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I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

of 28 January 2003

in Case C-334/99: Federal Republic of Germany v Commission of the European Communities ⁽¹⁾

*(EC and ECSC Treaties — State aid — Composition of the Commission — Notification to the Commission of aid and planned aid — Concept and substance of notification — Scope of the ECSC Treaty — Fifth Steel Aid Code — Powers of the Commission *ratione temporis* — Article 87(2)(c) EC — Privatisation procedure — Private investor test — Invitation to bid — Transparency)*

(2003/C 55/01)

(Language of the case: German)

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

In Case C-334/99, Federal Republic of Germany (Agent: C.-D. Quassowski, assisted by J. Sedemund) v Commission of the European Communities (Agents: D. Triantafyllou and K.-D. Borchardt): Application for annulment of Articles 4 to 7 of Commission Decision 1999/720/EC, ECSC of 8 July 1999 on State aid granted by Germany to Gröditzer Stahlwerke GmbH and its subsidiary Walzwerk Burg GmbH (OJ 1999 L 292, p. 27), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, V. Skouris (Rapporteur), S. von Bahr and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 28 January 2003, in which it:

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

⁽¹⁾ OJ C 366 of 18.12.1999.

JUDGMENT OF THE COURT

of 21 January 2003

in Case C-512/99: Federal Republic of Germany v Commission of the European Communities ⁽¹⁾

*(Approximation of laws — Directive 97/69/EC — Dangerous substances — More stringent national provisions — Application *ratione temporis* of Article 95 EC — Duty of cooperation — Conditions for the approval of new national provisions)*

(2003/C 55/02)

(Language of the case: German)

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

In Case C-512/99, Federal Republic of Germany (Agents: W.-D. Plessing and B. Muttelsee-Schön) v Commission of the European Communities (Agent: G. zur Hausen) supported by Republic of Finland (Agents: T. Pynnä and E. Bygglin): Application for annulment of Commission Decision 1999/836/EC of 26 October 1999 on the national provisions concerning mineral wool notified by Germany derogating from Directive 97/69/EC adapting to technical progress for the 23rd time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of

dangerous substances (OJ 1999 L 329, p. 100), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur) and A. Rosas, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 21 January 2003, in which it:

1. *Dismisses the action;*
2. *Orders the Federal Republic of Germany to pay the costs;*
3. *Orders the Republic of Finland to bear its own costs.*

(¹) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 23 January 2003

in Case C-221/00: Commission of the European Communities v Republic of Austria (¹)

(Failure by a Member State to fulfil its obligations — Approximation of laws — Articles 28 EC and 30 EC — Directive 79/112/EEC — Labelling and presentation of foodstuffs)

(2003/C 55/03)

(Language of the case: German)

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

In Case C-221/00, Commission of the European Communities (Agent: J. C. Schiefferer) v Republic of Austria (Agent: H. Dossi) supported by Kingdom of Denmark (Agent: C. P. Kristensen): Application for a declaration that, by interpreting and applying Paragraph 9(1) and (3) of the Bundesgesetz über den Verkehr mit Lebensmitteln, Verzehrsprodukten, Zusatzstoffen, kosmetischen Mitteln und Gebrauchsgegenständen (Lebensmittelgesetz 1975) (Federal Law on trade in foodstuffs, products intended for human consumption, additives, cosmetic products and consumer goods) of 23 January 1975 as meaning that health-related information on foodstuffs for general consumption is prohibited in a general and absolute manner, and by subjecting the affixing of such information to a prior authorisation procedure, the Republic of Austria has failed to fulfil its obligations under Articles 2(1)(b) and 15(1) and (2) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ

1979 L 33, p. 1), as amended by Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997 (OJ 1997 L 43, p. 21), and under Article 28 EC, the Court (Sixth Chamber), composed of: C. Gulmann, acting for the President of the Sixth Chamber, V. Skouris, F. Macken, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 23 January 2003, in which it:

1. *Declares that, by laying down a general prohibition of health-related information on the labelling of foodstuffs for general consumption and by subjecting the display of such information to a prior authorisation procedure, the Republic of Austria has failed to fulfil its obligations under Articles 2(1)(b) and 15(1) and (2) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997;*
2. *Orders the Republic of Austria to pay the costs;*
3. *Orders the Kingdom of Denmark to bear its own costs.*

(¹) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT

of 21 January 2003

in Case C-318/00 (Reference for a preliminary ruling from the High Court of Justice (England & Wales, Queen's bench Division): Bacardi-Martini SAS, Cellier des Dauphins v Newcastle United Football Company Ltd (¹),

(Reference for a preliminary ruling — Freedom to provide services — Refusal to display advertisements for alcoholic drinks at a sporting event taking place in a Member State whose law allows television advertising for alcoholic drinks but being broadcast on television in another Member State whose law prohibits such advertising — Relevance of the questions for the outcome of the main proceedings)

(2003/C 55/04)

(Language of the case: English)

In Case C-318/00: Reference to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between Bacardi-Martini SAS, Cellier

des Dauphins and Newcastle United Football Company Ltd, on the interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissechot and M. Wathelet (Presidents of Chambers), C. Gulmann, D.A.O. Edward, P. Jann (Rapporteur), V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 21 January 2003, in which it has ruled:

The reference for a preliminary ruling made by the High Court of Justice of England and Wales, Queen's Bench Division, by order of 28 July 2000 is inadmissible.

(¹) OJ C 302 of 21.10.2000.

JUDGMENT OF THE COURT

of 21 January 2003

in Case C-378/00: Commission of the European Communities v European Parliament and Council of the European Union (¹)

(Comitology — Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission — Criteria for choosing between the different procedures for adopting implementing measures — Effects — Obligation to state reasons — Annulment in part of Regulation (EC) No 1655/2000 of the European Parliament and of the Council concerning the Financial Instrument for the Environment (LIFE))

(2003/C 55/05)

(Language of the case: French)

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

In Case C-378/00, Commission of the European Communities (Agent: D. Maidani) v European Parliament (Agents: C. Pennera and M. Moore), and Council of the European Union (Agents: J.-P. Jacqué and G. Houttuin) supported by United Kingdom of Great Britain and Northern Ireland (Agent: G. Amodeo, assisted by M. Hoskins): Application for the annulment of Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE) (OJ 2000 L 192, p. 1), in so far as it makes the adoption of measures for the implementation of the LIFE programme subject to the regulatory procedure under Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing

powers conferred on the Commission (OJ 1999 L 184, p. 23), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissechot and M. Wathelet (Presidents of Chambers), C. Gulmann, A. La Pergola (Rapporteur), P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 21 January 2003, in which it:

1. Annuls Article 11(2) of Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE);
2. Declares that the measures for the implementation of Regulation No 1655/2000 already adopted at the time of the present judgment are not affected by it;
3. Declares that the effects of Article 11(2) of Regulation No 1655/2000 are to be fully maintained until the Parliament and the Council adopt new provisions concerning the committee procedure to which the measures for the implementation of that regulation are subject;
4. Orders the European Parliament and the Council of the European Union to pay the costs.

(¹) OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 23 January 2003

In Joined Cases C-421/00, C-426/00 and C-16/01 (Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat für Kärnten, the Unabhängiger Verwaltungssenat Wien and Verwaltungsgerichtshof): Renate Sterbenz and Paul Dieter Haug (¹)

(Approximation of laws — Articles 28 EC and 30 EC — Directive 79/112/EEC — Labelling and presentation of foodstuffs)

(2003/C 55/06)

(Language of the case: German)

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

In Joined Cases C-421/00, C-426/00 and C-16/01: References to the Court under Article 234 EC by the Unabhängiger Verwaltungssenat für Kärnten (Austria), the Unabhängiger Verwaltungssenat Wien (Austria) and the Verwaltungsgerichtshof (Austria) respectively for preliminary rulings in the criminal proceedings pending before those courts against Renate Sterbenz (C-421/00) and Paul Dieter Haug (C-426/00)

and C-16/01), on the interpretation of Articles 28 EC and 30 EC and of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 1979 L 33, p. 1), as amended by Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997 (OJ 1997 L 43, p. 21), the Court (Sixth Chamber), composed of: R. Schintgen, President of the Second Chamber, acting for the President of the Sixth Chamber, V. Skouris, F. Macken, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 23 January 2003, in which it has ruled:

Articles 2(1)(b) and 15(1) and (2) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997, preclude a system such as that established by Paragraph 9(1) and (3) of the Bundesgesetz über den Verkehr mit Lebensmitteln, Verzehrsprodukten, Zusatzstoffen, kosmetischen Mitteln und Gebrauchsgegenständen (Lebensmittelgesetz 1975) (Federal Law on trade in foodstuffs, products intended for human consumption, additives, cosmetic products and consumer goods) which lays down a general prohibition, subject to prior authorisation, of all health-related information on the labelling and presentation of foodstuffs.

(¹) OJ C 28 of 27.01.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 23 January 2003

in Case C-57/01 (Reference for a preliminary ruling from the Dioikitiko Efeteio Athinon): Makedoniko Metro, Mikhaniki AE v Elliniko Dimosio (¹),

(Public works contracts — Rules for participating — Group of contractors submitting a tender — Change in the composition of the group — Prohibition laid down in the contract documents — Compatibility with Community law — Review procedures)

(2003/C 55/07)

(Language of the case: Greek)

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

In Case C-57/01: Reference to the Court under Article 234 EC by the Diikitiko Efeteio Athinon (Greece) for a preliminary ruling in the proceedings pending before that court between Makedoniko Metro, Mikhaniki AE and Elliniko Dimosio, on the interpretation of Council Directive 89/665/EEC of

21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1), and of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), the Court (Sixth Chamber), composed of: C. Gulmann, acting for the President of the Sixth Chamber, V. Skouris, F. Macken, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 23 January 2003, in which it has ruled:

1. Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts does not preclude national rules which prohibit a change in the composition of a group consortium taking part in a procedure for the award of a public works contract or a public works concession which occurs after submission of tenders;
2. In so far as a decision of a contracting authority adversely affects the rights conferred on a consortium by Community law in the context of a procedure for the award of a public contract, the consortium must be able to avail itself of the review procedures provided for by Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.

(¹) OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 30 January 2003

in Case C-226/01: Commission of the European Communities v Kingdom of Denmark (¹)

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

(2003/C 55/08)

(Language of the case: Danish)

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

In Case C-226/01, Commission of the European Communities (Agent: H. C. Støvlbæk) v Kingdom of Denmark (Agents: J. Molde and J. Bering Liisberg): Application for a declaration

that, by failing to take all necessary measures to ensure that the quality of its bathing water conforms to the limit values laid down by Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1) and by failing to adhere to the minimum sampling frequencies required by that directive, the Kingdom of Denmark has failed to fulfil its obligations under Articles 4(1) and 6(1) of the same directive, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, C. Gulmann, V. Skouris and J.N. Cunha Rodrigues (Rapporteur), Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 30 January 2003, in which it:

1. *Declares that, by failing, during the years 1995 to 1998, to take all necessary measures to ensure that the quality of its bathing water conformed to the limit values laid down in Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water and by failing, during the same years, to adhere to the minimum sampling frequencies required by that directive, the Kingdom of Denmark has failed to fulfil its obligations under Articles 4(1) and 6(1) of the same directive;*
2. *Orders the Kingdom of Denmark to pay the costs.*

⁽¹⁾ OJ C 212 of 28.7.2001.

What is the precise scope of the eleven-month time limit laid down in Article 11a(1) of Commission Regulation (EEC) No 1062/87⁽¹⁾ of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, inserted by Article 1(1) of Commission Regulation (EEC) No 1429/90⁽²⁾ of 29 May 1990 amending Regulation (EEC) No 1062/87 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (as applicable prior to the repeal of Regulation No 1062/87 by Article 127(1) of Commission Regulation (EEC) No 1214/92⁽³⁾ of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, repealed in turn by Article 913 of Commission Regulation (EEC) No 2454/93⁽⁴⁾ of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92⁽⁵⁾ establishing the Community Customs Code)?

Must this provision be construed as meaning that the competent Member State is not entitled to demand the duties owed from the principal where this eleven-month time limit has not been observed?

⁽¹⁾ OJ L 107 [1987], p. 1.

⁽²⁾ OJ L 137 [1990], p. 21.

⁽³⁾ OJ L 132 [1992], p. 1.

⁽⁴⁾ OJ L 253 [1993], p. 1.

⁽⁵⁾ OJ L 302 [1992], p. 1.

Reference for a preliminary ruling by the Hof van Cassatie by judgment of that Court of 5 November 2002 in the case of 1. Belgian Refining Corporation, 2. Michael Gene Sachs, 3. Alfred Alfons Marie Leysens, 4. André Leonard Elisabeth Schatteman, 5. Frank Catharina Martin Devoght, and 6. Gilbert Theo Marie Frans Dias against Ministerie van Financiën

(Case C-412/02)

(2003/C 55/09)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hof van Cassatie (Belgian Court of Cassation) of 5 November 2002, received at the Court Registry on 19 November 2002, for a preliminary ruling in the case of 1. Belgian Refining Corporation, 2. Michael Gene Sachs, 3. Alfred Alfons Marie Leysens, 4. André Leonard Elisabeth Schatteman, 5. Frank Catharina Martin Devoght, and 6. Gilbert Theo Marie Frans Dias against Ministerie van Financiën on the following questions:

Reference for a preliminary ruling by the Hof van Cassatie by judgment of that Court of 5 November 2002 in the case of I. Francis Maria SIPS against Ministerie van Financiën and II. Florentius Martha Adrianus Petrus Vreijisen and Vreijisen Douane-Expeditie against Ministerie van Financiën

(Case C-413/02)

(2003/C 55/10)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hof van Cassatie (Belgian Court of Cassation) of 5 November 2002, received at the Court Registry on 19 November 2002, for a preliminary ruling in the case of I. Francis Maria SIPS against Ministerie van Financiën and II. Florentius Martha Adrianus Petrus Vreijisen and Vreijisen Douane-Expeditie against Ministerie van Financiën on the following questions:

1. Must Regulation No 2913/92⁽¹⁾ (the Community Customs Code) and Regulation No 2454/93⁽²⁾ (the regulation implementing the Community Customs Code), in particular Article 379(1) of the regulation implementing the Community Customs Code, be construed as meaning that the customs debt arising by reason of an offence or irregularity in connection with external Community transit cannot be recovered by the office of departure from the principal if the principal did not, before the end of the eleventh month following the date of registration of the Community transit declaration, receive the notification referred to in Article 379 of the regulation implementing the Community Customs Code?
2. Does the fact that the office of departure did not follow an administrative instruction for the transmission of information laid down in the Customs Code Committee (early warning system) or that the authorities in the office of departure can be criticised for failure to notify in good time have any bearing on the answer to this question?

