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I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 February 2003

in Case C-228/00: Commission of the European Communities v Federal Republic of Germany ⁽¹⁾

(Failure by a Member State to fulfil its obligations — Article 7(2) and (4) of Regulation (EEC) No 259/93 — Classification of the purpose of a shipment of waste (recovery or disposal) — Incinerated waste — Point R1 of Annex II B to Directive 75/442/EEC — Concept of use principally as a fuel or other means to generate energy)

(2003/C 83/01)

(Language of the case: German)

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

In Case C-228/00, Commission of the European Communities (Agent: G. zur Hausen) v Federal Republic of Germany (Agent: T. Jürgensen, assisted by D. Sellner): Application for a declaration that by raising unjustified objections against certain shipments of waste to other Member States to be used principally as a fuel the Federal Republic of Germany has failed to fulfil its obligations under Article 7(2) and (4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans (Rapporteur), D.A.O. Edward, P. Jann and S. von Bahr, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 13 February 2003, in which it:

1. Declares that by raising unjustified objections to certain shipments of waste to other Member States to be used

principally as a fuel, the Federal Republic of Germany has failed to fulfil its obligations under Article 7(2) and (4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community;

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

⁽¹⁾ OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 February 2003

in Case C-245/00 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Stichting ter Exploitatie van Naburige Rechten (SENA) v Nederlandse Omroep Stichting (NOS) ⁽¹⁾

(Directive 92/100/EEC — Rental right and lending right and certain rights related to copyright in the field of intellectual property — Article 8(2) — Broadcasting and communication to the public — Equitable remuneration)

(2003/C 83/02)

(Language of the case: Dutch)

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

In Case C-245/00: Reference to the Court under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands) for a

preliminary ruling in the proceedings pending before that court between Stichting ter Exploitatie van Naburige Rechten (SENA) and Nederlandse Omroep Stichting (NOS), on the interpretation of Article 8(2) of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61), the Court (Sixth Chamber), composed of: J.-P. Puissechot (Rapporteur), President of the Chamber, C. Gulmann, V. Skouris, F. Macken and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 6 February 2003, in which it has ruled:

1. The concept of equitable remuneration in Article 8(2) of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property must be interpreted uniformly in all the Member States and applied by each Member State; it is for each Member State to determine, in its own territory, the most appropriate criteria for assuring, within the limits imposed by Community law and Directive 92/100 in particular, adherence to that Community concept.
2. Article 8(2) of Directive 92/100 does not preclude a model for calculating what constitutes equitable remuneration for performing artists and phonogram producers that operates by reference to variable and fixed factors, such as the number of hours of phonograms broadcast, the viewing and listening densities achieved by the radio and television broadcasters represented by the broadcast organisation, the tariffs fixed by agreement in the field of performance rights and broadcast rights in respect of musical works protected by copyright, the tariffs set by the public broadcast organisations in the Member States bordering on the Member State concerned, and the amounts paid by commercial stations, provided that that model is such as to enable a proper balance to be achieved between the interests of performing artists and producers in obtaining remuneration for the broadcast of a particular phonogram, and the interests of third parties in being able to broadcast the phonogram on terms that are reasonable, and that it does not contravene any principle of Community law.

(¹) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 February 2003

in Case C-458/00: Commission of the European Communities v Grand Duchy of Luxembourg (¹)

(Failure by a Member State to fulfil its obligations — Article 7(2) and (4) of Regulation (EEC) No 259/93 — Classification of the purpose of a shipment of waste (recovery or disposal) — Incinerated waste — Point R1 of Annex II B to Directive 75/442/EEC — Concept of use principally as a fuel or other means to generate energy)

(2003/C 83/03)

(Language of the case: French)

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

In Case C-458/00, Commission of the European Communities (Agents: H. Støvlbaek and J. Adda) v Grand Duchy of Luxembourg (Agent: J. Faltz), supported by Republic of Austria (Agent: C. Pesendorfer): Application for a declaration that by raising unjustified objections to certain shipments of waste to another Member State to be used principally as a fuel, in breach of Article 7(2) and (4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1), and of Article 1(f) in conjunction with point R1 of Annex II B to Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 2, 6 and 7 of that Regulation and under Article 1(f) in conjunction with point R1 of Annex II B to that Directive, the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans (Rapporteur), D.A.O. Edward, P. Jann and S. von Bahr, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 13 February 2003, in which it:

1. Dismisses the application;
2. Orders the Commission of the European Communities to pay the costs;
3. Orders the Republic of Austria to bear its own costs.

(¹) OJ C 45 of 10.2.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 February 2003

in Case C-75/01: Commission of the European Communities v Grand Duchy of Luxembourg ⁽¹⁾

(Failure by a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora)

(2003/C 83/04)

(Language of the case: French)

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

In Case C-75/01: Commission of the European Communities (Agents: B. Wainwright and J. Adda) against Grand Duchy of Luxembourg (Agent: J. Faltz) — application for a declaration that, by failing to take all the necessary measures to implement fully and correctly Articles 1, 4(5), 5(4), 6, 7, 12(1)(b) and (c), 12(2), 12(4), 13(1)(b) and 13(2), 14, 15, 16(1), 22(b) and (c), and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) in conjunction with annexes I, II, IV, V and VI of that directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the directive and under the third paragraph of Article 249 EC — the Court of Justice (Sixth Chamber), composed of J.-P. Puissochet, President of the Chamber, and C. Gulmann (Rapporteur) and V. Skouris. F. Macken and N. Colneric, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 13 February 2003, in which it:

1. Declared that, by failing to take all the necessary measures to implement fully and correctly Articles 1, 4(5), 5(4), 6, 7, 12(1)(b) and (c), 12(2), 12(4), 13(1)(b), 14, 15, 16(1), 22(b), and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora in conjunction with annexes I, II, IV, V and VI of that directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the directive;
2. Ordered Luxembourg to pay the costs.

⁽¹⁾ OJ C 118 of 21.4.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 February 2003

in Case C-92/01 (Reference for a preliminary ruling from the Monomeles Dioikitiko Protodikeio Irakleiou): Georgios Stylianakis v Elliniko Dimosio ⁽¹⁾

(Article 8a of the EC Treaty (now, after amendment, Article 18 EC) — European citizenship — Article 59 of the Treaty (now, after amendment, Article 49 EC) — Freedom to provide services — Community air transport — Airport tax — Discrimination — Regulation (EEC) No 2408/92)

(2003/C 83/05)

(Language of the case: Greek)

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

In Case C-92/01: Reference to the Court under Article 234 EC by the Monomeles Diikitiko Protodikio Irakliou (Greece) for a preliminary ruling in the proceedings pending before that court between Georgios Stylianakis and Elliniko Dimosio, on the interpretation of Articles 8a and 59 of the EC Treaty (now, after amendment, Articles 18 and 49 EC) and Article 3(1) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1992 L 240, p. 8), the Court (Sixth Chamber), composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, R. Schintgen, V. Skouris, F. Macken and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 6 February 2003, in which it has ruled:

Article 3(1) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes precludes a measure adopted by a Member State, such as that at issue in the main proceedings, which imposes on, for the most part, flights to other Member States higher airport tax than that applicable to domestic flights within that Member State unless it is shown that those taxes compensate airport services necessary for the processing of passengers and that the cost of those services provided to passengers flying to other Member States is proportionately higher than the cost of those services necessary for the processing of passengers on domestic flights.

⁽¹⁾ OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 February 2003

in Case C-131/01: Commission of the European Communities v Italian Republic ⁽¹⁾

(Failure by a Member State to fulfil its obligations — Article 49 EC — Freedom to provide services — Patent agents — Duty to be enrolled on the register of patent agents of the host Member State — Obligation to have a residence or place of business in the host Member State)

(2003/C 83/06)

(Language of the case: Italian)

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

In Case C-131/01, Commission of the European Communities (Agents: B. Mongin and R. Amorosi) v Italian Republic (Agent: U. Leanza, assisted by O. Fiumara): Application for a declaration that, by retaining rules requiring patent agents established in other Member States to be enrolled on the Italian register of patent agents and to have a residence or place of business in Italy, in order to provide services before the Italian Patent Office, the Italian Republic has failed to fulfil its obligations under Articles 49 EC to 55 EC concerning the freedom to provide services, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, C. Gulmann, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 13 February 2003, in which it:

1. Declares that by retaining rules requiring patent agents established in other Member States to be enrolled on the Italian register of patent agents and to have a residence or place of business in Italy, in order to provide services before the Italian Patent Office, the Italian Republic has failed to fulfil its obligations under Articles 49 EC to 55 EC;
2. Orders the Italian Republic to pay the costs.

