragraph of Article 78 of the Staff Regulations;

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

Pleas in law and main arguments

The applicant is an official of the Commission. The contested decision forced the applicant into retirement with the benefit of an invalidity pension set in accordance with the third paragraph of Article 78 of the Staff Regulations.

In support of his application, the applicant alleged infringement of Article 7 of Annex II to the Staff Regulations and infringement of the provisions relating to the operation of the Invalidity Committees. According to the applicant, the Invalidity Committee was not properly formed. The applicant also argues a breach of the duty to state reasons.

Action brought on 17 December 2002 by 'P' against the Commission of the European Communities

(Case T-377/02)

(2003/C 44/72)

(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 17 December 2002 by 'P', represented by Juan Ramon Iturriagagoitiia, lawyer.

The applicant claims that the Court should:

— annul the Commission's decision of 30 September 2002 replying to the complaint lodged on 5 July 2002 by the applicant on the basis of Article 90 of the Staff Regulations of Officials and Other Servants of the European Communities;

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

Pleas in law and main arguments

The applicant is an official of the Commission and worked in the Berlaymont building, where he was exposed to asbestos. In 2001 the applicant asked to be given an invalidity pension on the basis of Article 78 of the Staff Regulations. That request was refused by the Commission.

The applicant claims, first, that in rejecting his complaint the Commission misconstrued the facts which led to the applicant's complaining about the malfunctioning of the Invalidity Committee as a result of linguistic problems.

The applicant also alleges that the principles of sound administration and the administration's duty to have regard to the welfare of officials were breached, as were the principle of the protection of legitimate expectations, the rights of the defence and the Charter of Fundamental Rights of the European Union. The applicant complains of irregularities in the procedure before the Invalidity Committee such as the abandonment of scheduled medical examinations, the problem of communication and the absence of a lawyer at the meeting of the Invalidity Committee.

Action brought on 18 December 2002 by Antonio Andolfi against the Commission of the European Communities

(Case T-379/02)

(2003/C 44/73)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 December 2002 by Antonio Andolfi, represented by Salvatore Amato, Lawyer.

The applicant claims that the Court should:

— annul the contested provision;

— order the European Economic Community to compensate the damages suffered and to be suffered by Seven Stars Pictures and Phoenix European S.r.l., to be liquidated in the course of the proceedings, together with clerical costs.

Pleas in law and main arguments

The applicant in the present action is the representative of Seven Stars Pictures Italia ('SSP'), a company with its head office in Rome and which, on 13 August 1977, applied, in the context of the Phare-Tacis Joint Venture Programme, for a financial contribution towards the incorporation of an Italo-Rumanian company (a joint venture project with Phoenix European S.r.l.). It is recorded that a contribution of EUR 81 327, together with a further EUR 4 099 in respect of the pre-feasibility stage, was granted, whereupon an advance of EUR 28 311 was paid to SSP and the corresponding contract was signed. At the end of the first phase of 'Facility 2' the remainder of the contribution was paid over.

According to the applicant, the relevant staff of the Commission had continuously assured the abovementioned company that everything was in order and that all that needed to be done was to calculate the precise amount still owing. However, on 30 October 2001, the Commission adopted the contested decision, refusing the joint venture company the contribution granted by the joint venture programme.

In support of its claims, the applicant argues that insufficient reasons were given and that the Commission made an error in its evaluation of the facts.

The statement of reasons given for the contested decision is too concise. Mention is made of a divergence between the project as approved and the joint venture ultimately set up, but no mention is made of any actual omission or discrepancy.

As regards the assertion that no documents are extant that prove that the joint venture in question became operational, and the allegation that no employees were even engaged and no turnover achieved, the applicant submits that it has shown that the joint venture is operational, that 12 professionals have been retained and that business has been commenced, in particular in the field of professional training.

The applicant claims compensation of the damages it has suffered as a result of the contested decision.