⁽¹⁾ OJ L 302 [1992], p. 1.

⁽²⁾ OJ L 253 [1993], p. 1.

Reference for a preliminary ruling by the Vestre Landsret by order of that Court of 15 November 2002 in the case of Fonden Marselisborg Lystbådehavn against Skatteministeriet

(Case C-428/02)

(2003/C 55/11)

Reference has been made to the Court of Justice of the European Communities by order of the Vestre Landsret (Western Regional Court) of 15 November 2002, received at the Court Registry on 26 November 2002, for a preliminary ruling in the case of Fonden Marselisborg Lystbådehavn against Skatteministeriet (Ministry of Fiscal Affairs) on the following questions:

- 1) Must Article 13.B(b) of the Sixth VAT Directive (Council Directive 77/388)⁽¹⁾ be construed as meaning that the term 'letting of immovable property' includes the letting of a boat site consisting of a section of a land-based port area and of a defined and identifiable water-based area?
- 2) Must Article 13.B(b)(2) of the Sixth VAT Directive be construed as meaning that the term 'vehicles' includes boats?

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

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 29 October 2002 in the case of Hauptzollamt Hamburg-Jonas against Gournik & Partner GmbH

(Case C-446/02)

(2003/C 55/12)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 29 October 2002, received at the Court Registry on 10 December 2002, for a preliminary ruling in the case of Hauptzollamt Hamburg-Jonas against Gournik & Partner GmbH on the following questions:

1. Does an entitlement to an export refund exist at least at the rate of refund applicable to the product actually exported where it is established during a control by the customs authorities that the declared and exported consignment did not consist entirely of the declared product but contained a proportion of another product to which a lower rate of refund applied?
2. Does the fact that the product which was incorrectly declared is similar to that actually declared have any bearing on the decision?
3. If Question 2 is answered in the affirmative, in accordance with which criteria must it be determined whether the declaration also covers the incorrectly declared goods?

Appeal brought on 11 December 2002 by KWS Saat AG against the judgment delivered on 9 October 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-173/00 between KWS Saat AG and the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-447/02 P)

(2003/C 55/13)

An appeal against the judgment delivered on 9 October 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-173/00 between KWS Saat AG and the Office for Harmonisation in the Internal Market

(Trade Marks and Designs) was brought before the Court of Justice of the European Communities on 11 December 2002 by KWS Saat AG, represented by Dr Christian Rohnke, Jungfernstieg 51, D-20354 Hamburg, with an address for service in Luxembourg.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 29 October 2002 in the case of Hauptzollamt Bremen against Joh. C. Henschen GmbH & Co. KG

(Case C-451/02)

The appellant claims that the Court should:

(2003/C 55/14)

1. set aside the judgment of the Court of First Instance of 9 October 2002 in Case T-173/00⁽¹⁾ in so far as it dismisses the action;
2. annul the decision of the Board of Appeal of 19 April 2000 in Case R 282/1999-2), in so far as that has not already occurred as a result of the judgment of the Court of First Instance in Case T-173/00;
3. order the defendant to pay the costs.

Grounds of appeal and main arguments

- The Court of First Instance wrongly rejected the applicant's claims. The Court failed to recognise that Article 74(1) of Regulation No 40/94 was infringed if only because up until the time of its appeal decision the Office did not in fact carry out any examination of its own. The reference for the first time in the appeal decision to the web page of a single producer also infringes the right to a fair hearing. Finally, the Court was compelled, in order to support the decision of the Board of Appeal, to construct its own replacement reasoning which, however, lacks detail and is formulaic.
- The Court of First Instance wrongly rejected the factual claims concerning the distinctive character of the colour mark 'orange' (corresponding to colour code HK57). When assessing the distinctive character of colour marks, criteria different from those for other types of marks cannot be applied. It is immaterial whether other colours are used for identifying certain characteristics of the goods at issue. Rather, it must be examined whether the specific colour applied for is understood by the public as a reference to a characteristic. If different manufacturers use different colours as references to a characteristic, the public will see in those colours at least at the same time a reference to the producer. The colour 'orange' is not understood by the relevant public as a reference to a characteristic of the goods at issue. Nor is a decorative or functional use possible. Therefore the mark has distinctive character.

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 29 October 2002, received at the Court Registry on 12 December 2002, for a preliminary ruling in the case of Hauptzollamt Bremen against Joh. C. Henschen GmbH & Co. KG on the following questions:

1. Is a customs debt on importation incurred under Article 203(1) of Regulation (EEC) No 2913/92⁽¹⁾ where goods in temporary storage are removed from their place of storage without the authorisation of the customs authority where the goods were presented and are then presented again to another customs office without first having been placed under the Community transit procedure required for their movement?
2. If Question 1 should be answered in the negative: In the circumstances described in Question 1 is there a non-fulfilment of an obligation that could result in the incurrance of a customs debt on importation under Article 204(1)(a) of Regulation (EEC) No 2913/92?
3. If Question 2 should be answered in the affirmative: Should Article 859, point 6, of Regulation (EEC) No 2454/93⁽²⁾ be interpreted as meaning that it applies even if goods in temporary storage are moved to a free warehouse in breach of the formalities relating to temporary storage?
4. If Question 3 should be answered in the negative:
 - (a) Should Article 859, point 5, of Regulation (EEC) No 2454/93 be interpreted as referring only to an unauthorised movement of goods that could have been authorised by the customs office, or does it mean any movement of goods at all?
 - (b) Should Article 859, point 5, of Regulation (EEC) No 2454/93 be interpreted as meaning that the condition laid down in that provision, that the goods in temporary storage can be presented to the customs authorities at their request, is fulfilled only if the goods are presented again to the customs office where they were originally presented, or is the condition fulfilled even if the goods are presented again to any customs office at all — even if it is in another Member State?

⁽¹⁾ OJ C 323, 21.12.2002.

⁽¹⁾ OJ L 302, p. 1.

⁽²⁾ OJ L 253, p. 1.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 29 October 2002 in the case of Hauptzollamt Bremen against ITG GmbH Internationale Spedition

(Case C-452/02)

(2003/C 55/15)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 29 October 2002, received at the Court Registry on 12 December 2002, for a preliminary ruling in the case of Hauptzollamt Bremen against ITG GmbH Internationale Spedition on the following questions:

1. Is a customs debt on importation incurred under Article 203(1) of Regulation (EEC) No 2913/92 ⁽¹⁾ where, contrary to instructions, goods in temporary storage are not presented to the original customs authority but to another customs authority without having been placed under the Community transit procedure required for their movement?
2. If Question 1 should be answered in the negative: In the circumstances described in Question 1 is there a non-fulfilment of an obligation that could result in the incurrance of a customs debt on importation under Article 204(1)(a) of Regulation (EEC) No 2913/92?
3. If Question 2 should be answered in the affirmative:
 - (a) Should Article 859, point 5, of Regulation (EEC) No 2454/93 ⁽²⁾ be interpreted as referring only to an unauthorised movement of goods that could have been authorised by the customs office, or does it mean any movement of goods at all?
 - (b) Should Article 859, point 5, of Regulation (EEC) No 2454/93 be interpreted as meaning that the condition laid down in that provision, that the goods in temporary storage can be presented to the customs authorities at their request, is fulfilled only if the goods are presented again to the customs office where they were originally presented, or is the condition fulfilled even if the goods are presented again to another customs office in the same town which comes under the organisation of a different customs authority?

⁽¹⁾ OJ L 302, p. 1.

⁽²⁾ OJ L 253, p. 1.

Action brought on 18 December 2002 by the Commission of the European Communities against the United Kingdom

(Case C-458/02)

(2003/C 55/16)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 18 December 2002 by the Commission of the European Communities, represented by K. Banks, acting as agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that in providing for an exception to the right to equitable remuneration for performers and phonogram producers where a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for any communication to the public (the exception concerning any communication to a non-paying audience), the United Kingdom has failed to implement correctly Article 8(2) of Council Directive 92/100/EEC ⁽¹⁾ on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
- order the United Kingdom to pay the costs of this action.

Pleas in law and main arguments

The only permissible exceptions to both the producers' and performers' right to obtain equitable remuneration under Article 8 of Directive 92/100/EEC are provided for by Article 10 of the directive. In the present context, the United Kingdom can only rely upon limitations allowed under Article 10(2) because the exceptions provided for under paragraph 1 of the said provision are not pertinent.

As to the application of the limitations allowed under Article 10(2), it must be borne in mind that, pursuant to this provision, Member States may only provide for limitations with regard to the protection of performers to the extent that they may lawfully do in connection with the protection of copyright in literary and artistic works. It follows, however, from Article 11 bis (2) of the Berne Convention that domestic legislation shall not in any circumstances be prejudicial to the author's right to obtain equitable remuneration.

Since, under Article 10(2) of the directive, producers and performers must be treated on an equal footing with authors, the United Kingdom is not entitled to exclude the right to claim equitable remuneration when a broadcast or cable programme containing a recording is seen or heard by a non-paying audience as set out in paragraph 18 of Schedule 2 of the 1988 Copyright, Designs and Patents Act.

In the view of the Commission, the criterion of a non-paying audience as defined in the aforementioned provision goes much further than the exceptions to the right permitted under Article 10 of the directive.

Therefore, the Commission submits that by providing for exceptions from the right to equitable remuneration granted to performers where a broadcast or communication to the public of protected subject matter is seen or heard by a non-paying audience, the United Kingdom has failed to fulfil the requirements of Community law and in particular of Article 8(2) of Directive 92/100/EEC.

(¹) OJ L 346, 27.11.1992, p. 61.

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

(Case C-460/02)

(2003/C 55/17)

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

The applicant claims that the Court should :

- (a) Declare that the Italian Republic has failed to fulfil its obligations under Council Directive 96/67/EC⁽¹⁾ of 15 October 1996 on access to the groundhandling market at Community airports inasmuch as Legislative Decree No 18 of 13 January 1999

- fails to lay down a maximum period of 7 years for the selection of suppliers of groundhandling services, in accordance with Article 11(1)(d), of the directive in question;
- introduces, by Article 14, a social measure which is not compatible with Article 18 of the directive;
- provides, at Article 20, transitional provisions not permissible under the directive;

- (b) order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 11 of Legislative Decree No 18 of 13 January 1999 does not lay down the maximum period for which suppliers of services are selected at airports in which access to the market is by means of a selection procedure. Article 11(1)(d) of Directive 96/67/EC expressly provides that the maximum period is fixed at 7 years. The Commission therefore takes the view that the absence of a limit to the duration of groundhandling contracts at Italian airports is incompatible with the requirements laid down by the directive.

Article 18 of Directive 96/67/EC allows Member States to take the necessary measures to ensure protection of the rights of workers. However, such measures must not affect the application of the directive itself and must not obstruct other provisions of Community law. In other words, the protection of the rights of workers is indeed permissible under Article 18 of the directive provided that it does not run counter to the effective application of the directive so far as concerns groundhandling services. Article 14(1) of Legislative Decree No 18/99 lays down the objective of adopting measures to protect the number of posts of staff working for the previous service supplier and continuing employment. The second paragraph of the article in question thus contains the obligation to transfer staff any time there is a 'transfer of business' affecting one or more categories of groundhandling services under Annex A and B. Such a provision manifestly exceeds the protection already guaranteed by Council Directive 77/187/EEC of 14 February 1977⁽²⁾ on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, as amended by Council Directive 98/50/EC⁽³⁾ and codified by Council Directive 2001/23/EC⁽⁴⁾ of 12 March 2001. Accordingly, the Commission takes the view that Article 14 of Legislative Decree No 18/99 goes beyond what may be considered to be permissible measures to guarantee the protection of the rights of workers under Article 18 of Directive 96/67/EC.

Article 20 of Legislative Decree No 18/99 relates to contracts of employment under various organisational arrangements or contractual conditions in force on 19 November 1998. Such contracts concern staff working for users which carry out self-handling services, which are different from those defined in the directive. Those contracts remain in force and unchanged until expiry; however, they may not be for longer than 6 years. In actual fact, undertakings with 'various organisational arrangements' are in practice authorised to act as self-handling operators alongside other self-handling operators and service suppliers.

The directive provides a clear definition for groundhandling services operators — groundhandling for third parties and users which carry out self-handling operations. Entities which do not fulfil the 'self-handling' criteria laid down in Article 2(f) may only operate groundhandling services for third parties. Furthermore, Article 7(2) and Article 11(2) of the directive lay down the specific procedures to follow when appointing self-handling operators and suppliers of groundhandling services for third parties. In light of the foregoing considerations, Article 20 appears to infringe those obligations.

⁽¹⁾ OJ 1996 L 272, p. 36.

⁽²⁾ OJ 1977 L 61, p. 26.

⁽³⁾ OJ 1998 L 201, p. 88.

⁽⁴⁾ OJ 2001 L 82, p. 16.