⁽¹⁾ OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 February 2003

in Case C-185/01 (Reference for a preliminary ruling from the Bundesfinanzhof): Auto Lease Holland BV v Bundesamt für Finanzen ⁽¹⁾

(Sixth VAT Directive — Place of taxable transactions — Refund of VAT paid in another Member State — Motor vehicle made available under a leasing contract — Fuel management agreement — Person having been supplied with fuel)

(2003/C 83/07)

(Language of the case: German)

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

In Case C-185/01: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Auto Lease Holland BV and Bundesamt für Finanzen, on the interpretation of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, P. Jann, S. von Bahr and A. Rosas (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 6 February 2003, in which it has ruled:

Article 5(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that there is not a supply of fuel by the lessor of a vehicle to the lessee where the lessee fills up at filling stations the vehicle which is the subject-matter of a leasing contract, even if the vehicle is filled up in the name and at the expense of that lessor.

⁽¹⁾ OJ C 200 of 14.07.2001.

JUDGMENT OF THE COURT

of 11 February 2003

In Joined Cases C-187/01 and C-385/01 (Reference for a preliminary ruling from the Oberlandesgericht Köln and Rechtbank van eerste aanleg te Veurne): Hüseyin Gözütok (C-187/01) and Klaus Brügge (C-385/01) ⁽¹⁾

(Convention implementing the Schengen Agreement — Ne bis in idem principle — Scope — Decisions by which the Public Prosecutor definitively discontinues criminal proceedings, without the involvement of a court, once the accused has satisfied certain conditions)

(2003/C 83/08)

(Languages of the case: German and Dutch)

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

In Joined Cases C-187/01 and C-385/01: References to the Court under Article 35 EU by the Oberlandesgericht Köln (Germany) and the Rechtbank van eerste aanleg te Veurne (Belgium) for a preliminary ruling in the criminal proceedings before those courts against Hüseyin Gözütok (C-187/01) and Klaus Brügge (C-385/01), on the interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19), signed on 19 June 1990 at Schengen (Luxembourg), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen (Rapporteur) and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, 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 11 February 2003, in which it has ruled:

The *ne bis in idem* principle, laid down in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor of a Member State discontinues criminal proceedings brought in that State, without the

involvement of a court, once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor.

⁽¹⁾ OJ C 212 of 28.7.2001, OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 13 February 2003

in Case C-85/02: Commission of the European Communities v French Republic ⁽¹⁾

(Failure by a Member State to fulfil its obligations — Failure to implement Directive 91/439/EC)

(2003/C 83/09)

(Language of the case: French)

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

In Case C-85/02, Commission of the European Communities (Agent: M. Wolfcarius) v French Republic (Agents: G. de Bergues and S. Pailler): Application for a declaration that, by failing to adopt the laws, regulations and administrative provisions to implement point 12 of Annex II to Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), and in any event by failing to notify the Commission of such provisions, the French Republic has failed to fulfil its obligations under that directive, the Court (Second Chamber), composed of: R. Schintgen (Rapporteur), President of the Chamber, V. Skouris and N. Colneric, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 13 February 2003, in which it:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with point 12 of Annex II to Council Directive 91/439/EEC of 29 July 1991 on driving licences within the prescribed period, the French Republic has failed to fulfil its obligations under that directive.
2. Orders the French Republic to pay the costs.

⁽¹⁾ OJ C 97 of 20.4.2002.

Reference for a preliminary ruling by the Højesterets Anke- og Kæremålsudvalg by order of that Court of 22 January 2003 in the case of I/S Fini H against Skatteministeriet

(Case C-32/03)

(2003/C 83/10)

Reference has been made to the Court of Justice of the European Communities by order of the Højesterets Anke- og Kæremålsudvalg (Appeals and Objections Committee of the Supreme Court) of 22 January 2003, received at the Court Registry on 28 January 2003, for a preliminary ruling in the case of I/S Fini H against Skatteministeriet (Danish Ministry of Taxation) on the following questions:

Question 1

Can a person be regarded as independently carrying on an economic activity within the meaning of Article 4(1)-(3) of the Sixth VAT Directive⁽¹⁾ in a situation in which the person concerned originally entered into a lease agreement as part of an independent economic activity but has now ceased that actual activity, even though the lease continues to exist for a particular period as a result of a non-termination clause, and in which, after the actual activity ceases, no transactions subject to VAT are conducted by application of the lease for the purpose of obtaining income therefrom on a continuing basis.

Question 2

Does the question whether or not the person concerned actively seeks, during the remaining part of the period of non-terminability, either to utilise the commercial lease to conduct transactions subject to VAT for the purpose of obtaining income therefrom on a continuing basis or to dispose thereof have any bearing on the answer to Question 1 and does the length of the period of non-terminability or the remaining part thereof likewise have any bearing?

⁽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, 13.6.1977, p. 1).

Action brought on 28 January 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-33/03)

(2003/C 83/11)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 28 January 2003 by the Commission of the European Communities, represented by R. Lyal, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

- (1) declare that by granting taxable persons the right to deduct value added tax in respect of certain supplies of road fuel to non-taxable persons, contrary to Articles 17 and 18 of the Sixth Council Directive of 17 May 1977 (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment⁽¹⁾, the United Kingdom has failed to fulfil its obligations under the EC Treaty;
- (2) order the United Kingdom to pay the costs.

Pleas in law and main arguments

By virtue of the VAT (Input Tax) (Person Supplied) Order 1991 [hereinafter, 'the disputed Order'], a taxable person is granted the right to deduct VAT in respect of supplies of road fuel to a non-taxable person, where the taxable person reimburses to the latter the cost of the fuel. Although the language of the Order is general, it appears that the right of deduction is granted to employers in respect of purchases of road fuel by their employees.

In the Commission's view, the provisions of the Order are contrary to the Sixth VAT Directive in three respects and in relation to two provisions. First of all, the disputed Order grants a right of deduction in respect of supplies to another, non-taxable, person, contrary to Article 17(2)(a). Secondly, the measure does not state that deduction can be granted only in respect of goods and services used for the purposes of taxable transactions; it thus fails to comply with the condition to that effect set out in Article 17(2). Finally, deduction is granted in the absence of any VAT invoice, contrary to Article 18(1)(a).

⁽¹⁾ OJ L 145, 13.6.1977, p. 1.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) by order of that court dated 23 December 2002, in the case of The Queen on the application of Approved Prescription Services Ltd against the Licensing Authority (acting by the Medicines Control Agency), Interested party: Eli Lilly & Co. Ltd

(Case C-36/03)

(2003/C 83/12)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) dated 23 December 2002, which was received at the Court Registry on 3 February 2003, for a preliminary ruling in the case of The Queen on the application of Approved Prescription Services Ltd against the Licensing Authority (acting by the Medicines Control Agency), Interested party: Eli Lilly & Co. Ltd, on the following questions:

Can an application for a marketing authorisation for a medicinal Product C validly be made under the first paragraph of Article 10.1(a)(iii) of Directive 2001/83/EC ⁽¹⁾, where the application seeks to demonstrate that Product C is essentially similar to another product, Product B, in circumstances where:

- (1) Product B is related to an original medicinal Product A, in that Product B has been authorised as a 'line extension' of Product A, but has a different pharmaceutical form from Product A or is otherwise not 'essentially similar' to Product A within the meaning of Article 10.1(a)(iii); and
- (2) Product A has been authorised for marketing in the Community for more than the six/ten year period stipulated in Article 10.1(a)(iii); and
- (3) Product B has been authorised for marketing for less than the six/ten year period stipulated in Article 10.1(a)(iii).

⁽¹⁾ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

Appeal brought on 4 February 2003 by Rica Foods (Free Zone) NV against the judgment delivered on 14 November 2002 by the Court of First Instance (Third Chamber) in Joined Cases T-94/00, T-110/00 and T-159/00 Rica Foods (Free Zone) NV, Free Trade Foods NV and Suproco NV, supported by the Kingdom of the Netherlands, v Commission of the European Communities, supported by the Kingdom of Spain and the French Republic

(Case C-41/03 P)

(2003/C 83/13)

An appeal has been brought before the Court of Justice of the European Communities on 4 February 2003 by Rica Foods (Free Zone) NV, represented by G. van der Wal, advocaat before the Hoge Raad der Nederlanden, against the judgment delivered on 14 November 2002 by the Court of First Instance (Third Chamber) in Joined Cases T-94/00, T-110/00 and T-159/00 Rica Foods (Free Zone) NV, Free Trade Foods NV and Suproco NV, supported by the Kingdom of the Netherlands, v Commission of the European Communities, supported by the Kingdom of Spain.