Action brought on 13 December 2002 by G.D. Searle LLC against the Office for Harmonization in the Internal Market

(Case T-383/02)

(2003/C 44/74)

(Language of the case: English)

An action against the Office for Harmonization in the Internal Market was brought before the Court of First Instance of the European Communities on 13 December 2002 by G.D. Searle LLC, Illinois, United States of America, represented by Professor W. A. Hoyng, lawyer.

A further party to the proceedings before the Board of Appeal was PHYTO-ESP S.L.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the OHIM of 1 October 2002 (Case R 627/2001-1);

— order the OHIM to compensate Searle for the costs of these proceedings.

Pleas in law and main arguments

Registered Community trade mark against which a request for declaration on invalidity has been introduced:	The word mark CELEBREX (No 852 372) for certain goods in class 5 (a.o. pharmaceuticals in the nature of anti-inflammatory analgesics)
Applicant for the Community trade mark:	G.D. Searle LLC
Applicant for the declaration of invalidity of the Community trade mark:	PHYTO-ESP S.L.
Trade mark or sign of the applicant for declaration of invalidity:	The national word mark CEREBRESP for certain goods in class 5 (pharmaceutical products a.o.)
Decision of the Cancellation Division:	Declaration of invalidity of the Community trade mark CELEBREX
Decision of the Board of Appeal:	Dismissal of the appeal by G.D. Searle LLC
Grounds of claim:	Infringement of Article 8(1)(b) of Regulation No 40/94 [1] in that there is no likelihood of confusion between the marks ...

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

Action brought on 19 December 2002 by Marta Andreasen against the Commission of the European Communities

(Case T-385/02)

(2003/C 44/75)

(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 December 2002 by Marta Andreasen, Brussels, Belgium, represented by Ian S. Forrester, QC.

The applicant claims that the Court should:

— annul the implied decision of the Commission rejecting the applicant's appeal against her removal from the post of Accounting Officer

— annul the implied decision of the Commission rejecting the applicant's appeal against her transfer to the post of Principal Adviser

— award her pecuniary damages for an amount of money to be fixed by the Court, plus interest at 5 % or at such other rate as may be fixed by the Court

— award her the costs of the present action.

Pleas in law and main arguments

The purpose of the present action is to challenge the Decision to remove the applicant from office as Accounting Officer and Bugdet Execution Director in Directorate General Budget and to transfer her to the position of principal Adviser in Directorate General Personnel and Administration.

In support of her conclusions, the applicant submits:

— Breach of the principle of good administration. Failure to state reasons for the removal in question, and violation of the Commission's duty of adequate reasoning for adoption of a decision having legal effect.

— Breach of Article 50 of the Staff Regulations by using the applicant's transfer as a punitive measure, and

— Breach of Article 7 of the Staff Regulations through the adoption of a disproportionate and unnecessary measure, resulting in the applicant's appointment to a post that is not suited to her category and grade.

Action brought on 23 December 2002 by Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG against the Commission of the European Communities

(Case T-388/02)

(2003/C 44/76)

(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 23 December 2002 by Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG, Heiligengrabe, Germany, represented by R. Nierer, Rechtsanwalt.

The applicants claim that the Court should:

— annul the Commission's decision of 19 June 2002 (State Aid No N 240/2002) not to raise any objection to the Federal Republic of Germany granting State aid to Zellstoff Stendal GmbH;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants produce timber-based materials from freshly felled pine, including [...] oriented structural boards. Their action is brought against the Commission's decision to raise no objection to the granting of a non-repayable subsidy of EUR 109,161 million and an investment allowance of EUR 165,515 million to Zellstoff Stendal GmbH for the construction of a cellulose factory and the establishment of a

wood procurement undertaking and a logistics undertaking in Arneburg bei Stendal in the Land Sachsen-Anhalt, Germany, and also against the provision of an 80 % surety for a loan of EUR 464,550 million.