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

(Case C-463/02)

(2003/C 55/18)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 23 December 2002 by the Commission of the European Communities, represented by E. Traversa and K. Simonsson, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that, by failing to levy value added tax on the amount of aid paid under Council Regulation (EC) No 603/95⁽¹⁾ of 21 February 1995 on the common organisation of the market in dried fodder, Sweden has

failed to fulfil its obligations under Article 11 of the Sixth Council Directive 77/388/EC⁽²⁾ 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; and

2. Order Sweden to pay the costs.

Pleas in law and main arguments

The three conditions for inclusion of a subsidy in the taxable amount are satisfied. It is clear from Regulation No 603/95 that only the undertaking which processes fresh fodder can be granted aid and not producers of fresh fodder, and that the processing undertaking both enters into a sales agreement with undertakings which consume dried fodder (supply of goods) and processing agreements with producers of fresh fodder (supply of services). In the present case there is no doubt that the intervention body which pays the aid in accordance with Regulation No 603/95 is a third person in relation to the processing undertaking and the buyer and that this intervention takes place in accordance with a procedure for the award of public subsidies.

Article 11 A point 1(a) of the Sixth Directive would be interpreted excessively narrowly if only types of aid which are calculated on the basis of the product price are included in the taxable amount for VAT. By its general reference to 'subsidies directly linked to the price of [the taxable] supplies', the Community legislature actually intended to include in the taxable amount for VAT all aid which is directly linked to the price of the goods or services, ie the subsidies which directly influence the size of the supplier's remuneration. Those subsidies must, in turn, be directly linked to or have a causal connection with precisely indicated or quantifiable supplies of goods or services, ie the aid paid, if and to the extent that the goods or services are actually sold on the market. That is why the subsidy has a direct influence on the product's sale price and that clearly shows the underlying idea that subsidies should be included in the taxable amount for VAT, on the basis of a non-restrictive interpretation of Article 11 A point 1(a) of the Sixth Directive and in accordance with the general purpose of the article, namely taxation of all the remuneration paid in whole or in part by a person, no matter who, and which is actually received by the supplier as a consequence of the sale of the goods or services.

⁽¹⁾ OJ L 63, 21.3.1995, p. 1.

⁽²⁾ OJ L 145, 13.6.1977, p. 1.

Action brought on 30 December 2002 (faxed on 27 December 2002) by the Federal Republic of Germany against the Commission of the European Communities

(Case C-465/02)

(2003/C 55/19)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities by the Federal Republic of Germany on 30 December 2002 (faxed on 27.12.2002), represented by Wolf-Dieter Plessing, Ministerialrat in the Bundesministerium der Finanzen (Federal Finance Ministry), Alfred Dittrich, Ministerialrat in the Bundesministerium der Justiz (Federal Ministry of Justice) and by Dr Michael Loschelder, c/o Loschelder Rechtsanwälte, Hohenstaufenring 30-32 D-50674 Cologne.

The applicant claims that the Court should:

1. Annul Commission Regulation (EC) No 1829/2002 ⁽¹⁾ of 14 October 2002 amending the annex to Commission Regulation (EC) No 1107/96 in relation to the 'Feta' designation;
2. Order the Commission to pay the costs.

Pleas in law and main arguments

- Infringement of the rules of procedure of the Regulatory Committee and infringement of Regulation (EEC) No 1: the documents for the meeting on 20 November 2001 of the Regulatory Committee established under Article 15 of Council Regulation No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs did not reach the Federal German Government 14 calendar days beforehand nor were they in German.
- Infringement of Article 2(3) of Council Regulation No 2081/92: The Commission erroneously examines in the recitals in the preamble to the contested regulation whether 'Feta' has become a generic designation. Since 'Feta' is first of all a non-geographical concept, the Commission ought first to have proved that it has acquired a geographical meaning and indeed one that does not refer to the whole of a Member State. The area indicated by the Greek Government in its application is quite plainly an artificial construct; unsupported by either tradition or commercial conceptions. Nor does Feta owe its quality or characteristics predominantly or exclusively to geographical conditions; the Commission's statements in Recital 36 are supported neither by the Greek Government's application nor by the findings of the Scientific Committee. Finally, the areas of production and manufacture do not coincide, as is borne out both by the Greek

legislative provisions themselves and by the fact that the Community makes provision for the grant of aid for the manufacture of Feta on the Aegean islands.

- Infringement of Council Regulation No 2081/92 and of Article 253 EC.

⁽¹⁾ OJ 2002 L 277, p. 10.

Action brought on 30 December 2002 by the Kingdom of Denmark against the Commission of the European Communities (received by fax on 23 December 2002)

(Case C-466/02)

(2003/C 55/20)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 30 December 2002 (received by fax on 23 December 2002) by the Kingdom of Denmark, represented by J. Molde and J.B. Liisberg, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Annul Commission Regulation (EC) No 1829/2002 ⁽¹⁾ of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 ⁽²⁾ with regard to the name 'Feta'.

Pleas in law and main arguments

(Main)

The Commission adopted Regulation No 1829/2002 in contravention of Article 17(2), in conjunction with Article 3(1), of Council Regulation (EEC) No 2081/92 ⁽³⁾ (the basic regulation):

Denmark bases its arguments in this connection on the following principles of interpretation:

- The prohibition of registration of generic designations specifically reflects a number of fundamental principles of Community law.
- This prohibition cannot be construed restrictively and compliance with the prohibition must be subject to full review by the Court.
- If a designation has become on one occasion/been from the outset a generic designation, then it is for all time — and irreversibly — a generic designation.

- If the applicant country has itself for a long time accepted and benefited from the generic use of the designation, it will have forfeited any right to argue that the designation is non-generic.
- Registration as a designation of origin at Community level is excluded if a designation is a generic designation in even only one Member State.
- Lawful production and marketing over a long period of time in other Member States are central factors in the evaluation of a generic designation. Lawful marketing of this kind may be suppressed only if it is contrary to fair custom and practice or gives rise to a genuine risk of confusion.
- Lawful production in non-member countries and their trade with the EU also argue in favour of treating a designation as being covered by the prohibition of registration of generic designations, *inter alia* in the light of the Community's obligations under the WTO.
- There is a presumption that non-geographical indications are generic designations, in particular where an indication is derived from a language other than that of the applicant country.
- The applicant country and, secondly, the Commission have the onus of establishing that a non-geographical indication is not a generic designation and that lawful marketing over a long period in other countries is contrary to fair custom and practice and gives rise to a genuine risk of confusion.

Denmark attaches particular importance to the following specific factors:

- Whether as a designation or a product, feta does not have its origin specifically in Greece. The traditional consumption and production area covers a number of Balkan lands, including several non-member countries due shortly to join the EU.
- Up until 15 years ago, Greece itself imported, produced, consumed and exported feta, including feta made from cow's milk. Consumers in Greece must, for a number of years, have regarded the designation as being generic.
- In other countries, both within and outwith the EU, in which it is consumed and produced in large quantities, consumers also regard feta as being a generic designation.

- Lawful production and marketing of feta outside the area of origin take place in a number of Member States and non-member countries.
- Danish production and marketing of feta are in no wise contrary to fair custom and practice, nor do they give rise to any genuine risk of confusion, precisely because Danish legislation has, since as far back as 1963, required that such feta be designated as 'dansk feta'.
- The Community legislature, including the Commission, has, in a number of legal provisions and measures, proceeded on the basis that 'feta' is a generic designation.

(Alternative)

The Commission adopted Regulation No 1829/2002 in contravention of the basic regulation inasmuch as feta does not satisfy the conditions governing registration as a traditional non-geographical name laid down in Article 2(3) of the basic regulation.

⁽¹⁾ OJ L 277 of 15.10.2002, p. 10.

⁽²⁾ Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ L 148 of 21.6.1996, p. 1).

⁽³⁾ Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208 of 24.7.1992, p. 1).

Action brought on 31 December 2002 by Kingdom of Spain against Commission of the European Communities

(Case C-468/02)

(2003/C 55/21)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 31 December 2002 by the Kingdom of Spain, represented by Lourdes Fraguas Gadea, Abogado del Estado, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul Decision 2002/881/EC ⁽¹⁾ so far as concern the financial corrections imposed on the Kingdom of Spain
2. order the defendant institution to pay the costs.

Pleas in law and main arguments

(Public storage of olive oil, financial correction of EUR 37 621,55)

The successful tenderer fulfilled its obligation to communicate its refusal to take over the lot, informing and notifying the Commission thereof in fulfilment of its obligation under Article 10 of Regulation No 561/99⁽²⁾.

Secondly, return of the securities did not result in any loss to the Community budget since the oil in question continued to form part of the intervention stock, subject to that body of rules and available to cover future operations, just as if refusal had been communicated by the successful tenderer directly to the Commission.

(Areas harvested for pasture by the paying agency of Castile and Leon, financial correction of EUR 1 229 951,00)

The corrections relating to the 1998 and 1999 harvests are the result of applying 2 % to the result of dividing the total declared area in cases where the discrepancies detected during administrative checks were in excess of 3 % or 2 hectares into the total declared area.

Spain does not agree with the Commission on the proposed financial correction because, first, Community legislation⁽³⁾ does not mean that the results of the administrative checks should be included in the risk analysis when selecting the checks to be made on the spot and, secondly, handling of the applications for 'area' aid makes it impossible to carry out all the administrative checks before on-the-spot checks are carried out.

Nonetheless, in the Autonomous Community of Castile and Leon cases in which irregularities have been detected in the administrative checks carried out the previous year are systematically included as a risk criterion when selecting the sample of cases for on-the-spot checks.

⁽¹⁾ Commission Decision 2002/881/EC of 5 November 2002 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), OJ 2002 L 306, p. 26.

⁽²⁾ Commission Regulation (EC) No 561/1999 of 15 March 1999 on the opening of a standing invitation to tender for the sale of olive oil held by the Spanish intervention agency, OJ L 69, 16.1.1999, p. 13.

⁽³⁾ Article 6(4) of Commission Regulation (EEC) No 3887/92 of 23 December 1992, OJ 1992 L 391, p. 36.

Appeal brought on 23 December 2002 by the European Broadcasting Union (EBU) against the judgment delivered on 8 October 2002 by the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities in Joined Cases T-185/00, T-216/00, T-299/00 and T-300/00 between Métropole télévision SA (M6), Antena 3 de Televisión, SA, Gestevisión Telecinco, SA, SIC-Sociedade Independente de Comunicação, SA, supported by Deutsches SportFernsehen GmbH (DSF) and Reti Televisive Italiane Spa (RTI) and Commission of the European Communities, supported by European Broadcasting Union (EBU) and Radiotelevisión Española (RTVE)

(Case C-470/02 P)

(2003/C 55/22)

An appeal against the judgment delivered on 8 October 2002 by the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities in Joined Cases T-185/00, T-216/00, T-299/00 and T-300/00 between Métropole télévision SA (M6), Antena 3 de Televisión, SA, Gestevisión Telecinco, SA, SIC-Sociedade Independente de Comunicação, SA, supported by Deutsches SportFernsehen GmbH (DSF) and Reti Televisive Italiane Spa (RTI) and Commission of the European Communities, supported by European Broadcasting Union (EBU) and Radiotelevisión Española (RTVE) was brought before the Court of Justice of the European Communities on 23 December 2002 by the European Broadcasting Union (EBU), represented by D. Waelbroeck and M. Johnsson, lawyers.

The appellant claims that the Court should:

- set aside the judgment of the Court of First Instance of the European Communities of 8 October 2002 in Joined Cases T-185/00, T-216/00, T-299/00 and T-300/00, Métropole Télévision and Others v Commission;
- send the case back to the Court of First Instance so that it may rule on the other pleas in law raised by the applicants on which it has not yet ruled;
- reserve the costs.

Pleas in law and main arguments

By basing its reasoning on arguments that were not raised by the applicants, the Court of First Instance has ruled *ultra petita* and infringed the rights of the defence of the EBU and of the Commission. The decisive element for the Court of First Instance is the application of the sub-licensing scheme for 'live

broadcast of un-used Eurovision rights', when such a ground was not argued before it. By so doing, the Court of First Instance deprived the EBU of its right, as a party to the proceedings, to refute the points accepted by the Court. By thus challenging a relatively marginal but no less essential aspect such as the sub-licensing scheme rather than the Eurovision system itself or the substance of the sub-licensing scheme introduced at the behest of the Commission, the Court of First Instance in fact requires the EBU to adjust that scheme in order to grant access to non-members to rights which the latter have not asked for nor, doubtless, wish to ask for.

Reference for a preliminary ruling by the Oberlandesgericht Düsseldorf by order of that Court of 5 December 2002 in the case of GAT, Gesellschaft für Antriebstechnik mbH & Co. KG against LuK Lamellen und Kupplungsbau Beteiligungs KG

(Case C-4/03)

(2003/C 55/23)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht Düsseldorf (Higher Regional Court Düsseldorf) of 5 December 2002, received at the Court Registry on 6 January 2003, for a preliminary ruling in the case of GAT, Gesellschaft für Antriebstechnik mbH & Co. KG against LuK Lamellen und Kupplungsbau Beteiligungs KG on the following question:

Is Article 16(4) of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ('the Brussels Convention') to be interpreted as meaning that the exclusive jurisdiction conferred by that provision on the courts of the Contracting State in which the deposit or registration of a patent has been applied for, has taken place or is under the terms of an international convention deemed to have taken place only applies if proceedings (with erga omnes effect) are brought to declare the patent invalid or are proceedings deemed to be concerned with the validity of patents within the meaning of the aforementioned provision where the defendant in a patent infringement action or the claimant in a declaratory action to establish that a patent is not infringed pleads that the patent is invalid or a nullity and that there is also no patent infringement for that reason, irrespective of whether the court seised of the proceedings considers the plea to be substantiated or unsubstantiated and of when the plea is raised during the course of the proceedings.