The appellant claims that the Court should:

- (1) declare admissible the appeal lodged by the appellant against the judgment delivered on 14 November 2002 by the Court of First Instance of the European Communities in Joined Cases T-94/00, T-110/00 and T-159/00;
- (2) set aside the judgment delivered on 14 November 2002 by the Court of First Instance of the European Communities in Joined Cases T-94/00, T-110/00 and T-159/00 and, ruling afresh pursuant to the application at first instance lodged by the present appellant on 18 April 2000:

— annul Regulation No 465/2000/EC ⁽¹⁾;

— declare that the Community is liable for the damage suffered by the appellant by reason of the fact that imports of the products referred to in Regulation (EC) No 465/2000 have, since 1 March 2000, been prevented or restricted as a consequence of that regulation, and order the parties to reach agreement on the extent of the damage suffered by the appellant, and, if no agreement is reached on that matter, order that proceedings be continued within a period to be laid down by the Court of Justice for the purpose of determining the extent of the damage, or at any rate order the Community to pay compensation for the provisionally estimated damage and

that still to be assessed; in the further alternative, order the Community to pay compensation to be determined on an equitable basis by the Court of Justice, plus annual interest of 8 % from the date of the application at first instance to the date of full and final payment;

- (3) order the respondent to pay the costs of both sets of proceedings, in accordance with Article 69(2) of the Rules of Procedure.

- Infringement of the preferential status of the OCT: the Court of First Instance erred in its determination of the relevant facts to such an extent that its appraisal in the grounds of its judgment here referred to is, in the light of the procedural documents, incomprehensible.

(¹) Commission Regulation (EC) No 465/2000 of 29 February 2000 introducing safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin (OJ 2000 L 56, p. 39).

(²) — Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1).

Pleas in law and main arguments

- Breach of Article 109(1) of the OCT Decision (²): the Court of First Instance failed to take into account the fact that Article 109(1) of the OCT Decision constitutes a derogation from the prohibition in Article 101 of the OCT Decision of import duties and measures having equivalent effect. As in the case of every derogation which departs from the principal rule, and in this case from the objective of the successive OCT Decisions, this derogation must be narrowly construed and applied. The 'wide discretion' of the Commission and the limited appraisal of the Community judicature on which the Court of First Instance based itself are incompatible with such a possibility of applying Article 109(1) of the OCT Decision that is limited to exceptional cases (Article 109(1) of the OCT Decision as an 'emergency brake');

- Failure to provide reasons: it was wrong in law and also, in light of the documents on the case-file, incomprehensible and/or indicative of inadequate reasoning that the Court of First Instance should hold (i) that any additional imports of OCT sugar under the EC/OCT cumulation of origin regime would increase the amount of surplus sugar on the Community market, and (ii) that 'additional imports' within the meaning of (i) impose an extra burden on the Community budget;

- Breach of Article 109(1) of the OCT Decision: the Court of First Instance erred in law in its construction of the terms 'difficulties' and 'deterioration' and consequently erred in law in its application of those terms. The appellant refers to its application at first instance;

- Breach of Article 109(2) of the OCT Decision: there is no quantitative correlation between the quota in Regulation No 465/2000 and 'difficulties' and/or 'deterioration'. In the light of the historical quantities, the measure is also entirely arbitrary and inequitable;

Reference for a preliminary ruling by the Tribunale di Catania — Prima Sezione Civile, by order of that Court of 19 January 2003 in the case of Catania Commissary General of Police against Oxana Dem'Yanenko

(Case C-45/03)

(2003/C 83/14)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Catania — Prima Sezione Civile (Catania District Court, First Civil Chamber) of 19 January 2003, received at the Court Registry on 7 February 2003, for a preliminary ruling in the case of Catania Commissary General of Police against Oxana Dem'Yanenko on the following questions:

1. Are the Community rules set out above — Articles 7, 8 and 9 of Council Directive 64/221/EEC (¹) of 25 February 1964 and Articles 2, 5, 6, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 — and the general, fundamental principles of Community law to be interpreted as meaning that any foreigner deported from a Member State of the European Community is entitled to have his deportation order reviewed before it is enforced by an impartial authority different from that which adopted the order?
2. Are the Community rules set out above — Articles 7, 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 and Articles 2, 5, 6, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 — and the general, fundamental principles of Community law to be interpreted as meaning that it is unacceptable and unlawful for the police of a Member State of the European Community, without prior review by any other authority,

forcibly to arrest and deport any person whom they unilaterally consider not to be entitled to remain within that State, and to do so within such a period of time and in such a way that their action escape any practical and effective review by any third-party impartial authority whether before, during or after their actions?

3. Are the Community rules set out above — Articles 7, 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 and Articles 2, 5, 6, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 — and the general, fundamental principles of Community law to be interpreted as meaning that it is illogical and unlawful for a Member State of the European Community to lay down a system for the judicial review of orders for the deportation of foreigners and of police action taken to execute such orders which, essentially, has no effect on the consequences which flow from such orders or on the actions taken to execute them, and is thus nothing more than a semblance of legal protection, wholly deprived of any practical effect or usefulness?

4. Are the Community rules set out above — Articles 7, 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 and Articles 2, 5, 6, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 — and the general, fundamental principles of Community law to be interpreted as meaning that it is unlawful for a Member State of the European Community to lay down provisions governing orders for the deportation of foreigners and the execution of such orders in such a way as to preclude the person deported from actually exercising any right of asylum?

5. Are the Community rules set out above — Articles 7, 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 and Articles 2, 5, 6, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 — and the general, fundamental principles of Community law to be interpreted as meaning that it is unlawful, in the sense that it disproportionately and unfairly denies and limits the right to personal liberty accorded to all persons in the European Community, for a Member State of the Community to provide that orders for the deportation of foreigners in possession of a valid passport be forcibly executed immediately (in the sense of within a few minutes) following their notification to the foreigner concerned, even in the absence of genuine and specific reasons of public security or public order justifying recourse to such physical coercion?

6. Are the Community rules set out above — Articles 7, 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 and Articles 2, 5, 6, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 — and the general, fundamental principles of Community law to be interpreted as meaning that Articles 13(3), (4) and (5) of Legislative Decree No 286 of 25 July 1998, as amended are inconsistent with them?

(¹) Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ P 56 of 4.4.1964, p. 850).

Appeal brought on 7 February 2003 by Mr Cwik against the judgment delivered on 26 November 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-103/01 between Mr Cwik and Commission of the European Communities

(Case C-47/03 P)

(2003/C 83/15)

An appeal against the judgment delivered on 26 November 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-103/01 Cwik v Commission was brought before the Court of Justice of the European Communities on 7 February 2003 by Mr Cwik, represented by N. Lhoëst, lawyer, with an address for service in Luxembourg.

The appellant claims that the Court should:

1. declare the appeal admissible and well founded;
2. accordingly:
 - (a) set aside the contested judgment;
 - (b) refer the case back to the Court of First Instance so that it may rule, first, on the application seeking the annulment of the decision of the Commission of 13 June 2000 transferring the applicant from the 'Economic Information, Publications and Documentation' Unit, which, following restructuring, subsequently became the 'Information: EURO, EMU' Unit (CFIN-04 under the direction of Mr Blackie), to the 'General Coordination, Human Resources and Administration' Unit, (ECFIN-01 under the direction of Mr Verhaeven), and (ii) on the claim for damages;

- (c) order the defendant to pay the entire costs of both proceedings.

Pleas and main arguments

Infringement of Community law, in particular infringement of Article 33 of the statute of the Court of Justice of the European Communities under which judgments are to state the reasons on which they are based, which means among other things that the grounds relied on should be legally valid, that is to say coherent, relevant, free of any error of law or fact, and internally consistent.

- the Court of First Instance did not take into consideration all the evidence put forward by the applicant to demonstrate the kind of harassment he was subjected to, nor has it assessed it as a whole,
- the Court of First Instance has failed to mention new facts consisting in a new restructuring of departments which left the applicant the only person not to be reintegrated into his former unit,
- the Court of First Instance, without the least explanation, refused to include in the case-file recent documents which came to light after the written procedure was closed and which rebutted the Commission's arguments.