The applicants claim that the Commission did not fully adhere to the guidelines and general regulations. It failed to examine the sectoral effects of the plans on wood as a resource and adopted too wide a procurement radius. That wide procurement radius leads in their submission to higher costs and thus the unprofitability of the undertaking, whereas, if a smaller procurement radius were used, forest resources would not be sufficient to supply all wood-processing undertakings in the region.

The Commission failed to take account of the fact that the aid beneficiary's own share was less than the necessary 25 %.

The Commission calculated the number of indirectly created jobs at too high a figure, so that, instead of the factor of 1,5, a factor of 1,25 should have been used. The maximum permissible intensity of aid was therefore only 26,25 %.

In addition, the aid proportion of a State guarantee for a loan was calculated too low, so that, on a correct calculation, there was an aid intensity of 33,31 %, which even exceeded the maximum aid intensity approved by the Commission of 31,5 %.

Council Regulation (EC) No 659/99 of 22 March 1999 laying down detailed rules for the application of Article 88 EC [1] was infringed, since no formal investigation procedure was opened, although the Commission had cause for concern. The applicants were thereby hindered in the exercise of their procedural rights and limited in their right to a hearing.

Since the regional aid guidelines and the provisions of the multisectoral regional aid framework were not complied with, none of the exceptions in Article 87(3)(a) and (c) of the EC Treaty can apply.

The Commission further infringed Article 2, Article 3(1)(i), Article 6, and the third indent of Article 174(1) of the EC Treaty, as it failed to take account of the environmental impact when making its decisions. In the applicants' submission, the plans being supported would lead to overfelling in order to meet requirements.

[1] OJ 1999 L 83, p. 1.

Action brought on 24 December 2002 by Sergio Sandini against the Court of Justice of the European Communities

(Case T-389/02)

(2003/C 44/77)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 24 December 2002 by Sergio Sandini, residing in Ehlange (Luxembourg), represented by Juan Ramon Iturriagagoitia and Karine Delvolvé, lawyers.

The applicant claims that the Court should:

— annul the decision of the Court of Justice given on 24 September 2002 and concerning Complaint 2/02-R(e) lodged by the applicant on 25 January 2002 against the decision of 25 October 2001;

— order the defendant to pay the applicant, as compensation for the damage that he has suffered and will in future suffer, the sum of EUR 350 000, subject to all necessary reservations, together with default interest at the rate of 10 % per annum from 7 October 1999 until the date of payment;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant, an official of the Court of Justice, challenges that institution's refusal to compensate him for the damage suffered as a result of his occupational disease, which has already been recognised by decision of the appointing authority of 31 May 2001, adopted under Article 73 of the Staff Regulations, and on the basis of which a sum was paid to him.

The pleas relied on in support of this application are similar to those in Case T 255/02 H v Court of Justice (OJ C 274 of 9.11.2002, p. 26).

Action brought on 24 December 2002 by Antonio Cagnato against the Court of Justice of the European Communities

(Case T-390/02)

(2003/C 44/78)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 24 December 2002 by Antonio Cagnato, residing in Dippach-Gare (Luxembourg), represented by Juan Ramon Iturriagagoitia and Karine Delvolvé, lawyers.

The applicant claims that the Court should:

— annul the decision of the Court of Justice given on 24 September 2002 and concerning the complaint lodged by the applicant on 25 January 2002 against the decision of 25 October 2001;

— order the defendant to pay the applicant compensation for the damage and non-material damage of every kind that he has suffered as a result of his being exposed to asbestos when carrying out his duties at the Palais de Justice of the Court of First Instance and the Court of Justice of the European Communities, estimated at a sum of EUR 350 000, subject to all necessary reservations;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant, an official of the Court of Justice, challenges that institution's refusal to compensate him for the damage suffered as a result of his occupational disease, which has already been recognised by decision of the appointing authority of 31 May 2001, adopted under Article 73 of the Staff Regulations, and on the basis of which a sum was paid to him.

The pleas relied on in support of this application are similar to those in Case T 255/02 H v Court of Justice (OJ C 274 of 9.11.2002, p. 26).