Action brought on 7 January 2003 by the Hellenic Republic against the Community of the European Communities

(Case C-5/03)

(2003/C 55/24)

An action against the Commission of the European Communities was brought on 7 January 2003 by the Hellenic Republic, represented by Stilianis Xharitakis and Eleni Svolopoulou, members of the State legal service, with an address for service in Luxembourg at the Greek embassy, 27 Rue Marie-Adélaïde.

The applicant claims that the Court should:

- Annul, or amend, Decision E/2002/4127 concerning the exclusion from Community financing of certain expenditure incurred by the Member States within the context of the EAGGF — Guarantee section.

Pleas in law and main arguments

The financial corrections called in question by the Hellenic Republic concern fruit and vegetables and financing for beef cattle and goats and sheep.

As regards fruit and vegetables, the Hellenic Republic maintains that the 2 % correction imposed for the years 1997 to 2001 concern non-existent or wholly isolated infringements of the Community rules and must be annulled for being adopted (a) on the basis of an erroneous interpretation and a misapplication of the provisions of Regulation No 729/70, as amended; (b) on the basis of inadequate reasoning; (c) following a misappraisal of the factual circumstances; (d) on the basis of a manifest infringement of the limits of its margin of discretion, and (e) of the principle of proportionality.

As regards financing for beefcattle and goats and sheep, the applicant maintains that the Commission did not provide adequate evidence of the degree of risk to which, in its estimation, EAGGF Funds were exposed so as to ensure that the amount of the corrections proposed was commensurate with that risk. In its view the financial corrections in the amount of 10 % or 5 % imposed in those sectors should be set aside or else reduced to 2 %.

Action brought on 10 January 2003 by the Commission of the European Communities against the Grand-Duchy of Luxembourg

(Case C-9/03)

(2003/C 55/25)

An action against the Grand-Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 10 January 2003 by the Commission of the European Communities, represented by D. Martin and M. França, acting as Agents, with an address for service in Luxembourg.

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

- Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests⁽¹⁾, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;
- Order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for transposition laid down in Article 8 of the directive expired on 1 January 2001.

⁽¹⁾ OJ 1998 L 166, p. 51.

Reference for a preliminary ruling by the Raad van State, Afdeling Administratie by order of that Court of 9 December 2002 in the case of NV Boss Pharma against Belgian State, represented by the Minister for Economic Affairs

(Case C-11/03)

(2003/C 55/26)

Reference has been made to the Court of Justice of the European Communities by order of the Raad van State, Afdeling Administratie (Council of State, Administrative Division) of 9 December 2002, received at the Court Registry on 13 January 2003, for a preliminary ruling in the case of NV Boss Pharma against Belgian State, represented by the Minister for Economic Affairs on the following question:

On a proper interpretation, does Article 2(2) of Council Directive 89/105/EEC⁽¹⁾ of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal

products for human use and their inclusion in the scope of national health insurance systems, under which a decision of the competent national authority refusing permission to market a medicinal product at the price proposed by the applicant must contain a statement of reasons 'based on objective and verifiable criteria', mean that the competent authority under domestic Belgian legislation must lay down in advance by way of a generally applicable provision the criteria to be taken into consideration by the authority ruling on the individual application, or is the decision-making authority permitted to state in each individual decision the objective and verifiable criteria on which it based its refusal, in that case, to grant the application, or is it sufficient for the authority to provide a formal statement of the reasons for its individual decision by citing actual evidence from the file and for the courts then to review whether that evidence constitutes an objective and verifiable criterion?

⁽¹⁾ OJ L 40 of 11.02.1989, p. 8.

Action brought on 14 January 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-15/03)

(2003/C 55/27)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 14 January 2003 by the Commission of the European Communities, represented by Dr Jürgen Grunwald, legal adviser of the European Commission and Minas Konstantinidis, of its legal service, with an address for service at the office of Luis Escobar Guerrero, of the Commission's legal service, Wagner Centre C 254, Luxembourg-Kirchberg.

The applicant claims that the Court should:

1. Declare that the Republic of Austria has infringed its obligations under Article 3(1) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils⁽¹⁾ by failing to take the legal and practical measures necessary to ensure that priority is given to the treatment by way of regeneration of waste oils, so long as that is not precluded by technical, financial and organisational constraints.
2. Order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Republic of Austria neither transposed the principle of priority contained in Article 3(1) of Directive 75/439/EEC in the version contained in Directive 87/101/EEC⁽²⁾ nor demonstrated that such priority was precluded by technical, financial or organisational constraints.

Priority in favour of 'regeneration' or (in Austrian terminology) 'recycling' as opposed to 'combustion' or (in Austrian terminology) 'energy conversion' cannot be inferred from the Austrian legal provisions. Rather those provisions refer to recycling and energy conversion in the same context without according priority to one of the two methods of treatment over the other.

The arguments relied on by the Republic of Austria in order to substantiate the existence of preclusive technical, financial and organisational constraints, that is to say that owing to the small quantity of waste oil regeneration in Austria is uneconomical; that for ecological reasons no clear advantages is to be gained from recycling; that there is no reprocessing plant in Austria for waste oils, are in the Commission's view unconvincing since they merely seek to perpetuate in Austria the existing status quo and do not indicate that any endeavours have been made in order to meet the directive's requirements.

⁽¹⁾ OJ 1975 L 194, p. 31.

⁽²⁾ OJ 1987 L 42, p. 43.

Reference for a preliminary ruling by the Hovrätten över Skåne och Blekinge by order of that Court of 19 December 2002 in the case of Peak Holding AB against Axolin-Elinor AB (formerly Handelskompaniet Factory Outlet i Löddeköpinge AB)

(Case C-16/03)

(2003/C 55/28)

Reference has been made to the Court of Justice of the European Communities by order of the Hovrätten över Skåne och Blekinge (Court of Appeal for Skåne and Blekinge) of 19 December 2002, received at the Court Registry on 15 January 2003, for a preliminary ruling in the case of Peak Holding AB against Axolin-Elinor AB (formerly Handelskompaniet Factory Outlet i Löddeköpinge AB) on the following questions:

1. Are goods to be regarded as having been put on the market by virtue of the fact that the trademark owner:
 - (a) has imported them into the common market and paid import duty on them, with the intention that they be sold there?

- (b) has offered them for sale in the trademark owner's own shops or those of a related company within the common market but a sale of the goods has not taken place?

2. If goods have been put on the market under one of the above alternatives and exhaustion of the trademark right thereby occurs without there having been a sale of the goods, can a trademark owner interrupt exhaustion by returning the goods to a warehouse?
3. Are goods to be regarded as having been put on the market by virtue of the fact that they have been sold by the trademark owner to another company in the internal market, if, upon the sale, the trademark owner imposed a restriction on the buyer under which he was not entitled to resell the goods in the common market?
4. Is the answer to question 3 affected if the trademark owner, upon selling the consignment to which the goods belonged, gave the buyer permission to resell a small part of the goods in the common market but did not specify the individual goods to which that permission applied?

Reference for a preliminary ruling by the Conseil d'État, section d'administration (Belgium) by judgment of that Court of 27 December 2002 in the case of Fabricom SA against l'État belge

(Case C-21/03)

(2003/C 55/29)

Reference has been made to the Court of Justice of the European Communities by judgment of the Conseil d'État, section d'administration (Council of State, administrative section) (Belgium) of 27 December 2002, received at the Court Registry on 22 January 2003, for a preliminary ruling in the case of Fabricom SA against l'État belge (Belgian State) on the following questions:

1. Do Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors⁽¹⁾, and in particular Article 4(2) thereof, and Directive 98/4/EC⁽²⁾ of 16 February 1998 of the European Parliament and of the Council amending Directive 93/38/EEC, in conjunction with the principle of proportionality, freedom of trade and industry and respect for the law of property guaranteed in particular by the protocol of 20 March 1992 to the Convention for the Protection of Human rights and Fundamental

Freedoms, preclude the barring of the submission of an application to participate in or a tender for a public contract for works, supplies or services by any person who has been responsible for research, testing, study or development in respect of those works, supplies or services where that person has not been given an opportunity to prove that, in the circumstances of the case, the experience he has acquired could not distort competition?

2. Would the answer to the preceding question be different if the abovementioned directives, considered in conjunction with the same principle, freedom and law, were interpreted as covering only private undertakings or undertakings which had supplied gratuitous services?
3. Can Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors⁽³⁾, and in particular Articles 1 and 2 thereof, be interpreted as meaning that a contracting entity may exclude, up to the end of the process of evaluation of the tenders, from participation in the procedure or submission of a tender, an undertaking connected to any person who has been responsible for the research, testing, study or development in respect of the works, supplies or services, although when questioned in that regard by the contracting authority that undertaking declares that it has gained therefrom no unfair advantage of a nature such as to distort the normal conditions of competition?

⁽¹⁾ OJ L 199 of 09.08.1993, p. 84.

⁽²⁾ OJ L 101 of 01.04.1998, p. 1.

⁽³⁾ OJ L 76 of 23.03.1992, p. 14.

Removal from the register of Case C-304/99⁽¹⁾

(2003/C 55/31)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-304/99 (Reference for a preliminary ruling by the Tribunale di Brescia): F. Apollonio & C. SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 333 of 20.11.1999.

Removal from the register of Case C-305/99⁽¹⁾

(2003/C 55/32)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-305/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Leglerdata SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 333 of 20.11.1999.

Removal from the register of Case C-303/99⁽¹⁾

(2003/C 55/30)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-303/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Markfactor SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 333 of 20.11.1999.

Removal from the register of Case C-358/99⁽¹⁾

(2003/C 55/33)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-358/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Tecnologie Meccaniche Avanzate Srl (TMA) v Ministero delle Finanze.

⁽¹⁾ OJ C 352 of 4.12.1999.

Removal from the register of Case C-359/99⁽¹⁾

(2003/C 55/34)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-359/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Autogolf Srl v Ministero delle Finanze.

⁽¹⁾ OJ C 352 of 4.12.1999.

Removal from the register of Case C-486/99⁽¹⁾

(2003/C 55/37)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-486/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Flos SpA and Others v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-360/99⁽¹⁾

(2003/C 55/35)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-360/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Union Factor SpA and Others v Ministero delle Finanze.

⁽¹⁾ OJ C 352 of 4.12.1999.

Removal from the register of Case C-487/99⁽¹⁾

(2003/C 55/38)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-487/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Petra SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-485/99⁽¹⁾

(2003/C 55/36)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-485/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Gottinghen SpA and Others v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-488/99⁽¹⁾

(2003/C 55/39)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-488/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Supercar Srl v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-489/99⁽¹⁾

(2003/C 55/40)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-489/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Immobiliare Flavia Srl, in liquidation, v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-492/99⁽¹⁾

(2003/C 55/43)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-492/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Colleoni Giacomo e Figli Srl v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-490/99⁽¹⁾

(2003/C 55/41)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-490/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Azzini SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-134/00⁽¹⁾

(2003/C 55/44)

By order of 11 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-134/00 (Reference for a preliminary ruling by the Tribunale di Trento): Ministry of Finance v Merkur Chemical s.r.l..

⁽¹⁾ OJ C 176 of 24.06.2000.

Removal from the register of Case C-491/99⁽¹⁾

(2003/C 55/42)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-491/99 (Reference for a preliminary ruling by the Tribunale di Brescia): Falegnameria Carminati di Franco e Domenico Carminati Snc v Ministero delle Finanze.

⁽¹⁾ OJ C 79 of 18.03.2000.

Removal from the register of Case C-88/01⁽¹⁾

(2003/C 55/45)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-88/01 (Reference for a preliminary ruling by the Tribunale di Brescia): Agricola Torriani Sas v Ministero delle Finanze.

⁽¹⁾ OJ C 118 of 21.04.2001.

Removal from the register of Case C-89/01 ⁽¹⁾

(2003/C 55/46)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-89/01 (Reference for a preliminary ruling by the Tribunale di Brescia): Finanziaria Immobiliare Perugino SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 118 of 21.4.2001.

Removal from the register of Case C-260/01 ⁽¹⁾

(2003/C 55/49)

By order of 11 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-260/01: European Parliament v Council of the European Union.

⁽¹⁾ OJ C 245 of 1.9.2001.

Removal from the register of Case C-90/01 ⁽¹⁾

(2003/C 55/47)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-90/01 (Reference for a preliminary ruling by the Tribunale di Brescia): San Marco SpA and Others v Ministero delle Finanze.

⁽¹⁾ OJ C 118 of 21.4.2001.

Removal from the register of Case C-310/01 ⁽¹⁾

(2003/C 55/50)

By order of 14 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-310/01 (Reference for a preliminary ruling by the Consiglio di Stato): Comune di Udine, AMGA — Azienda Multiservizi s.p.a. v Diddi Dino Figli s.r.l, A.G.E.S.I. — Associazione Nazionale Imprese Gestione.

⁽¹⁾ OJ C 289 of 13.10.2001.

Removal from the register of Case C-231/01 ⁽¹⁾

(2003/C 55/48)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-231/01 (Reference for a preliminary ruling by the Tribunale di Brescia): El. Da Srl v Ministero delle Finanze.

⁽¹⁾ OJ C 227 of 11.8.2001.

Removal from the register of Case C-346/01 ⁽¹⁾

(2003/C 55/51)

By order of 20 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-346/01: Commission of the European Communities v Federal Republic of Germany.

⁽¹⁾ OJ C 331 of 24.11.2001.

Removal from the register of Case C-347/01 ⁽¹⁾

(2003/C 55/52)

By order of 28 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-347/01: Commission of the European Communities v Federal Republic of Germany.

⁽¹⁾ OJ C 331 of 24.11.2001.

Removal from the register of Case C-390/01 ⁽¹⁾

(2003/C 55/55)

By order of 12 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-390/01: Commission of the European Communities v Portuguese Republic.