Reference for a preliminary ruling by the Tribunale Ordinario di Torino — Sezione GIP by order of that Court of 29 January 2003 in the case brought against Giuseppe Momblano

(Case C-52/03)

(2003/C 83/16)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Ordinario di Torino — Sezione GIP (District Court, Turin, — Preliminary Investigations Section) of 29 January 2003, received at the Court Registry on 10 February 2003, for a preliminary ruling in the case brought against Giuseppe Momblano on the following questions:

1. May Article 6 of Directive 68/151/EEC⁽¹⁾ be interpreted as imposing an obligation upon the Member States to establish appropriate penalties not only for failure on the part of commercial companies to publish their balance sheet and profit and loss statement but also for publishing inaccurate versions of those statements or of other company information addressed to shareholders or the public or of any other information concerning their

economic, asset or financial position which they are required to provide and which concern the company itself or the group of companies to which it belongs?

2. With reference to the obligation upon each Member State to adopt 'appropriate penalties' for the infringements provided for in the First Directive 68/151/EEC and the Fourth Directive 78/660/EEC⁽²⁾, must those directives and, in particular, the combined provisions of Article 44(2)(g) of the Treaty Establishing the European Community, Article 2(1)(f) and Article 6 of the First Directive and Article 2(2), (3) and (4) of the Fourth Directive, as amended by Directive 83/349/EEC and Directive 90/605/EEC, be interpreted as precluding the legislation of a Member State under which no penalty may be imposed for breach of the duty to publish true and fair company documents and which lays down a system of penalties which are not responsive to the criteria of effectiveness, proportionality and deterrent effect?
3. Must the directives mentioned, and in particular the provisions of Article 44(2)(g) of the Treaty Establishing the European Community, Article 2(1)(f) and Article 6 of the First Directive and Article 2(2), (3) and (4) of the Fourth Directive, as amended by Directive 83/349/EEC and Directive 90/605/EEC, be interpreted as precluding the legislation of a Member State under which, in the case of breach of the duty to publish true and fair company information, which is intended to protect 'the interests of shareholders and third parties', permits only shareholders and creditors to apply for the imposition of penalties, thus depriving third parties generally of effective protection?
4. Must the directives mentioned, and in particular the provisions of Article 44(2)(g) of the Treaty Establishing the European Community, Article 2(1)(f) and Article 6 of the First Directive and Article 2(2), (3) and (4) of the Fourth Directive, as amended by Directive 83/349/EEC and Directive 90/605/EEC, be interpreted as precluding the legislation of a Member State under which, in the case of breach of the duty to publish true and fair company information, which is intended to protect 'the interests of shareholders and third parties', lays down rules for the prosecution of offences and a system of penalties which are differentiated, reserving to cases where material damage or loss is caused to shareholders or creditors the right to submit a complaint and apply for the imposition of sanctions and reserving to such cases sanctions which are serious and effective?

⁽¹⁾ OJ L 65 of 14.3.1968, p. 8.

⁽²⁾ OJ L 222 of 14.8.1978, p. 11.

Action brought on 11 February 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-55/03)

(2003/C 83/17)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 11 February 2003 by the Commission of the European Communities, represented by Maria Patakia, Legal Adviser, and Marina Valverde López, a member of the auxiliary staff of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Declare that, by failing to implement Council Directives 89/48/EEC of 21 December 1988⁽¹⁾ and 92/51/EEC of 18 June 1992⁽²⁾ on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC in connection with the profession of air traffic controller in the civil sector, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Council Directives 89/48/EEC and 92/51/EEC apply, not to diplomas awarded on completion of academic education but rather to diplomas awarded on completion of education and training at the end of which the holder of such a diploma is fully qualified to practise a given profession. In consequence, it is not the diploma giving access to training as an air traffic controller which must be recognised in accordance with those directives, but the final diploma giving access to the profession of air traffic controller in the civil sector. Having regard to the provisions of Royal Decree 3/1998, the Commission considers that that profession is regulated in Spain for the purposes of Article 1(d) of Directive 89/48/EEC and the settled case-law of the Court of Justice.

The Member States are required to transpose directives into their national legal order. The fact that there exists a law approved by Eurocontrol does not relieve Spain of that obligation.

⁽¹⁾ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ L 19 of 24 January 1989, p. 16).

⁽²⁾ Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 209 of 24 July 1992, p. 25).

Action brought on 12 February 2003 by the Commission of the European Communities against the Grand-Duchy of Luxembourg

(Case C-56/03)

(2003/C 83/18)

An action against the Grand-Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 12 February 2003 by the Commission of the European Communities, represented by Karen Banks, acting as Agent, with an address for service in Luxembourg.

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

- Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs⁽¹⁾, or in any event by failing to inform the Commission of those provisions, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under Article 19 of that directive;
- Order the Grand-Duchy of Luxembourg to pay the costs of the proceedings.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 28 October 2001.

⁽¹⁾ OJ L 289 of 28.10.1998, p. 28.

Action brought on 12 February 2003 by the Commission of the European Communities against the Italian Republic

(Case C-57/03)

(2003/C 83/19)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 12 February 2003 by the Commission of the European Communities, represented by Antonio Aresu, acting as Agent.

The applicant claims that the Court should:

- a) declare that, by not adopting the measures necessary to comply with the judgment of the Court of Justice of the European Communities of 9 March 2000 in Case C-386/98 ⁽¹⁾, the Italian Republic has failed to fulfil its obligations under Article 228(1) EC.
- b) impose a penalty payment on the Italian Republic in the sum of EUR 238 950 per day from the date of notification of the judgment in the present case to the date of execution thereof.
- c) order the Italian Republic to pay the costs.

Pleas in law and main arguments

Under Article 228(1) EC, where the Court of Justice finds that a Member State has failed to fulfil an obligation under the Treaty, that State is required to take the measures necessary to comply with the judgment of the Court of Justice.

Notwithstanding the repeated assurances of the Italian Government that the implementation of Directive 93/104 ⁽²⁾ into Italian law was imminent, it must be found that Italy has not yet notified the Commission of the national measures implementing that directive. It should be noted that, pursuant to Article 18(1)(a) and (c) of Directive 93/104, those measures should have been notified by 23 November 1996.

In those circumstances, the Commission must find that the Italian Republic has failed to adopt the measures necessary to comply with the judgment of the Court of 9 March 2000 in Case C-386/98, and has thus failed to fulfil its obligations under Article 228 EC.

Pursuant to Article 228(2) EC, the Commission requests that the Court impose a penalty on the Italian Republic in the sum of EUR 238 950 for each day's delay in complying with the Court's judgment in Case C-386/98, with effect from the date of judgment in the present case.

⁽¹⁾ OJ C 149 of 27.5.2000, p. 2.

⁽²⁾ OJ L 307 of 13.12.1993, p. 18.

Reference for a preliminary ruling by the Raad van State by order of that Court of 4 February 2003 in the case of Y.G. Encheva against Staatssecretaris van Justitie

(Case C-58/03)

(2003/C 83/20)

Reference has been made to the Court of Justice of the European Communities by order of the Raad van State (Council of State) of 4 February 2003, received at the Court Registry on 12 February 2003, for a preliminary ruling in the case of Y.G. Encheva against Staatssecretaris van Justitie on the following questions:

1. Is Article 59(1) of the Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, to be interpreted as precluding the refusal of an application made in the Netherlands for an ordinary residence permit subject to a restriction that the person concerned be 'self-employed' on the grounds that the foreigner concerned, who is a national of Bulgaria, did not apply in that country or in the country of permanent residence for a temporary residence authorisation to be issued to that end and await the decision thereon in that country before coming to the Netherlands and therefore failed not satisfy the requirement laid down by Article 3.71(1) of the Vb 2000?
2. Does the fact that, unlike the situation concerned in the judgment of the Court of Justice of 27 September 2001 in Case C-257/99 [Barkoci and Malik], the foreigner concerned already intended to work as a self-employed person before leaving Bulgaria for the Netherlands and failed to apply for such authorisation in Bulgaria despite having an opportunity to do so have any bearing on the answer to the first question?