Action brought on 24 December 2002 by the Bundesverband der Nahrungsmittel- und Speiseresteverwertung e.V. and Josef Kloh against the European Parliament and the Council of the European Union

(Case T-391/02)

(2003/C 44/79)

(Language of the case: German)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Insurance of the European Communities on 24 December 2002 by the Bundesverband der Nahrungsmittel- und Speiseresteverwertung e.V., Bochum (Germany), and Josef Kloh, Eichenried (Germany), represented by R. Steiling and S. von Zimmermann-Wienhues.

The applicants claim that the Court should:

— annul Article 32(2) of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption [1] in so far as transitional measures under Article 32(1) of the regulation are permitted for no more than four years from 1 November 2002;

— order the defendants to pay the costs.

Pleas in law and main arguments

The action challenges the time-limit on transitional measures which may be adopted under Article 32 of the contested regulation in the case of Member States with a secure system for processing food and kitchen waste [catering waste].

1. The imposition of a time-limit exceeds the bounds of the Parliament's and the Council's discretion; it runs counter to the principle of subsidiarity (Article 5(2) EC) and the principle of proportionality (Article 5(3) EC).

   In matters of Community health and hygiene law the institutions do not enjoy wide political discretion: decisions must be based on scientific evidence. There is

no scientific evidence that the processing of food waste, as performed in the Federal Republic of Germany under stricter conditions in recent years, presents a risk of contamination. The risk is, on the contrary, reduced because illegal disposal and use as feed is prevented and food and kitchen waste are subject to treatment which destroys pathogens to a scientifically proven degree. There are adequate measures of control to ensure compliance with those legal requirements and the constituents of animal feed are traceable. The system used in the Federal Republic of Germany for the collection and treatment of food waste and its processing into feed thus already meets the objectives of the regulation and there was no need for any wider authorisation in Community law. The possibility of extending the duration of derogations should have been made dependent on scientific evidence.

2. It is incompatible with the general principle of equality for the inflexible time restriction placed on derogating provisions to treat the various systems used in the Member States for processing food waste, and in particular the processing into feed of food waste adequately treated or not, as being the same. There is no justification for that in the principle governing the regulation, which is the prevention of contamination. Scientific evidence showed clearly that the way in which food waste was treated in the Federal Republic of Germany was sufficient to avoid the spread of pathogens.

3. The time-limit imposed for derogations is an unjustified encroachment on freedom of property and freedom to pursue an occupation, and on freedom as to how business is run, because the member undertakings of plaintiffs 1 and 2 are entitled to special protection of their right to rely on being able to pursue their activities and continue to use their facilities — most of which have been only recently modernised. Their facilities and their activities have been brought into compliance with stringent legal requirements which are based on scientific evidence. They must therefore be able to rely on being able to continue to pursue their activities and use their facilities as long as they keep to those stricter requirements and no new scientific evidence is available. In addition, the regulation's provisions take no account of the fact that as a rule it is not possible for the food waste processors concerned to alter the use of their facilities and business premisses.

(1) OJ 2002 L 273, p. 1.

Action brought on 30 December 2002 by Linea Gig S.r.l. (in liquidation) against the Commission of the European Communities

(Case T-398/02)

(2003/C 44/80)

(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 30 December 2002 by Linea Gig S.r.l. (in liquidation), represented by Lucio D'Amario and Bruno Lazia, Lawyers.

The applicant claims that the Court should:

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

— in the alternative, annul Article 3 of the decision in so far as it imposes a fine on the applicant;

— in the further alternative, reduce the amount of the fine imposed on the applicant;

— order the Commission to pay the costs;

— order the Commission to reimburse the whole of the costs incurred by the applicant in the administrative proceedings.