⁽¹⁾ OJ C 348 of 8.12.2001.

Removal from the register of Case C-377/01 ⁽¹⁾

(2003/C 55/53)

By order of 11 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-377/01: Commission of the European Communities v Kingdom of Belgium.

⁽¹⁾ OJ C 317 of 10.11.2001.

Removal from the register of Case C-21/02 ⁽¹⁾

(2003/C 55/56)

By order of 13 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-21/02: Commission of the European Communities v Italian Republic.

⁽¹⁾ OJ C 68 of 16.03.2002.

Removal from the register of Case C-389/01 ⁽¹⁾

(2003/C 55/54)

By order of 12 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-389/01: Commission of the European Communities v Portuguese Republic.

⁽¹⁾ OJ C 348 of 8.12.2001.

Removal from the register of Case C-88/02 ⁽¹⁾

(2003/C 55/57)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-88/02 (Reference for a preliminary ruling by the Tribunale di Brescia): Dolomite italiana SpA (SDI) v Ministero delle Finanze.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-89/02 ⁽¹⁾

(2003/C 55/58)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-89/02 (Reference for a preliminary ruling by the Tribunale di Brescia): Dolomite Franchi SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-97/02 ⁽¹⁾

(2003/C 55/61)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-97/02 (Reference for a preliminary ruling by the Tribunale di Brescia): Rezzola Scavi Srl v Ministero delle Finanze.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-95/02 ⁽¹⁾

(2003/C 55/59)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-95/02 (Reference for a preliminary ruling by the Tribunale di Brescia): Ugine Srl v Ministero delle Finanze.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-98/02 ⁽¹⁾

(2003/C 55/62)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-98/02 (Reference for a preliminary ruling by the Tribunale di Brescia): Villa Gemma SpA v Ministero delle Finanze.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-96/02 ⁽¹⁾

(2003/C 55/60)

By order of 15 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-96/02 (Reference for a preliminary ruling by the Tribunale di Brescia): TOMAR Srl v Ministero delle Finanze.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-106/02 ⁽¹⁾

(2003/C 55/63)

By order of 12 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-106/02: Commission of the European Communities v Federal Republic of Germany.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-108/02⁽¹⁾

(2003/C 55/64)

By order of 12 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-108/02: Commission of the European Communities v Federal Republic of Germany.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-120/02⁽¹⁾

(2003/C 55/65)

By order of 12 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-120/02: Commission of the European Communities v Grand Duchy of Luxembourg.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-129/02⁽¹⁾

(2003/C 55/66)

By order of 17 December 2002 the President of the Court of Justice of the European Communities ordered the removal

from the register of Case C-129/02: Commission of the European Communities v French Republic.

⁽¹⁾ OJ C 131 of 01.06.2002.

Removal from the register of Case C-274/02⁽¹⁾

(2003/C 55/67)

By order of 5 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-274/02: Commission of the European Communities v French Republic.

⁽¹⁾ OJ C 233 of 28.09.2002.

Removal from the register of Case C-356/02⁽¹⁾

(2003/C 55/68)

By order of 12 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-356/02 (Reference for a preliminary ruling by the Tribunal du Travail de Nivelles): Anne Hennecart v Office National de l'Emploi.

⁽¹⁾ OJ C 289 of 23.11.2002.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 8 January 2003

in Joined Cases T-94/01, T-152/01 and T-286/01: Astrid Hirsch and Others v European Central Bank⁽¹⁾

(Officials — Members of staff of the European Central Bank — Article 19 of the Conditions of Employment — Education allowance — Refusal to grant it to members of staff not entitled to the expatriation allowance under Article 17 of those conditions — Principle of non-discrimination)

(2003/C 55/69)

(Language of the case: German and English)

In Joined Cases T-94/01, T-152/01 and T-286/01, Astrid Hirsch, member of staff of the European Central Bank, resident in Eppstein-Niederjosbach, Germany, represented by G. Vandersanden and L. Levi, lawyers, Emanuele Nicastro, member of staff of the European Central Bank, resident in Frankfurt on Main, Germany, represented by N. Pflüger, R. Steiner and S. Mittländer, lawyers, and Johannes Priesemann, member of staff of the European Central Bank, resident in Frankfurt on Main, Germany, represented by N. Pflüger, lawyer, v European Central Bank (Agents: V. Saintot, T. Gilliams and B. Wägenbaur): Application for annulment, in Case T-94/01, of the decision of the European Central Bank of 25 September 2000 refusing to grant the applicant an education allowance to cover the costs of attendance by her son at the International School Frankfurt, in Case T-152/01, of the decision of the European Central Bank of 15 February 2001 refusing to grant the applicant an education allowance in respect of his two sons and, in Case T-286/01, of the decision of the European Central Bank of 6 June 2001 refusing to grant the applicant an education allowance in respect of his children, the Court of First Instance (Third Chamber), composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 8 January 2003, in which it:

1. Joins Cases T-94/01, T-152/01 and T-286/01 for the purposes of judgment;
2. In Case T-94/01:
 - Annuls the decision of the European Central Bank of 25 September 2000;
 - Dismisses the remainder of the action;

— Orders the European Central Bank to pay the costs;

3. In Case T-152/01:

- Annuls the decision of the European Central Bank of 15 February 2001;
- Dismisses the remainder of the action;
- Orders the European Central Bank to pay the costs;

4. In Case T-286/01:

- Annuls the decision of the European Central Bank of 6 June 2001;
- Dismisses the remainder of the action;
- Orders the European Central Bank to pay the costs.

⁽¹⁾ OJ C 186 of 30.06.2001, C 275 of 29.09.2001 and C 31 of 02.02.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 October 2002

in Case T-310/01: Schneider Electric SA v Commission of the European Communities⁽¹⁾

(Competition — Regulation (EEC) No 4064/89 — Decision declaring a concentration to be incompatible with the common market — Action for annulment)

(2003/C 55/70)

(Language of the case: French)

In Case T-310/01: Schneider Electric SA, established in Rueil-Malmaison (France), represented by F. Herbert, J. Steenbergen and M. Pittie, lawyers, supported by French Republic (Agents: G. de Bergues and F. Million), against Commission of the European Communities (Agents: P. Oliver, P. Hellström and F. Lelièvre), supported by Comité Central d'Entreprise de la SA Legrand, Comité Européen du Groupe Legrand, established in Limoges, represented by H. Masse-Dessen, lawyer — application for annulment of Commission Decision C(2001)3014 final declaring a concentration to be incompatible with the common market and the EEA Agreement (Case COMP/M.2283

— Schneider-Legrand) — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 22 October 2002, in which it:

1. *Annuls Commission Decision C(2001)3014 final of 10 October 2001 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case COMP/M.2283 — Schneider-Legrand);*
2. *Orders the Commission to bear its own costs and, in addition, to pay those incurred by Schneider Electric SA;*
3. *Orders the Comité Central d'Entreprise de SA Legrand and the Comité Européen du Groupe Legrand to bear their own costs;*
4. *Orders the French Republic to bear its own costs.*

(¹) OJ C 56 of 2.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 October 2002

in Case T-77/02: Schneider Electric SA v Commission of the European Communities (¹)

(Competition — Regulation No 4064/89 — Decision ordering separation of undertakings — Article 8(4) of Regulation No 4064/89 — Illegality of the decision declaring a concentration incompatible with the common market — Ensuing illegality of the divestiture decision)

(2003/C 55/71)

(Language of the case: French)

In Case T-77/02: Schneider Electric SA, established in Rueil-Malmaison (France), represented by A. Winckler and É. de La Serre, lawyers, against Commission of the European Communities (Agents: P. Oliver, P. Hellström and F. Lelièvre), supported by Legrand SA, established in Limoges (France), represented by H. Calvet, lawyer, Comité central d'entreprise de la SA Legrand, Comité européen du Groupe Legrand, established in Limoges, represented by H. Masse-Dessen, lawyer — application for annulment of Commission Decision C (2002) 360 final of 30 January 2002, ordering a separation of undertakings (Case COMP/M.2282 — Schneider-Legrand) — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 22 October 2002, in which it:

- (1) *Annuls Commission Decision C (2002) 360 final of 30 January 2002 ordering the separation of undertakings (Case COMP/M.2283 — Schneider — Legrand);*
- (2) *Orders the Commission to bear its own costs and to pay the costs incurred by the applicant, including the costs of the interlocutory proceedings in Case T-77/02 R;*
- (3) *Orders Legrand SA, the Comité Central d'Entreprise de la SA Legrand and the Comité Européen du Groupe Legrand to bear their own costs.*

(¹) OJ C 118 of 18.5.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 13 December 2002

in Case T-112/02: Gustaaf Van Dyck v Commission of the European Communities (¹)

(Officials — Classification of grade upon recruitment — Application for reclassification — New fact — Meaning)

(2003/C 55/72)

(Language of the case: Dutch)

In Case T-112/02, Gustaaf Van Dyck, an official of the Commission of the European Communities, resident in Wuustwezel (Belgium), represented by M.E. Storme and A. Gobien, avocats, against the Commission of the European Communities (agents: F. Clotuche-Duvieusart and H.M.H. Speyart), seeking to set aside the Commission's refusal to accede to the applicant's request for reclassification, the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, and R.M. Moura Ramos and H. Legal, Judges; Registrar: H. Jung, made an order on 13 December 2002 in which it:

- (1) *Dismissed the application as inadmissible.*
- (2) *Ordered the parties to bear their own costs.*

(¹) OJ 2002 C 131, p. 26.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 3 December 2002

in Case T-181/02 R: Neue Erba Lautex GmbH Weberei und Veredlung v Commission of the European Communities

(Procedure for interim relief — State aid — Aid granted to the new Länder — Rescue and restructuring aid — Duty to recover — Urgency — Balance of interests)

(2003/C 55/73)

(Language of the case: German)

In Case T-181/02 R: Neue Erba Lautex GmbH Weberei und Veredlung, a company established in Neugersdorf, Germany, represented by Professor U. Ehrlicke, with an address for service in Luxembourg, supported by Freistaat Sachsen, represented by M. Schütte, Lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: V. Kreuschitz, V. di Bucci and T. Scharf) — application for a stay of execution of the Commission's Decision 2002/783/EC of 12 March 2002 on State aid C 62/2001 (ex NN 8/2000) implemented by Germany for Neue Erba Lautex GmbH and Erba Lautex GmbH in bankruptcy (OJ 2002 L 282, p. 48) and, in the alternative, an application for staged reimbursement of the aid in question — the President of the Court of First Instance has made an order on 3 December 2002, in which he:

1. *Dismissed the application for interim measures;*
2. *Ordered that costs be reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 13 December 2002

in Case T-234/02 R: Christos Michael v Commission of the European Communities

(Interim measures — Officials — Appointment decisions — Admissibility — Urgency — Lack of urgency)

(2003/C 55/74)

(Language of the case: Greek)

In Case T-234/02 R, Christos Michael, an official of the Commission of the European Communities, resident in Brus-

sels, represented by C. Tagaras, avocat, against the Commission of the European Communities (agents: H. Tserepa-Lacombe and F. Clotuche-Duvieusart, seeking the suspension of operation of decisions appointing a Deputy Head of Unit of Unit DG FC A.01 and Head of the Sector 'Politiques internes et agences' of that unit, the President of the Court of First Instance made an order on 13 December 2002 in which it:

- (1) *Dismissed the application for interim measures.*
- (2) *Reserved the costs.*

Action brought on 29 November 2002 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-356/02)

(2003/C 55/75)

(Language of the case to be decided in accordance with Article 131(2) of the Rules of Procedure Language in which the application was drafted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 29 November 2002 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG, Bremen (Germany), represented by U. Sander also a party before the Board of Appeal: KRAFFT, S.A., Andoain, Spain

The applicant claims that the Court should:

- partially annul the decision of the Fourth Board of Appeal of 4 September 2002 inasmuch as the appeal of KRAFFT S.A. was upheld and inasmuch as the applicant's appeal was not allowed
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:

The applicant

Community trade mark concerned:

Word mark 'VITAKRAFT' for goods in Classes 1, 3, 4, 12 and 19 (inter alia, Chemicals used in industry, science, photography, as well as in agriculture, horticulture and forestry, Bleaching preparations and other substances for laundry use, Industrial oils and greases, Vehicles and Building materials (non metallic)) — Application No 303909

Owner of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings

KRAFFT, S.A.

Trade mark or sign asserted by way of opposition in the opposition proceedings:

The Spanish figurative marks 'krafft' for goods in Classes 1, 3, 4, 12 and 19 (inter alia, Chemicals used in industry, science, photography, as well as in agriculture, horticulture and forestry, Bleaching preparations and other substances for laundry use, Industrial oils and greases, Vehicles and Building materials (non metallic))

Decision of the Opposition Division:

Refusal of registration as regards Classes 1 and 3 and dismissal of the opposition in so far as it concerned Classes 4, 12 and 19

Decision of the Board of Appeal:

Dismissal of KRAFFT S.A.'s appeal with regard to the following goods in the application, 'candles, wicks' in Class 4, 'Vehicles, apparatus for locomotion by land, air or water' in Class 12 and 'non-metallic transportable buildings; monuments, not of metal' in Class 19 and dismissal of the applicant's appeal in respect of all goods in the application in Classes 1 and 3

Grounds of claim:

- Infringement of Article 43(2) of Regulation (EC) No 40/94 ⁽¹⁾ and Rule 22(2) of the implementing Regulation ⁽²⁾;
- Infringement of Article 8(1)(b) of Regulation (EC) No 40/94.