Reference for a preliminary ruling by the Tribunale di Genova — Sezione Lavoro by order of that Court of 28 January 2003 in the case of Mario Cigliola and Others against Ferrovie dello Stato SpA

(Case C-59/03)

(2003/C 83/21)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Genova — Sezione Lavoro (District Court, Genoa — Employment Division) of 28 January 2003, received at the Court Registry on 13 February 2003, for a preliminary ruling in the case of Mario Cigliola and Others against Ferrovie dello Stato SpA on the following question:

Does national legislation (Decree-Law No 324 of 10 September 1998, unconverted, and Article 43(7) of Law No 448 of 23 December 1998) which, by setting aside the ordinary law that permits continuation of the employment relationship, allows an undertaking (Ferrovie dello Stato SpA) to dismiss its older employees — thereby creating a situation in which the undertaking can save on labour costs (salaries and insurance obligations), with an immediate resulting burden to the State in the form of reduced contribution revenue and the payment of pensions to dismissed workers — fall within the concept of aid that is incompatible with the common market within the meaning of Article 87 of the Treaty?

Action brought on 14 February 2003 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-63/03)

(2003/C 83/22)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 14 February 2003 by the Commission of the European Communities, represented by W. Wils, acting as Agent.

The applicant claims that the Court should:

1. Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 98/71/EC⁽¹⁾ of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, or in any event by failing to forward those provisions to the Commission, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;
2. Order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 28 October 2001.

⁽¹⁾ Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ 1998 L 289, p. 28).

Action brought on 14 February 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-65/03)

(2003/C 83/23)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 14 February 2003 by the Commission of the European Communities, represented by D. Martin, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that, by not adopting the measures necessary to ensure that holders of secondary education qualifications obtained in the other Member States may be admitted to higher education organised by the Belgian French-speaking Community on the same terms as holders of the CESS (certificat d'enseignement secondaire supérieur), the Kingdom of Belgium has failed to fulfil its obligations under Articles 12, 149 and 150 EC.
- order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Belgian authorities in question require holders of diplomas and qualifications attesting to the completion of secondary studies in other Member States (with the exception of the Grand-Duchy of Luxembourg), who are nationals of other Member States and who wish to be admitted to higher education in Belgium, to sit and pass an aptitude test unless, by way of an additional requirement, they are able to demonstrate that they have been granted admission in their country of origin to the desired university faculty without an entrance examination or other form of restriction of admission. The Commission considers that this practice is discriminatory and contrary to the articles cited in the above claims.

Action brought on 14 February 2003 by the Commission of the European Communities against the Italian Republic

(Case C-67/03)

(2003/C 83/24)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 14 February 2003 by the Commission of the European Communities, represented by Antonio Aresu, acting as Agent.

The applicant claims that the Court should:

- declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/39/EC ⁽¹⁾ of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC ⁽²⁾ on the protection of the health and safety of workers from the risks related to chemical agents at work, or by not notifying the Commission of those provisions, the Italian Republic has failed to fulfil its obligations under Article 3(1) of that directive.
- order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 249 EC, which provides that directives are binding on the Member States as to the result to be achieved, requires the Member States to respect the time-limits for transposition stipulated in the directives. This time-limit expired on 31 December 2001 without the Italian Republic having adopted the provisions necessary to comply with the directive referred to in the Commission's claims.

⁽¹⁾ OJ L 142 of 16.06.2000, p. 47.

⁽²⁾ OJ L 131 of 5.05.1998, p. 11.

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that Court of 14 February 2003 in the case of Staatssecretaris van Financiën against D. Lipjes

(Case C-68/03)

(2003/C 83/25)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Netherlands Supreme Court) of 14 February 2003, received at the Court Registry on 17 February 2003, for a preliminary ruling in the case of Staatssecretaris van Financiën against D. Lipjes on the following questions:

1. Must Article 28b(E)(3) of the Sixth Directive ⁽¹⁾ be construed as meaning that that provision refers only to services by intermediaries where the recipient of the service is a taxable person within the meaning of the directive or a non-taxable legal person within the meaning of Article 28a of the Directive?
2. If not, must the first sentence of Article 28b(E)(3) of the Sixth Directive then be construed as meaning that where an intermediary acts on the purchase and sale of a tangible object between two individuals, for the purposes of determining the place where the intermediary acts, regard must be had to the place where the transaction is carried out, as if the transaction were a supply or service by a taxable person as referred to in Article 8 of the Sixth Directive?

⁽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 Corte d'Appello di Venezia — Sezione IV Civile by order of that Court of 6 November 2002 in the case of Caseificio Cooperativo di Cornedo Soc. Coop. a.r.l. against Ministero delle Finanze

(Case C-69/03)

(2003/C 83/26)

Reference has been made to the Court of Justice of the European Communities by order of the Corte d'Appello di Venezia — Sezione IV Civile (Court of Appeal of Venice, Fourth Civil Chamber) of 6 November 2002, received at the Court Registry on 17 February 2003, for a preliminary ruling in the case of Caseificio Cooperativo di Cornedo Soc. Coop. a.r.l. against Ministero delle Finanze on the following question:

Do Regulations (EEC) No 1079/77 ⁽¹⁾ and No 1822/77 ⁽²⁾, which establish a co-responsibility levy on cows' milk, apply to all transfers of cows' milk from the producer to third parties, regardless of the legal form which such transfers take, or merely to transfers which result in the acquisition of title in the product by the transferee?

⁽¹⁾ OJ L 131 of 26.5.1977, p. 6.

⁽²⁾ OJ L 203 of 9.8.1977, p. 1.

Action brought on 18 February 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-71/03)

(2003/C 83/27)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 18 February 2003 by the Commission of the European Communities, represented by Wouter Wils, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/71/EC ⁽¹⁾ of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs and, in any event, by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;
- order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 28 October 2001.

⁽¹⁾ OJ L 289 of 28.10.1998, p. 28.

Reference for a preliminary ruling by the Commissione Tributaria Provinciale — di Massa Carrara, Sezione 2, by order of that Court of 11 December 2002 in the case of Carbonati Apuani s.r.l. against Comune di Carrara

(Case C-72/03)

(2003/C 83/28)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria Provinciale — di Massa Carrara, Sezione 2 (Massa Carrara Provincial Tax Court, Second Chamber) of 11 December 2002, received at the Court Registry on 18 February 2003, for a preliminary ruling in the case of Carbonati Apuani s.r.l. against Comune di Carrara on the following question:

whether the Italian rules in question, Laws No 749 of 15 July 1911 and No 449 of 23 December 1997 and Decree-Law No 8 of 26 January 1999 as converted, with amendments, into Law No 75.99 — establishing a marble tax in the Comune di Carrara — are compatible with Articles 23, 81, 85 and 86 of the EC Treaty as amended by the Treaty of Amsterdam, ratified in Italy by Law No 209.1998.

Action brought on 20 February 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-76/03)

(2003/C 83/29)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 20 February 2003 by the Commission of the European Communities, represented by Claudia Schmidt, of the European Commission's Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, also of the European Commission's Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs ⁽¹⁾ and/or by failing to forward those provisions to the Commission, the Republic of Austria has failed to fulfil its obligations under that directive;
2. Order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 28 October 2001.

⁽¹⁾ OJ 1998 L 289, p. 28.

Action brought on 21 February 2003 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-80/03)

(2003/C 83/30)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 21 February 2003 by the Commission of the European Communities, represented by W. Wils, acting as Agent.

The applicant claims that the Court should:

- Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 1999/93/EC⁽¹⁾ of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, or in any event by failing to inform the Commission of those provisions, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;
- Order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The period within which the measures had to be adopted expired on 19 July 2001.

⁽¹⁾ OJ L 13 of 19.1.2000, p. 12.

Removal from the register of Case C-173/00⁽¹⁾

(2003/C 83/31)

By order of 14 January 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-173/00 (Reference for a preliminary ruling by the Consiglio di Stato): ANAS — Ente Nazionale per

le Strade v SCA RL CMC Cooperativa Muratori Cementisti Ravenna, SpA ICLA Costruzioni Generali and SpA Impresa Toto e Toto.

⁽¹⁾ OJ C 192 of 8.7.2000.

Removal from the register of Case C-337/00⁽¹⁾

(2003/C 83/32)

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-337/00: Federal Republic of Germany v Commission of the European Communities.

⁽¹⁾ OJ C 316 of 4.11.2000.

Removal from the register of Case C-188/01⁽¹⁾

(2003/C 83/33)

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-188/01 (Reference for a preliminary ruling by the Unabhängiger Verwaltungssenats Salzburg): Francisco Javier Gonzales Moreno.