Pleas in law and main arguments

The present action is directed against the Decision of 30 October 2002 COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega-Nintendo doc. C(2000) 4072 final, wherein the Commission found that the applicant had infringed Article 81(1) EC and Article 53(1) of the EEA agreement as a result of its involvement, during the period from 1 October 1992 to the end of December 1997, in a series of agreements and concerted practices in the market for video game consols and cartridges compatible with the Nintendo console, the purpose and effect of the agreements and practices being to limit parallel exports of Nintendo

consols and cartridges. The applicant is alleged to have participated actively in a distribution agreement which impeded exports and to have provided information to assist with retracing the origins of parallel exports. A fine of EUR 1,5 million was also imposed on the applicant.

The applicant does not propose to dispute the material facts upon which the decision rests. However, it submits that the decision is vitiated, in law, in a number of respects, putting forward the following pleas:

— Incorrect application of Article 81 EC in so far as concerns the first distribution agreement concluded between Linea Gig S.r.l. Nintendo Corporation Ltd. and error in finding the applicant responsible for the anti-competitive conduct attributed to the parties involved.

— Inconsistency within the decision and infringement of Article 253 EC. It is submitted in this regard that, despite the fact that relations and dealings between Nintendo and its retail and wholesale customers and relations and dealings between John Menzies and its customers were identical to relations and dealings between Nintendo and its authorised distributors, the Commission decided to assess them in different fashions and alleged involvement in the supposed agreements and concerted practices only against Nintendo and its national distributors.

— Failure to assess the economic context in which the supposed agreements and/or concerted practices occurred. The applicant says that the Commission failed properly to define the relevant markets, failed to assess Nintendo's position in the relevant markets identified — instead merely evaluating its market shares in certain Member States — and failed to assess Nintendo's market position in 1990, the year in which the distribution agreements were concluded, or at all during the period 1992 to 1997, instead arbitrarily choosing certain other years.

— Infringement of Article 15(2) of Regulation EEC No 17/62 and breach of the principles of equality and proportionality in the Commission's assessment of the intention behind the applicant's conduct and its fixing of the amount of the fine, in that it set the fine higher than the maximum permissible sum, selected the wrong basic amount and failed to take account of mitigating circumstances.

Action brought on 31 December 2002 by Eurocermex S.A. against the Office for Harmonisation in the Internal Market

(Case T-399/02)

(2003/C 44/81)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 31 December 2002 by Eurocermex S.A., established in Evere, Belgium, represented by André Bertrand, lawyer.

The applicant claims that the Court should:

— annul the decision by which the examiner found that the three-dimensional trade mark at issue was not such as to constitute a valid trade mark for 'beers, mineral and aerated waters and fruit juices', 'restaurants, bars and snack bars';

— send the case back to the examiner for prosecution;

— order the Office to pay the costs.

Pleas in law and main arguments:

The trade mark in question:	three-dimensional mark representing a 'long neck' bottle on the neck of which a piece of lemon has been plugged, claiming the colours yellow and green.
Goods or services concerned:	goods in Classes 16, 25, 32 and 42.
Decision contested before grant of registration as regards Classes 16 and the Board of Appeal:	25 and refusal as regards Classes 32 and 42.
Grounds pleaded:	Infringement of Article 7(1)(b) and (3) of Regulation (EC) No 40/94.

Removal from the register of Case T-201/94 [1]

(2003/C 44/82)

(Language of the case: German)

By order of 27 November 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-201/94: Erwin Kustermann v Council of the European Union and Commission of the European Communities.

[1] OJ C 218 of 6.8.1994.

Removal from the register of Case T-262/01 [1]

(2003/C 44/83)

(Language of the case: German)

By order of 29 November 2002 the Court of First Instance of the European Communities (Sole Judge: J. Azizi) ordered the removal from the register of Case T-262/01: Jürgen Sachau v Commission of the European Communities.

[1] OJ C 3 of 5.1.2002.

III

(Notices)

(2003/C 44/84)

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

OJ C 31, 8.2.2003

Past publications

OJ C 19, 25.1.2003

OJ C 7, 11.1.2003

OJ C 323, 21.12.2002

OJ C 305, 7.12.2002

OJ C 289, 23.11.2002

OJ C 274, 9.11.2002

These texts are available on:

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

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