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

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

Action brought on 27 November 2002 by Wolf-Dieter Graf Yorck von Wartenburg against the Commission of the European Communities

(Case T-360/02)

(2003/C 55/76)

(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 27 November 2002 by Wolf-Dieter Graf Yorck von Wartenburg, Wittibreut, Germany, represented by H.-H. Heyland, Rechtsanwalt, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Declare that, in amending the decision of 22 June 2000 and in its conduct of the complaint procedure R/332/2002 which followed, the Commission disregarded the prescribed legal and administrative provisions inasmuch as it announced a change in the decision of 22 June 2000, carried out no hearing with representation of the parties following an objection by the applicant and the direct beneficiaries of the decision, ignored the formal requirements for attachment under German and Belgian law, even though these had been notified to it in writing, and instead instructed bailiff M to draw up a partition scheme, which it received and, without giving reasons, then failed to carry out;

- Order the Commission to carry out the partition scheme of bailiff M of 19 August 2002, at least in relation to the amount of his pension, which under Belgian law has protection against the seizure order of bailiff V of 18 March 2002;
- Order the Commission to compensate the applicant for the loss (including that incurred through interest payments on bridging loans and non-material damage at the discretion of the court, not being less than EUR 100, together with costs incurred in enforcing his rights) arising from the fact that, since May 2002, his pension has been entirely deposited with bailiff M, although the Commission is or must be aware that such conduct is unlawful, the amount of compensation for material damage on account of the continuing illegality to be determined in the event of the declaration being granted.

Pleas in law and main arguments

The applicant, a former temporary servant now in retirement, draws a pension from the Communities. He claims that the Commission has unlawfully made maintenance payments out of his pension to his former wives.

The applicant argues that, in making deductions from his pension, the Commission disregarded the prescribed legal and administrative rules and infringed his right to a proper hearing.

The applicant claims that the Court should:

- annul the decision of the defendant of 25 September 2002 in the appeal procedure R 338/2001-1;
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark applied for: Word mark 'SnTEM' — Application No 1421734

Goods or services: Goods in Class 6 (inter alia, metallic semi-finished products in the form of sheets, trips, wires, tubes, sections and rods)

Decision before the Board of Appeal: Refusal of registration by the examiner

Decision of the Board of Appeal: Dismissal of appeal

Pleas in law: — Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 since the mark is not descriptive.

Action brought on 9 December 2002 by Wieland-Werke AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-367/02)

(2003/C 55/77)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 9 December 2002 by Wieland-Werke AG, Ulm (Germany), represented by S. Gruber and F. Graf von Stosch, lawyers.

Action brought on 9 December 2002 by Wieland-Werke AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-368/02)

(2003/C 55/78)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 9 December 2002 by Wieland-Werke AG, Ulm (Germany), represented by S. Gruber and F. Graf von Stosch, lawyers.

The applicant claims that the Court should:

- annul the decision of the defendant of 25 September 2002 in the appeal procedure R 337/2001-1;
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark applied for: Word mark 'SnPUR' — Application No 1421775

Goods or services: Goods in Class 6 (inter alia, metallic semi-finished products in the form of sheets, trips, wires, tubes, sections and rods)

Decision before the Board of Appeal: Refusal of registration by the examiner

Decision of the Board of Appeal: Dismissal of appeal

Pleas in law: — Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 since the mark is not descriptive.

Pleas in law and main arguments

Community trade mark applied for: Word mark 'SnMIX' — Application No 1422294

Goods or services: Goods in Class 6 (inter alia, metallic semi-finished products in the form of sheets, trips, wires, tubes, sections and rods)

Decision before the Board of Appeal: Refusal of registration by the examiner

Decision of the Board of Appeal: Dismissal of appeal

Pleas in law: — Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 since the mark is not descriptive.

Action brought on 12 December 2002 by Alpenhain-Camembert-Werk Gottfried Hain GmbH & Co. KG and six other undertakings against the Commission of the European Communities

(Case T-370/02)

(2003/C 55/80)

(Language of the Case: German)

Action brought on 9 December 2002 by Wieland-Werke AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-369/02)

(2003/C 55/79)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 9 December 2002 by Wieland-Werke AG, Ulm (Germany), represented by S. Gruber and F. Graf von Stosch, lawyers.

The applicant claims that the Court should:

- annul the decision of the defendant of 25 September 2002 in the appeal procedure R 335/2001-1;
- order the defendant to pay the costs.

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 December 2002 by Alpenhain-Camembert-Werk Gottfried Hain GmbH & Co. KG, established in Lehen/Pfaffing (Germany), Bayerland eG, established in Nuremberg (Germany), Bergpracht-Milchwerk GmbH & Co, established in Tettwang (Germany), Hochland AG, established in Heimenkirch (Germany), Käserei Champignon Hofmeister GmbH & Co. KG, established in Lauben (Germany), Milchwerk Crailsheim-Dinkelsbühl eG, established in Crailsheim (Germany) and Rücker GmbH, established in Aurich (Germany), represented by J. Salzwedel and M.J. Werner, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

- annul the inclusion, pursuant to Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta', of the name 'Feta' (PDO) as a protected designation of origin (PDO) in the register of protected designations of origin;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicants, the main producers of the cow-milk feta produced in Germany, seek the annulment of Commission Regulation (EC) No 1829/2002 ⁽¹⁾.

The applicants submit first of all that the information in Greece's notification of 17 January 1995 does not satisfy the formal requirements for the inclusion of 'Feta' in the list of protected designations of origin. That is so because Greece's application was out of time, precluding the Commission from registering 'Feta' under the shortened procedure pursuant to Article 17 of Regulation (EEC) No 2081/92 ⁽²⁾. Furthermore, it is not possible for the name 'Feta' to be protected under Article 17 since Greece did not introduce protection of feta at national level until 11 January 1994, that is to say almost six months after Regulation (EEC) No 2081/92 entered into force.

The applicants further submit that the contested regulation does not comply in the slightest with the grounds of the decision of the Court of Justice of 16 March 1999 ⁽³⁾, according to which the Commission must accord decisive importance to the markets which, at the time of Greece's application, had already lawfully developed in the Member States and throughout the world. Moreover, the product 'feta' is not capable of being protected since it is not a protected designation of origin but rather a generic name. Under Article 3(1) of Regulation No 2081/92 generic names cannot be registered. Furthermore, feta is a product which originates not just from Greece, but from the Mediterranean and Balkan region. Feta has been produced and consumed in considerable quantities for decades in six Member States. In addition, the burden rests with Greece to prove that feta is not a generic name; it has not adduced evidence discharging this burden.

The applicants also argue that the requirements of Articles 2 and 4 of Regulation No 2081/92 are not met. Feta is not a traditional geographic name. The name 'feta' comes from Italian and means 'slice', and was a generic name before the adoption of Regulation No 2081/92 and thus allowed to be used in intra-Community trade between Member States. Finally the registration of 'Feta' infringes the Community-law fundamental rights to protection of property and of exercise of a profession, nor is the injury to property justified by Article 30 EC.

⁽¹⁾ Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10).

⁽²⁾ Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1).

⁽³⁾ Judgment of the Court of Justice in Joined Cases C-289/96, C-293/96 and C-299/96 Denmark and Others v Commission [1999] ECR I-1541.

Action brought on 17 December 2002 by Technische Glaswerke Ilmenau GmbH against the Commission of the European Communities

(Case T-378/02)

(2003/C 55/81)

(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 17 December 2002 by Technische Glaswerke Ilmenau GmbH, whose registered office is in Ilmenau (Germany), represented by G. Schohe and C. Arhold, Rechtsanwälte, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the Commission's decision of 2 October 2002, C(2002) 2147 endg., on State aid by Germany in favour of Technische Glaswerke Ilmenau GmbH;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant acquired four glass production lines from Ilmenauer Glaswerke GmbH, in liquidation, an undertaking of the German Bundesanstalt für vereinigungsbedingte Sonderaufgaben (Federal Institution for Special Tasks arising from Unification) ('BvS'). In the contested decision, the Commission classified two measures by Germany in connection with that acquisition as State aid: There was a guarantee in favour of BvS for a remaining purchase price balance of DEM 1,8 million. BvS had declared itself willing to replace that guarantee by a land charge. In addition, Thüringer Aufbaubank (Thüringen Bank for Reconstruction) ('TAB') had granted the applicant a loan of DEM 2,0 million. The Commission held these measures incompatible with the common market.

The applicant argues that the loan by TAB to the applicant was not an aid, because it corresponded to market conditions, was covered by a general aid regulation approved by the Commission, and served to compensate for a claim for damages of the applicant against the Land Thüringen which was justified from the standpoint of State liability. The replacement of the guarantee in respect of the residual purchase price for three production lines by a land charge was also no aid.

The applicant further argues that the Commission has not demonstrated that the measures could affect trade between Member States. Furthermore, refusal of authorisation under Article 87(3)(c) EC was based on obvious errors of assessment and reasoning. The Commission refused to take important facts into account in the considerations which it took as the

basis for its assessment. The main competitor would obtain a monopoly position if the applicant were to disappear. In examining the applicant's prospects of profitability, the Commission overlooked the commitment of a private investor, the applicant's latest restructuring plan, essential testimony in economic reports, and the positive development of the applicant.

The applicant further argues that the Commission wrongly made a preliminary decision in an earlier proceeding about the adjustment of the purchase price⁽¹⁾, and thereby artificially divided its examination, which related to the restructuring as a whole. The opening of a further formal examination procedure, relating only to the loan from TAB and the changing of the security, was out of time. The principle of sound administration required the Commission to assess the whole restructuring plan as a unity and in its proper context.

The applicant argues that the Commission infringed its defence rights. Because of the splitting of the procedure, the applicant was able to adopt a position on only part of the measures, and the Commission wrongly denied the applicant's applications for inspection of the files and a proper legal hearing. The Commission infringed the principle of impartiality by not giving the applicant and the German Government the opportunity to comment on the statement of a competitor, which the Commission had obtained by putting questions to that competitor.

Finally, the applicant submits that the Commission has not proved that repayment of the alleged aid in this case would be appropriate to restore the previous position. Repayment was a sanction going beyond the limited powers of the Commission.

⁽¹⁾ Commission Decision K(2001) 1549 of 12.6.2001 on State aid by Germany in favour of Technische Glaswerke Ilmenau GmbH, against which the applicant brought an action before the Court of First Instance (Case T-198/01, OJ 2001 C 303, p. 25).

Action brought on 18 December 2002 by Confédération générale des producteurs de lait de brebis et des industriels de roquefort against Commission of the European Communities

(Case T-381/02)

(2003/C 55/82)

(Language of the case: French)

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

European Communities on 18 December 2002 by Confédération générale des producteurs de lait de brebis et des industriels de roquefort, established in Millau (France), represented by Michel-Jean Jacquot and Olivier Prost, lawyers.

The applicant claims that the Court should:

- annul Commission Regulation No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta'⁽¹⁾;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is an inter-branch association which claims to group together and represent the interests of all producers of Feta made from ewe's milk.

The contested regulation reserves the name 'Feta' — a protected designation of origin — for Greek producers. The Court of Justice of the European Communities had already annulled, in 1996, a Commission regulation on the same subject⁽²⁾.

In support of its action for annulment, the applicant argues that no justification or reasons are stated for the choice of the 'simplified' procedure laid down in Article 17 of Regulation No 2081/92⁽³⁾. In order to have recourse to that procedure, it is necessary, not only for an application by the national authorities for a legally protected name in the applicant State to exist before the entry into force of Regulation No 2081/92, but also for that name to be neither legally protected in countries other than the applicant Member State nor in use in those countries. The term 'Feta' was not legally protected in Greece — the applicant State — in the sense intended by the legislation at the time of the entry into force of Regulation No 2081/92. By contrast, not only was that same term legally protected in Denmark before the entry into force of Regulation No 2081/92, but also its use was widespread in France and throughout the world.

The applicant also submits that the Commission failed to fulfil its obligations in the analysis of whether the term 'Feta' is generic and that it infringed Article 3(1) of Regulation No 2081/92 by the fact that it once again did not take sufficient account of certain factors: in particular, the existing situation in the Member State in which the name originates, the existing situation in other Member States, and the relevant national and Community laws. In addition, the applicant is of the opinion that the Commission infringed Article 2(3) of Regulation No 2081/92.

Finally, the applicant alleges breach of the principle of proportionality and breach of the principle of the protection of legitimate expectations based on the existence of Community financing for the production and marketing of 'Feta'.

(¹) OJ L 277, p. 10.

(²) Judgment in Joined Cases C-289/96, C-293/96 and C-299/96 Denmark and Others v Commission [1999] ECR I-1541.

(³) Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, p. 1).

Action brought on 18 December 2002 by Fernando Valenzuela Marzo against Commission of the European Communities

(Case T-384/02)

(2003/C 55/83)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 December 2002 by Fernando Valenzuela Marzo, residing in Brussels, represented by Marc-Albert Lucas, lawyer.

The applicant claims that the Court should:

- annul the decisions of the head of the Administration of Individual Rights unit of the Administration Directorate-General of 16 November 2001 and 13 February 2002 refusing the applicant the second half of the installation allowance;
- annul the decision of the appointing authority of 16 September 2002 rejecting the complaint through official channels of 9 May 2002 against the abovementioned decisions;
- order the Commission to pay the applicant the second half of his installation allowance together with default interest at the rate of 8 % per annum with effect from 11 April 2001 and until payment is made in full;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is an official at the Commission in Brussels. In June 2000, on taking up his appointment, he settled in Brussels. His spouse subsequently settled in Brussels with him and organised the removal of the family, which took place on 11 April 2001, whilst continuing to be present at her former home in Madrid, where their youngest daughter was completing her secondary education. Consequently, his spouse and daughter did not join him until July 2001, which they declared to the Privileges and Immunities service.

By the contested decision, the Commission refused to pay the applicant the second half of the installation allowance.