⁽¹⁾ OJ C 200 of 14.7.2001.

Removal from the register of Case C-375/01⁽¹⁾

(2003/C 83/34)

By order of 15 January 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-375/01: Commission of the European Communities v Ireland.

⁽¹⁾ OJ C 348 of 8.12.2001.

Removal from the register of Case C-444/01 ⁽¹⁾

(2003/C 83/35)

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-444/01 (Reference for a preliminary ruling by the Bundesverwaltungsgericht): Stadt Villingen-Schwenningen v Ophilia Akosua Owusu.

⁽¹⁾ OJ C 84 of 06.4.2002.

Removal from the register of Case C-61/02 ⁽¹⁾

(2003/C 83/36)

By order of 19 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-61/02: Commission of the European Communities v Republic of Austria.

⁽¹⁾ OJ C 97 of 20.4.2002.

Removal from the register of Case C-191/02 ⁽¹⁾

(2003/C 83/37)

By order of 16 December 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-191/02: Commission of the European Communities v Federal Republic of Germany.

⁽¹⁾ OJ C 180 of 27.7.2002.

Removal from the register of Case C-215/02 ⁽¹⁾

(2003/C 83/38)

By order of 16 December 2002 the President of the Court of Justice of the European Communities ordered the removal

from the register of Case C-215/02 (Reference for a preliminary ruling by the Sozialgericht Stuttgart): Karin Müller v Postbeamtenkrankenkasse.

⁽¹⁾ OJ C 202 of 24.8.2002.

Removal from the register of Case C-241/02 P ⁽¹⁾

(2003/C 83/39)

By order of 6 January 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-241/02 P: International and European Public Services Organisation (IPSO) v European Central Bank.

⁽¹⁾ OJ C 191 of 10.8.2002.

Removal from the register of Case C-337/02 ⁽¹⁾

(2003/C 83/40)

By order of 4 February 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-337/02: Commission of the European Communities v Italian Republic.

⁽¹⁾ OJ C 274 of 9.11.2002.

Removal from the register of Case C-368/02 ⁽¹⁾

(2003/C 83/41)

By order of 23 January 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-368/02: Commission of the European Communities v Kingdom of Spain.

⁽¹⁾ OJ C 305 of 7.12.2002.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 January 2003

in Case T-75/00: Augusto Fichtner v Commission of the European Communities ⁽¹⁾

(Officials — Disciplinary measures — Removal from post — Engagement in outside activities without prior authorisation)

(2003/C 83/42)

(Language of the case: Italian)

In Case T-75/00: Augusto Fichtner, a former official of the Commission of the European Communities, residing in Besozzo (Italy), represented initially by V. Salvatore, avvocato, and subsequently by V. La Russa, avvocato, against Commission of the European Communities (Agents: J. Currall and A. Dal Ferro) — application, first, for annulment of the Commission decision imposing on the applicant the disciplinary measure of removal from his post, with maintenance of retirement pension rights, on the ground that he had engaged in outside activities without prior authorisation, and, second, for payment of compensation — the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, P. Mengozzi and A.W.H. Meij, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 16 January 2003, the operative part of which is as follows:

1. The application is dismissed;
2. The parties shall bear their own costs, including those relating to the proceedings for interim measures.

⁽¹⁾ OJ C 135, 13.5.00.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 January 2003

in Case T-147/00: Les Laboratoires Servier v Commission of the European Communities ⁽¹⁾

(Medicinal products for human use — Community arbitration procedures — Withdrawal of marketing authorisations — Competence — Serotonergic anorectics: dexfenfluramine, fenfluramine — Directives 65/65/EEC and 75/319/EEC)

(2003/C 83/43)

(Language of the case: English)

In Case T-147/00, Les Laboratoires Servier, established in Neuilly-sur-Seine (France), represented by C. Norall, E. Wright, M.I.F. Utgès Manley, I.S. Forrester QC and J. Killick, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: H. Støvlbæk and R. Wainwright): Application for annulment of the Commission decision of 9 March 2000 concerning the withdrawal of marketing authorisations of medicinal products for human use which contain the [following] substances: 'dexfenfluramine' and 'fenfluramine' (C(2000) 573), the Court of First Instance (Second Chamber, Extended Composition), composed of: R.M. Moura Ramos, President, V. Tiili, J. Pirrung, P. Mengozzi and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 28 January 2003, in which it:

1. Annuls the Commission Decision of 9 March 2000 (C(2000) 573);
2. Orders the Commission to pay all the costs.

⁽¹⁾ OJ C 247, 26.8.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 January 2003

in Joined Cases T-303/00, T-304/00 and T-322/00: Manuel Francisco Caballero Montoya and Others v Commission of the European Communities ⁽¹⁾

(Officials — Transfer to the Community pension scheme of pension rights acquired under a national social security scheme — Late transfer — Interest paid after transfer — Commission's refusal to review the calculation of the pension rights of the officials concerned and to pay them part of that interest)

(2003/C 83/44)

(Languages of the case: Spanish and French)

In Joined Cases T-303/00, T-304/00 and T-322/00: Manuel Francisco Caballero Montoya, former official of the Commission of the European Communities, residing in Brussels, María Jesús Sáez Acevedo, an official of the Commission of the European Communities, residing in Brussels, represented by J.R. Iturriagagoitia Bassas, lawyer, Cecilio Alonso de Miguel, residing in Bornem-Wintam (Belgium), Miguel Baena Durán, residing in Torremolinos (Spain), Lucrecio Blázquez Rubia, Juan Antonio Campos Morales, Jaime Cavanillas Junquera, Carlos Fernández Liébana, Ricardo García Ayala, Luis García Collados, Pilar Gil Soria, Joaquín López Madruga, Martín Minguella Giné, Ramón Oviedo Bussells, Giovanni Ouzonoff Popoff, Raquel Sevilla García, Alfonso Solloa Inchaurtieta, José Trimiño Pérez, residing in Brussels, Juan Cornet Prat, residing in Overijse (Belgium), José Luis Gallego LaPeña, Manuel Puerta García, residing in Kraainem (Belgium), Lorenzo Sánchez García, residing in Algiers (Algeria), Kaethe Sommerau Roschinsky, residing in Buenos Aires (Argentina), officials or former officials of the Commission of the European Communities, represented by J.-N. Louis and V. Peere, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall, J. Rivas Andrés and J. Gutiérrez Gisbert) -application for annulment of the Commission's decisions contained in notes of 13 December 1999 relating to the applicant in Case T-303/00 and of 15 December 1999 relating to the applicants in Cases T-304/00 and T-322/00 refusing to review the calculation of their pension rights — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; B. Pastor, Deputy Registrar, has given a judgment on 30 January 2003, in which it:

1. Joins Cases T-303/00, T-304/00 and T-322/00 for the purposes of the judgment;

2. In Case T-303/00:

- annuls the Commission's decision contained in the note of 13 December 1999 relating to the applicant's pension rights;
- dismisses the remainder of the action;
- orders the Commission to pay the costs.

3. In Case T-304/00:

- annuls the Commission's decision contained in the note of 15 December 1999 relating to the applicant's pension rights;
- dismisses the remainder of the action;
- orders the Commission to pay the costs;

4. In Case T-322/00:

- annuls the Commission's decisions contained in the notes of 15 December 1999 relating to the applicants' pension rights;
- orders the Commission to pay the costs.

⁽¹⁾ OJ C 372, 23 December 2000, C 355, 9 December 2000 and C 335, 25 November 2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 January 2003

in Case T-307/00: C v Commission of the European Communities ⁽¹⁾

(Officials — Orphan's pension — Fourth paragraph of Article 80 of the Staff Regulations — Parents' civil status — Equal treatment)

(2003/C 83/45)

(Language of the case: French)

In Case T-307/00: C, an official of the Commission of the European Communities, residing in Brussels, represented by J.-N. Louis and V. Peere, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: F. Anton and A. Pillette) — application for annulment of the Commission's decision of 25 November 1999 refusing to award an orphan's pension to the applicant's child — the Court of First Instance (Fourth Chamber, Extended Composition), composed of M. Vilaras, President, V. Tiili, J. Pirrung, P. Mengozzi and A.W.H. Meij, Judges; J. Palacio González, Registrar, has given a judgment on 30 January 2003, in which it:

1. *Annuls the Commission's decision of 25 November 1999 refusing to award an orphan's pension to the applicant's child;*
2. *Orders the Commission to pay the costs, except those incurred by the Council of the European Union and those incurred by the applicant as a consequence of the Council's intervention;*
3. *Orders the Council to bear its own costs.*

(¹) OJ C 335, 25 November 2000.