In support of his action, the applicant pleads an error of law and a manifest error of assessment. According to the applicant, the administration attached decisive importance to the declarations made by his spouse and daughter to the Privileges and Immunities service. The applicant states that the concept of installation is a factual concept and that the text of the Staff Regulations does not prescribe any particular mode of proof.

The applicant also pleads an error of law and an omission of essential facts, since the administration considered the period laid down by Articles 5(4) and 9(3) of Annex VII to the Staff Regulations to be a mandatory time-limit and did not consider the possibility of waiving it by reason of the complainant's establishment as an official on taking up his appointment and the fact that his daughter was unable to join her parents in Brussels before the end of the school year.

Action brought on 16 December 2002 by Lamprecht A.G. against Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM)

(Case T-386/02)

(2003/C 55/84)

(Language of the case: Spanish)

An action against Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM) was brought before the Court of First Instance of the European Communities on 16 December 2002 by Lamprecht A.G., whose registered office is in Madrid, represented by Enrique Armijo Chávarri and Antonio Castán Pérez-Gómez.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (OHIM) of 1 October 2002 in Case 114/2000-1;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: J. Tricot & Sons Ltd.

The Community trade mark concerned: 'EMOS' — Application No 133637 for goods in Class 25 (articles of clothing)

Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings: Applicant

Trade mark or sign asserted by way of opposition in the opposition proceedings: German trade mark 'EMOSWISS' registered in respect of goods within Classes 10, 24 and 25

Decision of the Opposition Division: Application rejected

Decision of the Board of Appeal: Appeal dismissed

Grounds of claim: Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

Action brought on 26 December 2002 by Solvay Pharmaceuticals B.V. against Council of the European Union

(Case T-392/02)

(2003/C 55/85)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 26 December 2002 by Solvay Pharmaceuticals B.V., established in Weesp (Netherlands), represented by Callista Meijer, Francis Herbert and Michel L. Struys, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul Council Regulation (EC) No 1756/2002 of 23 September 2002 amending Directive 70/524/EEC concern-

ing additives in feedingstuffs as regards withdrawal of the authorisation of an additive and amending Commission Regulation (EC) No 2430/1999;

- order the Council to pay the costs;
- in the alternative, should the application be dismissed on the merits, apply the first subparagraph of Article 87(3) of the Rules of Procedure and order the Council to pay the costs, in view of the persistent lack of cooperation and transparency on the part of the Commission in the administrative handling of the case.

Pleas in law and main arguments

The applicant manufactures Nifursol, a feedingstuff additive. The applicant is contesting Council Regulation No 1756/2002 ⁽¹⁾. The contested regulation amends Council Directive 70/524/EEC ⁽²⁾ concerning additives in feeding-stuffs and withdraws authorisation to place Nifursol on the market. That authorisation is linked, by virtue of Regulation No 2430/1999 ⁽³⁾, to the person responsible for putting the product into circulation, in this case the applicant.

In support of its application, the applicant alleges infringement of Articles 9m and 3a(b) of Directive 70/524/EEC and breach of the precautionary principle. The sixth recital in the preamble to the contested regulation states that it could not be guaranteed that Nifursol does not present a risk for human health. According to the applicant, the Council altered the test referred to in the abovementioned articles according to which authorisation may be withdrawn only where it becomes apparent that the additive adversely affects human or animal health or the environment, or harms the consumer by impairing the characteristics of products.

The applicant further points out that the Council cannot rely on the precautionary principle since no reference is made thereto. In any event, the applicant claims that the Council is in fact choosing a purely hypothetical risk criterion which is irreconcilable with the case-law of the Court of First Instance which rules out a zero-risk level when applying the precautionary principle.

The applicant also alleges infringement of the fifth indent of Article 9m of Directive 70/524 as amended and of the general principle of equal treatment. According to the applicant, the Council and the Commission could not base themselves on the inadequacy of the information provided in order to withdraw authorisation, when the Commission has not made use of its powers to enjoin the person responsible for placing an additive on the market to provide it with information.

Finally, the applicant alleges breach of the fundamental principles of legal certainty, sound administration and good faith. The applicant makes the point that it has, on numerous occasions, approached the Commission without ever obtaining any indication which would have enabled it to provide results likely to be acceptable in the eyes of the Commission and the Council.

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- (1) Council Regulation (EC) No 1756/2002 of 23 September 2002 amending Directive 70/524/EEC concerning additives in feeding-stuffs as regards withdrawal of the authorisation of an additive and amending Commission Regulation (EC) No 2430/1999 (Text with EEA relevance) (OJ 2002 L 265, p. 1).
- (2) Council Directive 70/524/EEC of 23 November 1970 concerning additives in feeding-stuffs (OJ, English Special Edition 1970 (III), p. 840).
- (3) Commission Regulation (EC) No 2430/1999 of 16 November 1999 linking the authorisation of certain additives belonging to the group of coccidiostats and other medicinal substances in feedingstuffs to persons responsible for putting them into circulation (Text with EEA relevance) OJ 1999 L 296, p. 3.
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Action brought on 27 December 2002 by Henkel KGaA against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-393/02)

(2003/C 55/86)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 27 December 2002 by Henkel KGaA, Düsseldorf (Germany), represented by C. Osterrieth, Rechtsanwalt, with an address for service in Luxembourg.

The applicant claims that the Court should:

- set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 3 October 2002 in Case R 313/2001-4, concerning Community trade mark registration application No 1162395;
- order the Office to pay the costs.

Pleas in law and main arguments

Trade mark for which Community registration sought:	A three-dimensional mark in the form of a bottle standing on its head in the colours transparent and white — Application No 1162395
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Goods or services:	Goods of Classes 3 and 20 (including soaps, washing and bleaching preparations, cleaning and polishing preparations and artificial containers for liquid, gel-like and pasty preparations)
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Decision challenged before the Board of Appeal:	Refusal of registration by the examiner
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Decision of the Board of Appeal:	Dismissal of the complaint
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Pleas in law:	— The mark is distinguished by a number of special features and has distinctive force. — The Board of Appeal disregarded the characteristic geometry of the mark. — The mark has acquired protection in several Member States.
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Action brought on 27 December 2002 by Arnaldo Lucaccioni against Commission of the European Communities

(Case T-394/02)

(2003/C 55/87)

(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 27 December 2002 by Arnaldo Lucaccioni, residing in St-Leonards-on-Sea (United Kingdom), represented by Juan Ramón Iturriagagoitia and Karine Delvolvé, lawyers.

The applicant claims that the Court should:

- annul the decision of the Commission of the European Communities adopted on 7 September 2002 concerning complaint R/272/02 lodged by the applicant on 21 May 2002;
- order payment in their entirety of: the fees charged by Dr Cognigni for his work in the context of the Medical and Invalidity Committees concerning the applicant, together with reimbursement of the amounts withheld from the applicant's pension; default interest on all those amounts; and the costs of the proceedings, including lawyers', translation and process servers' fees;
- compensate the applicant for the non-material damage suffered;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a former official of the Commission who worked in the Berlaymont building, was retired on the ground of invalidity in 1991. The applicant's condition was subsequently acknowledged to be an occupational disease. The applicant appointed Dr Cognigni to sit on the Medical and Invalidity Committees.

The Commission failed to pay Dr Cognigni's fees. The applicant then brought Case T-75/98 seeking payment of the fees. That case was removed from the register after an out-of-court settlement fixing an amount to be paid to the applicant by way of additional payment in respect of the work done by the Invalidity Committee and of the costs incurred in bringing proceedings before national courts. Contrary to expectation, Dr Cognigni insisted that the whole of his fees be reimbursed. He therefore again brought proceedings against the applicant before the Italian courts. Following a judgment delivered by an Italian court, Dr Cognigni sought enforcement of the judgment by way of attachment of the applicant's pension. The applicant is challenging the decision adopted by the Commission authorising the attachment.

The applicant would point out that in accordance with the rules relating to fees incurred in the context of medical and invalidity committees, the costs are entirely covered by the Commission.

In support of his claims, the applicant alleges breach of the principle of proportionality and the spurious and vexatious nature of the attachment ordered by the Commission. According to the applicant, the Commission ought to have taken account of the fact that the judgment was still open to appeal.

The applicant also alleges failure to have regard for the welfare of officials and misuse of powers. The Commission has created a situation allowing it to avoid all contact with Dr Cognigni who, for his part, can only pursue the applicant.

Action brought on 27 December 2002 by Eva Vega Rodríguez against the Commission of the European Communities

(Case T-395/02)

(2003/C 55/88)

(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 27 December 2002 by Eva Vega Rodríguez, residing in Brussels, represented by J.R. Iturriagagoitia and K. Delvolvé, avocats

The applicant claims that the Court should:

Primarily

- annul the decision of the Commission of the European Communities adopted on 27 September 2002 in respect of Claim No R/297/02 brought by the applicant on 5 June 2002;
- order the respondent to pay the costs;

In the alternative

- annul the Commission's decision of 25 June 2002;
- order the payment of compensation for the damages sustained in the sum of EUR 72 292,36 together with interest until the date of payment at the legal rate;
- order the respondent to pay the costs.

Pleas in law and main arguments

By the present action, the applicant objects to her exclusion, at the pre-selection stage, from the tests for open competition COM/A/10/01.

After finding an error in the wording of multiple-choice question number 35 of test (b), the jury decided to cancel that question.

In support of her claims, the applicant alleges a manifest error of assessment in the marking of questions number 21 in test (a) and number 9 in test (c). She also alleges misuse of powers in the present case.

Action brought on 27 December 2002 by August Storck KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-396/02)

(2003/C 55/89)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 27 December 2002 by August Storck KG, Berlin, represented by H. Wrage-Molkenthin, T. Reher and A. Heise, Rechtsanwälte, with an address for service in Luxembourg.

The applicant claims that the Court should:

- set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 14 October 2002 in Case R 187/2001-4;
- order the Office to pay the costs.

Pleas in law and main arguments

Trade mark for which Community registration sought: A three-dimensional mark in the form of a caramel sweet of a light brown colour — Application No 784314

Goods or services: Goods of Class 30 (confectionery)

Decision challenged before the Board of Appeal: Refusal of registration by the examiner

Decision of the Board of Appeal: Dismissal of the complaint

- Pleas in law:
- Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾;
 - Infringement of Article 7(3) of Regulation (EC) No 40/94.

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

Action brought on 27 December 2002 by August Storck KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-402/02)

(2003/C 55/90)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 27 December 2002 by August Storck KG, Berlin, represented by H. Wrage-Molkenthin, T. Reher and A. Heise, Rechtsanwälte, with an address for service in Luxembourg.

The applicant claims that the Court should:

- set aside the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 18 October 2002 in Case R 256/2001-2;
- order the Office to pay the costs.

Pleas in law and main arguments

Trade mark for which Community registration sought: The pictorial mark consisting of the illustration of a wrapped sweet — Application No 784454

Goods or services: Goods of Class 30 (sweets)

Decision challenged before the Board of Appeal: Refusal of registration by the examiner

Decision of the Board of Appeal: Dismissal of the complaint

- Pleas in law:
- Infringement of Article 7(1)(b) of Regulation (EC) No 40/94⁽¹⁾;
 - Infringement of Article 7(3) of Regulation (EC) No 40/94;
 - Infringement of Article 74(1) of Regulation (EC) No 40/94;
 - Infringement of Article 73 of Regulation (EC) No 40/94;
 - Infringement of the right to a proper hearing.

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

Action brought on 7 January 2003 by the Verein für Konsumenteninformation (VKI) against the Commission of the European Communities

(Case T-2/03)

(2003/C 55/91)

(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 7 January 2003 by the Verein für Konsumenteninformation (Association for Consumer Information — VKI), represented by A. Klausner, Lawyer.

The applicant claims that the Court should:

- annul Commission Decision (2002) 330472 of 18 December 2002 by which the applicant was entirely refused access to inspect the Commission's records concerning the competition proceedings against Austrian banks (COMP/36.571 'Lombard Club: Cartel')
- order the Commission to pay the costs.

Pleas and main arguments

The applicant is a consumer organisation constituted under the Austrian law on associations which in order to safeguard the collective interests of consumers has special powers in connection with civil proceedings. Currently, the applicant is

conducting several sets of civil proceedings before Austrian courts against the Bank für Arbeit und Wirtschaft AG. He submits that, in order to conduct these proceedings successfully, in particular in order to underpin the claims made with the argument that the Bank's incorrect conduct was part of a systematic anti-competitive concerted practice over a number of years between the Austrian banks, it has sought authorisation to inspect the administrative records concerning the Commission's competition proceedings against Austrian banks. In the contested decision the Commission rejected the applicant's application.

The applicant claims that the contested decision runs counter to the fundamental right of Union citizens granted under Article 255(1) and (2) EC and Article 42 of the EU Charter of Fundamental Rights to access to public documents. Furthermore, the decision conflicts with the provisions of Regulation (EC) No 1049/2001⁽¹⁾. A once-for-all exclusion of the entirety of the administrative records from the right to access to the documents would, in the absence of closer examination of the individual documents for the purpose of determining whether or not they are suitable for publication, not be in accordance with the provisions of that regulation or the case-law of the Community judicature.

The applicant goes on to claim that the exceptional circumstances mentioned in the third indent of Article 4(2) of Regulation No 1049/2001 do not justify refusal of access to the documents because the relevant inspection activities by the Commission have already been concluded. Nor are the requirements for application of the exception concerning protection of commercial interests satisfied since the Commission has not submitted in what manner banks' commercial interests might specifically be jeopardised. Prevention of the making of justified claims by consumers who have suffered loss is not a commercial interest worthy of protection within the meaning of Regulation No 1049/2001. Nor does the protection of court proceedings preclude the grant of access to inspect documents. Furthermore, protection of the private domain and of the individual's integrity can readily be secured by ensuring the anonymity of records.