Action brought on 10 January 2003 by Colette Di Marzio against Commission of the European Communities

(Case T-14/03)

(2003/C 83/47)

(Language of the case: French)

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 January 2003

in Case T-138/01: F v Court of Auditors of the European Communities (¹)

(Officials — Reassignment — Legitimate expectations — Action for annulment and compensation)

(2003/C 83/46)

(Language of the case: French)

In Case T-138/01: F, an official of the Court of Auditors of the European Communities, residing in Luxembourg, represented by P. Goergen, lawyer, with an address for service in Luxembourg, against Court of Auditors of the European Communities (Agents: J.-M. Stenier, P. Giusta and B. Schäfer) — application, firstly, for annulment of the decision of the Court of Auditors of 4 December 2000 reassigning the applicant to the translation service and, secondly, for compensation for the non-material damage alleged by the applicant, the Court (Second Chamber), composed of R.M. Moura Ramos, President, and J. Pirrung and A.W.H. Meij, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 28 January 2003, in which it:

1. *Annuls the decision of the Court of Auditors of 4 December 2000 reassigning the applicant to the translation service.*
2. *Dismisses the remainder of the application.*
3. *Orders the Court of Auditors to pay the costs, including those relating to the interlocutory proceedings in Case T-138/01 R.*

(¹) OJ C 259 of 15.9.2001.

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 Colette Di Marzio, residing in Ginasservis (France), represented by Georges Vandersanden and Laure Levi, lawyers.

The applicant claims that the Court should:

- annul the appointing authority's decision to make a deduction from the applicant's salary corresponding, for the months of October, November and December 2001, to the weighting for France and the expatriation allowance;
- annul the decision of an unknown date depriving the applicant of the fixed allowance (the 'secretarial allowance') referred to in Article 4a of Annex VII to the Staff Regulations with effect from October 2000;
- annul the decision of an unknown date depriving the applicant of the annual travel allowance provided for in Article 8 of Annex VII to the Staff Regulations for 2001;
- reinstate all the applicant's pecuniary rights, which entails payment of the weighting for France and the expatriation allowance for October, November and December 2001; payment of the fixed allowance (the 'secretarial allowance') referred to in Article 4a of Annex VII to the Staff Regulations for the period from 1 January 2001; payment of the annual travel allowance provided for in Article 8 of Annex VII to the Staff Regulations for the whole of 2001; plus interest on all those amounts at the rate of 5,25 % per annum until full payment is made;
- order the defendant to pay damages assessed, on an equitable basis, at EUR 10 000;
- order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant is an official of the Commission. She was assigned to Cadarache and then reassigned to Brussels. The applicant challenged the decision to reassign her in Case T-355/01, which resulted in a settlement being reached with the Commission and in the applicant's being seconded to Cadarache. However, the Commission took the view that the applicant had received the weighting for France and the expatriation allowance without being entitled to do so. The applicant was also deprived of the 'secretarial allowance' and of the fixed allowance for travelling expenses.

In support of her action, the applicant claims that there has been an infringement of Articles 59 and 64 of the Staff Regulations and Article 4 of Annex VII to the Staff Regulations and an infringement of Article 71 of the Staff Regulations and Articles 5 to 10 of Annex VII to the Staff Regulations. The applicant also claims that there has been a breach of the obligation to state reasons and an infringement of the principle of non-discrimination.

In the alternative, as regards the weighting for France and the expatriation allowance, the applicant claims that there has been an infringement of Article 85 of the Staff Regulations. The applicant also claims that there has been an infringement of Article 4a of Annex VII to the Staff Regulations, an infringement of the general principle that an institution must comply with the rules which it itself has made and a breach of the obligation to state reasons as regards the secretarial allowance.

Last, the applicant claims that there has been an infringement of the general principle of sound management and good administration and a breach of the duty to have regard for the welfare of officials.

— award EUR 1 000 by way of damages as compensation for non-material damage, that amount being fixed *ex aequo et bono*;

— order the defendant to pay the costs.

Pleas in law and main arguments

By his action the applicant, an official of the Commission, challenges the validity of his staff report for the period 1995-1997 and claims damages for the faults allegedly committed by the Commission in preparing that report.

He claims that the report infringes Article 43 of the Staff Regulations and the provisions of the Guide to Staff Reports. Thus, notwithstanding the opinion of the Joint Committee on Staff Reports pointing out significant procedural and substantive irregularities, the appeal assessor did not find it necessary to correct them. In addition, that the report was completed after an unreasonable period of time was the Commission's fault alone. Similarly, the assessors systematically refused to hold a prior interview with the applicant as provided for by the Guide to Staff Reports. Furthermore, the quite irregular drafting of the report reflected a more general 'mobbing' attitude from which the applicant had suffered for some years.

The applicant claims that the very negative assessments in his report are clearly unfounded and that the Commission has failed in its duty to have regard for the interests of officials and has failed to observe the principle of sound administration.

Action brought on 13 January 2003 by Albano Ferrer de Moncada against Commission of the European Communities

(Case T-16/03)

(2003/C 83/48)

(Language of the case: French)

An action against Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 January 2003 by Albano Ferrer de Moncada, residing in Luxembourg, represented by Georges Vandersanden, Laure Levi and Aurore Finchelstein, lawyers.

The applicant claims that the Court should:

— annul his staff report for the reference period 1995-1997;

Action brought on 22 January 2003 by Spyridoula Konstantopoulou against Court of Justice of the European Communities

(Case T-19/03)

(2003/C 83/49)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of Justice of the European Communities on 22 January 2003 by Spyridoula Konstantopoulou, residing in Ioannina (Greece), represented by Eric Boigelot, lawyer.

The applicant claims that the Court should:

- annul the decision of the selection board of 23 October 2002 not to admit the applicant to the oral test in general competition CJ/LA/14;
- annul the express rejection of the complaint lodged by the applicant as notified on 9 November 2003 by letter from Marc Ronayne;
- in any event, order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a candidate in general competition CJ/LA/14, organised by the Court of Justice with a view to constituting a reserve list of Greek-language lawyer-linguists, objects to not being admitted to the oral test for having failed to obtain the minimum requisite marks in the first compulsory written paper (translation of a legal text drafted in French).

In support of her arguments, the applicant alleges:

- failure to observe the duty to state reasons. The applicant claims in that regard that the selection board cannot rely on the secrecy of its deliberations in order not to fulfil the obligation to give reasons to a candidate who requests them;
- irregularities in the conduct of the tests in the competition and breach of the principle of equality as between the candidates in that, in view of the system for preserving the anonymity of the candidates, the applicant is justified in wondering whether the written test script attributed to her when the tests were being marked is indeed hers. That method for ensuring anonymity, which she describes as unusual, constitutes, furthermore, a substantive irregularity.
- infringement of the competition notice and of Article 5 of Annex III to the Staff Regulations; manifest error of assessment. The applicant states in that respect that the purpose of the test in question was to assess whether each of the candidates had perfect command of Greek and good knowledge of French on the basis of objective criteria which were identical for each of the candidates.

Action brought on 21 January 2003 by ‘S’ against the Commission of the European Communities

(Case T-21/03)

(2003/C 83/50)

(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 21 January 2003 by S, represented by Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Annul the decision of 11 March 2002 of the Head of the ‘Occupational disease and accident insurance’ sector rejecting the applicant’s request to have removed from the file forwarded to the medical officer all reports drawn up to her knowledge relating to her ability, efficiency and conduct;
- order the defendant to withdraw from the file forwarded to the medical officer the originals of the reports in question, send them to the applicant and destroy all copies;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in these proceedings objects to all the reports relating to her ability, efficiency and conduct, which have to her knowledge been drawn up, not placed in her personal file and communicated to the defendant’s medical officer, being made available to the medical committee called upon to give a decision on her case in response to a request for her illness to be recognised as occupational in origin.

In support of her claims, the applicant alleges infringement of her right to a fair hearing and of Articles 26 and 43 of the Staff Regulations.

Action brought on 29 January 2003 by C.A.S. Succhi di Frutta against the Commission of the European Communities**(Case T-23/03)**

(2003/C 83/51)

(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 29 January 2003 by C.A.S. Succhi di Frutta, Verona, Italy, represented by D. Ehle, lawyer.