In addition, the applicant claims that there is an overriding public interest in inspection by the applicant of the Commission's records since collective enforcement of claims for compensation by consumers who have suffered loss is conducive to both enforcement of EC competition law and the collective interests of consumers in the Community.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Action brought on 7 January 2003 by Everlast World's Boxing Headquarters Corporation against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-3/03)

(2003/C 55/92)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 7 January 2003 by Everlast World's Boxing Headquarters Corporation, New York, represented by A. Barth, Rechtsanwalt.

The applicant claims that the Court should:

- set aside paragraphs 2 and 3 of the operative part of Decision R 391/2001-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 30 October 2002;
- order the Office to pay the costs.

Pleas in law and main arguments

Trade mark for which Community registration sought:	The word mark 'Choice of Champions' — Application No 1508498
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Goods or services:	Goods of Classes 18, 25 and 28
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Decision challenged before the Board of Appeal:	Refusal of registration by the examiner
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Decision of the Board of Appeal:	Annulment of the examiner's decision in respect of 'Leather and imitations of leather and goods made from these materials' so far as contained in Class 18; 'animal skins and hides', 'trunks and travelling bags; umbrellas, parasols and walking sticks' and 'Playthings; decorations for Christmas trees'. Dismissal of the complaint in respect of 'whips, harness and saddlery', 'Clothing, footwear, headgear' and 'Games; gymnastic and sporting articles' so far as contained in Class 28, and dismissal of the application for distinctive force as a result of use in respect of those goods.
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Pleas in law:

- There are no absolute grounds for refusal to register the mark within the meaning of Article 7(1)(c) and (b) of Regulation (EC) No 40/94 ⁽¹⁾.
- The trade mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it, in accordance with Article 7(3) of Regulation (EC) No 40/94.

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

Action brought on 8 January 2003 by Giorgio Lebedef against the Commission of the European Communities

(Case T-4/03)

(2003/C 55/93)

(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 8 January 2003 by Giorgio Lebedef, residing in Senningerberg (Luxembourg), represented by G. Bounéou, avocat, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the decision of Appointing Authority of the Commission of the European Communities of 21 December 2001 not to include the applicant's name in the list of most deserving officials and not to promote him to grade B1 in the promotion exercise for 2001 (decision adopted following reconsideration of the applicant's file during the 2001 promotion exercise);

- annul, to the extent necessary, the decision notified by Note 41280 of the Vice-President of the Commission of the European Communities, Mr Neil Kinnock, dated 25 September 2002, not to include the applicant's name in the list of most deserving officials and not to promote him to grade B1 in the promotion exercise for 2001 (decision in reply to the applicant's Claim No R 220/02, brought for the annulment of the abovementioned decision of 21 December 2001);
- order the Commission of the European Communities to pay such costs as the Court may assess.

Pleas in law and main arguments

In support of his action, the applicant alleges, first, an infringement of Article 45(1) of the Staff Regulations and of the principle of non-discrimination. The applicant further alleges an infringement of the principle of respect for the rights of the defence, an infringement of the principle prohibiting arbitrary proceedings and of the obligation to state reasons, an infringement of the principle of legitimate expectations and of the rule 'patere legem quam ipse fecisti' and, lastly, infringement of the duty to have regard for the interests of officials.

Action brought on 9 January 2003 by Ayassami & Fils EURL and Others against the Council of the European Union

(Case T-5/03)

(2003/C 55/94)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 9 January 2003 by Ayassami & Fils EURL, established in Saint-François (Guadeloupe), and 23 other undertakings, represented by John Sylvanus Dagnon, avocat.

The applicants claim that the Court should:

- Annul Council Decision 2002/973/EC of 10 December 2002 amending Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments Commission Regulation (OJ 2002 L 337, p. 83).
- Declare that Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments (OJ 1989 L 399, p. 46) is inapplicable.

Pleas in law and main arguments

The applicant companies in the present case object to the extension by the contested act of the exemption arrangement from Article 90 of the Treaty in favour of the French overseas departments.

In support of their arguments, they submit that there is infringement of Article 299(2) of the Treaty in so far as the Council adopted the contested measure in breach of the conditions laid down therein. The preparatory acts leading up to the contested decision, particularly the report of the Commission to the Council dated 24 November 1999, and points 3 and 5 of the statement of the grounds for the decision proposal by the Commission to the Council of 23 August 2002 (COM 2002 473 FINAL) show that the prerequisite conditions for validly authorising an extension of the special tax arrangements in favour of the overseas departments have not yet been satisfied.

As regards Decision 89/688 of 22 December 1989, the effects of which were extended by the contested decision, the applicants question its legality on the basis of Article 241 of the Treaty, on the grounds that the Council was not competent to authorise it in 1989. They submit that that decision constituted a derogation from Article 95 of the EC Treaty (now Article 90) and thus could no longer be taken by the Council after expiry of the two-year time period provided for in 1957, in the second subparagraph of Article 227(2) of the EC Treaty.

Action brought on 10 January 2003 by COLDIRETTI — Federazione Regionale Coltivatori Diretti della Sardegna e CIA — Confederazione Italiana Agricoltori della Sardegna against Commission of the European Communities

(Case T-9/03)

(2003/C 55/95)

(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 10 January 2003 by COLDIRETTI — Federazione Regionale Coltivatori Diretti della Sardegna e CIA — Confederazione Italiana Agricoltori della Sardegna, represented by Giovanni Dore and Fabio Ciulli, lawyers.

The applicants claim that the Court should:

- pursuant to Article 230 of the Treaty, declare unlawful Commission Decision No 02/229/EC of 13 November 2001, published in the Official Journal on 20 March 2002 and, accordingly, annul it in its entirety or in so far as necessary;
- in the alternative, order the Commission to compensate the Sardinian undertakings for the damage suffered which is quantified as amounting to EUR 1 300 000 (corresponding to the regional contribution which was not received), together with interest and any readjustment, to be distributed in proportion to the costs incurred;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicants, the two largest prestigious associations in the agriculture sector, contest the decision of the defendant which found contrary to the common market the aid scheme laid down in Article 21 of Region of Sardinia Law No 21/2000 which provides for the reduction of production costs linked to the use of fuels other than methane. The object of that scheme is to compensate for the extremely high cost of heating fuel available in Sardinia (diesel). According to the applicants, the contested decision has prevented Sardinian greenhouse growers from being placed on an equal footing with those in other parts of Italy and in the rest of Europe, which would have made it possible to have free competition in the market.

In support of its arguments, the applicants allege:

- infringement of Article 158 of the Treaty and of Declaration No 30 on Island Regions, annexed to the final act of the Amsterdam Treaty.
- infringement of Articles 2, 3, 5, 12 and 34 of the Treaty and failure to apply the principles of equality and proportionality. The applicants point out in that respect that the contested decision has rejected an aid scheme intended to eliminate serious discrimination between Sardinian greenhouse growers and other Italian and European greenhouse growers rather than to distort competition.
- infringement of Article 32 in conjunction with Articles 33 to 37 of the Treaty. The applicants claim that the Commission was not entitled to adopt that decision inasmuch as it failed to take the precautions which must be taken in a sector such as agriculture in which, as a rule, the competition rules are applied only to the extent determined by the Council.

- infringement of the rules which govern procedure relating to State aid, inasmuch as the decision was adopted after the expiry of the two-month period from the date on which the appropriate notification was received.
- failure to assess the aid, when examining its compatibility, in the light of Council Regulation (EC) No 1257/1999 ⁽¹⁾ of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) amending and repealing certain Regulations and the Community guidelines for State aid in the agriculture sector (2000/C28/02) ⁽²⁾.
- failure to apply the Guidelines on National Regional Aid ⁽³⁾ and the Community guidelines on State aid for small and medium-sized enterprises ⁽⁴⁾.

Finally, the applicants allege failure to state reasons and misapplication to the present case of the derogation under Article 87(3) of the Treaty.

⁽¹⁾ OJ 1999 L 160, p. 80.

⁽²⁾ OJ 2000 C 28, p. 2.

⁽³⁾ OJ 1998 C 74, p. 9.

⁽⁴⁾ OJ 1992 C 213, p. 2.

Action brought on 13 January 2003 by Jean-Pierre Koubi against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-10/03)

(2003/C 55/96)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 13 January 2003 by Jean-Pierre Koubi, resident in Marseille (France), represented by Katia Manhaeve, Avocat, with an address for service in Luxembourg. Additional party before the Office: Fabricas Lucia Antonio Betere, S.A. Flabesa.

The applicant claims that the Court should:

- set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 16 October 2002 in Case R 542/2001-4;
- order the Office to pay the costs.

Pleas in law and main arguments

Applicant for registration of a Community trade mark:	Jean-Pierre Koubi
Community mark concerned:	The word mark 'conforflex' for certain products in Class 20 (bed-room furniture) (No 1171172).
Marks put forward as grounds for refusal under the opposition procedure	The national marks 'flex' and 'flex' for certain products in Class 20 (including beds, mattresses and pillows, bedding articles).
Owner of the marks put forward as grounds for refusal	Fabrics Lucia Antonio Betere, S.A.
Decision of the Opposition Division:	Dismissal of the opposition.
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and rejection of the application for registration of the Community mark.
Pleas in law:	Infringement of the concept of risk of confusion.

Action brought on 16 January 2003 by Itochu Corporation against the Commission of the European Communities

(Case T-12/03)

(2003/C 55/97)

(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 16 January 2003 by Itochu Corporation, Tokyo, Japan, represented by Mr Gerwin Van Gerven and Mr Thomas Franchoo, Lawyers.

The applicant claims that the Court should:

- annul Articles 1, 3 and 5 of Commission decision C(2002) 4072 final of 30 October 2002 in Cases COMP/35.587 PO Video games, COMP/35.706 Nintendo Distribution and COMP/36.321 Omega-Nintendo, insofar as it finds an infringement on Article 81 (1) of the EC Treaty, imposes a fine upon and addresses the decision to the applicant, or alternatively, to substantially reduce that fine;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is a major general trading company in Japan. Itochu Hellas, a local subsidiary of Itochu Europe and only indirectly a subsidiary of the applicant, concluded a distribution agreement with Nintendo. The applicant indicates that the distribution and sale of game consoles was never one of its core activities and that such activities were at the sole discretion of local subsidiaries, who operate with a large degree of independence.

In support of its application, the applicant claims that it cannot be held liable for an alleged infringement of Article 81 (1) of the EC Treaty on behalf of Itochu Hellas and, therefore, that it is not the correct addressee of the contested decision. According to the applicant, the Commission should prove that a mother company exerted decisive influence over its subsidiary in order to hold the former liable for the acts of the subsidiary.

The applicant claims furthermore that the fine should be annulled or substantially reduced. The applicant invokes a lack of proper reasoning and an infringement of the principle of proportionality and equal treatment. The applicant claims that the Commission treated the applicant in the same way as other undertakings without enabling the applicant to assess the figures on which the Commission relied.

The applicant submits that the Commission had no grounds to increase the fine to ensure deterrence considering that Itochu Hellas should have been the addressee of the decision. The applicant also claims that an increase for deterrence on account of the applicant's size and resources constitutes an infringement of the principles of proportionality and equal treatment.

Moreover, the applicant invokes a manifest error of assessment and a violation of the principle of proportionality insofar as the fine was increased to take into account the duration of the alleged infringement. The applicant also submits that the Commission should have applied a smaller increase by percentage on account of duration as Itochu Hellas' participation was only passive.

The applicant also puts forward that the Commission has infringed Article 253 of the EC Treaty and the principle of proportionality because it has refused to consider certain attenuating circumstances, like the very limited and exclusively passive role of Itochu Hellas and the fact that Itochu Hellas did not implement the restrictive practices. Furthermore, according to the applicant, the Commission has violated the principle of equal treatment by accepting attenuating circumstances in favour of other addressees and not for the applicant.

The applicant finally invokes a violation of Article 15 (2) of Regulation 17⁽¹⁾ insofar as the Commission imposed a fine that exceeds 10 % of Itochu Hellas' turnover in the preceding business year and a violation of its rights of defence insofar

as the Commission changed the legal assessment of the infringements without offering the applicant the possibility of responding to it during the administrative proceedings.

⁽¹⁾ EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ 13 of 21.2.1962, p. 204).

Removal from the register of Case T-96/01 ⁽¹⁾

(2003/C 55/98)

(Language of the Case: Greek)

By order of 13 December 2002 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-96/01: Rodolfos Maslias v European Parliament.

⁽¹⁾ OJ C 200 of 14.07.2001.

Removal from the register of Joined Cases T-99/02 and T-101/02 ⁽¹⁾

(2003/C 55/99)

(Language of the Case: English)

By order of 2 December 2002 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Joined Cases T-99/02 and T-101/02: Ineos N.V. v Commission of the European Communities.

⁽¹⁾ OJ C 156 of 29.06.2002.

Removal from the register of Joined Cases T-100/02 and T-102/02 ⁽¹⁾

(2003/C 55/100)

(Language of the Case: English)

By order of 2 December 2002 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Joined Cases T-100/02 and T-102/02: EVC International N.V. v Commission of the European Communities.

⁽¹⁾ OJ C 156 of 29.06.2002.

Removal from the register of Case T-170/02 ⁽¹⁾

(2003/C 55/101)

(Language of the Case: French)

By order of 6 December 2002 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-170/02: Maria Rosaria Ragazzini v European Parliament.

⁽¹⁾ OJ C 202 of 24.08.2002.

Removal from the register of Case T-295/02 ⁽¹⁾.

(2003/C 55/102)

(Language of the Case: Dutch)

By order of 13 December 2002 the President of the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-295/02: Koninklijke BAM NBM N.V. v Commission of the European Communities.

⁽¹⁾ OJ C 289 of 23.11.2002.

III

(Notices)

(2003/C 55/103)

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

OJ C 44, 22.2.2003

Past publications

OJ C 31, 8.2.2003

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

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