The applicant claims that the Court should:

- annul the Commission's decision of 18 October 2002 (REC 10/01), in so far as the Commission refused to remit or repay the import duties amounting to ITL 3 296 190 371 collected by way of post-clearance recovery in respect of 32 imports covered by 32 specified A.TR.1 certificates;
- order the Commission to pay the costs.

Pleas in law and main arguments

Regulation (EEC) No 4115/86⁽¹⁾ abolished, with certain exceptions, the customs duties imposed on the goods originating in Turkey listed in Annex II to the EEC Treaty.

Between 5 April 1995 and 20 November 1997, the applicant, an Italian company which, inter alia, processes imported fruit juice concentrates, put on the market for free circulation apple and pear juice concentrates declared to originate in Turkey. According to the applicant, the shipments were accompanied by proper documents, including the A.TR.1 movement of goods certificates. In 1998, the customs authorities in Ravenna presented the applicant with a list of A.TR.1 certificates. On the basis of examinations of the authenticity and regularity of the certificates carried out at the offices of the Turkish customs authority, it was alleged that the applicant had imported apple juice concentrates with falsified A.TR.1 certificates. At the same time, the applicant was required to pay import duties by way of post-clearance recovery.

The applicant lodged an objection to the customs assessment notices issued by the competent customs authority in Ravenna. At the same time, it applied for remission under Article 220(2)(b) and Article 239 of the Customs Code. The Italian tax authorities submitted the decision on the remission of the import duties collected by way of post-clearance recovery to the Commission.

In the contested decision, the Commission, inter alia, takes the view that 32 A.TR.1 certificates were falsified. The Commission refused the applicant's request for remission of ITL 3 296 190 371.

In support of its claim for annulment of the part of the Commission's decision refusing remission, the applicant submits that the Commission infringed its right of access to the file, inasmuch as, in the course of providing access to the file, the Commission failed to disclose and produce to the applicant all the documents relevant to the case.

The applicant further submits that the Commission failed to comply with its remission or repayment obligation under Article 239 of the Customs Code in respect of the 32 allegedly falsified A.TR.1 certificates, since those 32 certificates too were issued and registered and handed over to the exporter when clearing the goods for export with the knowledge and cooperation of the competent Turkish customs authority, which was aware of the possibility that the goods might not be of Turkish origin.

Moreover, the Commission infringed Article 220(2)(b) of the Customs Code since the Turkish customs authorities knew or could reasonably have known that the deliveries for which the 32 A.TR.1 certificates were issued, were not of Turkish origin, whereas, when importing the products, the applicant acted in good faith and was unaware of the misconduct of the Turkish customs authority.

⁽¹⁾ Council Regulation (EEC) No 4115/86 of 22 December 1986 on imports into the Community of agricultural products originating in Turkey (OJ 1986 L 380, p. 16).

Action brought on 28 January 2003 by Marco de Stefano against the Commission of the European Communities**(Case T-25/03)**

(2003/C 83/52)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 January 2003 by Marco de Stefano, residing in Brussels, represented by Georges Vander-sanden and Guy Verbrugge, lawyers.

The applicant claims that the Court should:

- annul the Commission's decision rejecting the applicant's candidature and refusing to admit him to the written procedure in open competition EUR/A/166/01, as notified to him by decision of the appointing authority of 8 April 2002;
- in the alternative, order compensation for non-material damage provisionally estimated at EUR 2 500;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in the present case challenges the decision refusing to allow him to take part in the tests in competition EUR/A/166/01, held for the purpose of constituting a reserve for recruitment of A7/A6 administrators in the area of auditing, on the ground that the qualifications and diplomas produced by the applicant did not satisfy the conditions laid down in point III.B.2 of the notice of competition. The Selection Board considered that the applicant's qualifications of 'Ragioniere e Perito Commerciale' and 'Revisore Commerciale' could not be regarded as equivalent to the qualification of 'Dottore Commercialista'.

In support of his claims, the applicant alleges failure to comply with of the notice of competition and infringement of the duty to state reasons, and alleges that there was in the circumstances of the case a manifest error of assessment. Specifically, he argues that the Selection Board erred in its assessment of his qualifications, diplomas, professional activity and training periods in auditing which in fact enable him to claim a professional qualification of equivalent level.

Action brought on 31 January 2003 by Aventis Cropscience S.A. against Office for the Harmonisation of the Internal Market (trade marks and designs) (OHIM)

(Case T-35/03)

(2003/C 83/53)

(Language of the case: Spanish)

An action against the 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 31 January 2003 by Aventis Cropscience S.A., the registered office of which is in Lyon (France), represented by Enrique Armijo Chávarri.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of OHIM of 18 November 2002 in file R 803/2001-2;
- uphold, therefore, the applicant's opposition to registration of the trade mark 'CARPO', and
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Basf Aktiengesellschaft

The Community trade mark concerned: Word mark 'CARPO' for products in class 5 (fungicides, herbicides, insecticides and pesticides).

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: Spanish word mark 'HARPO Z' for products in Class 5 (preparations for destroying vermin, fungicides, herbicides).

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Action dismissed.

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

Action brought on 4 February 2003 by Open Mobile Alliance Ltd. against the Office for Harmonization in the Internal Market

(Case T-37/03)

(2003/C 83/54)

(Language of the case: English)

An action against the Office for Harmonization in the Internal Market was brought before the Court of First Instance of the European Communities on 4 February 2003 by Open Mobile Alliance Ltd., Reading, United Kingdom, represented by Ms Alexandra Dellmeier, Attorney at Law.

The applicant claims that the Court should:

- cancel the decision of the Third Board of Appeal of 20 November 2002;
- reassign the application No 1131739 for the figurative mark 'W@P' to the original filing date of 8 April 1999;
- as an auxiliary request it is asked for that the application No 1131739, the figurative mark 'W@P', be reassigned the application date of 13 October 1999, the date given to the application for the word mark 'WAP FORUM' with the No 1131705 which was also filed for on 8 April 1999;
- as an auxiliary request it is asked for that the application No 1131739, the figurative mark 'W@P', be reassigned the application date of 21 December 1999;
- as an auxiliary request it is asked for reinstatement according to article 78 of Council Regulation 40/94;

Pleas in law and main arguments

The applicant applied on 8 April 1999 for the registration of the figurative mark 'W@P' for goods and services in classes 35, 41 and 42 (application No 1131739). The then representatives of the applicant requested that the filing fee be deducted from their deposit account.

The defendant informed the applicant that the filing fee had to be paid within a time-limit of one month. Later, the defendant informed the applicant that since the application fee had not been paid, the application would have, as its filing date, the date on which all flaws had been remedied. The then representatives of the applicant requested again that the fee be deducted from their deposit account.

The defendant informed the applicant on 5 September 2000 that the application would have 17 March 2000 as its filing date because this was the date actual payment by cheque was received. The applicant was furthermore informed that the deposit account did not have sufficient funds to debit the fee.

The applicant contested this decision before the board of appeal on 23 January 2001. The Board of Appeal decided that the appeal was out of time and declared it inadmissible.

In support of its present application, the applicant submits that the defendant has breached an obligation it has as a public authority to keep track of its bookkeeping and an infringement of Article 41 of the Charter of Fundamental Rights, namely the right to good administration. According to the applicant, the defendant has the responsibility to notify within a reasonable period of time any inconsistencies.

The applicant furthermore invokes a violation of Rule 52(2) of Regulation 2868/95⁽¹⁾ and an infringement of the right to good administration and the right to an effective remedy and a fair trial as incorporated in articles 41 and 47 of the Charter of Fundamental Rights. The applicant states that no written communication was attached as required by Rule 52(2).

The applicant finally submits that the defendant made a statement and not a decision so that the time-limit of two months indicated in Rule 52(2) of Regulation 2868/95 is not applicable.

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

Action brought on 4 February 2003 by Merck Sharp & Dohme Limited and 19 other applicants against the Commission of the European Communities and the European Agency for the Evaluation of Medicinal Products ('EMEA')

(Case T-41/03)

(2003/C 83/55)

(Language of the case: English)

An action against the Commission of the European Communities and the European Agency for the Evaluation of Medicinal Products ('EMEA') was brought before the Court of First Instance of the European Communities on 4 February 2003 by Merck Sharp & Dohme Limited, Hoddeston, United Kingdom, Merck Sharp & Dohme BV, Haarlem, Netherlands, Laboratoires Merck Sharp & Dohme-Chibret, Paris, France, MSD Sharp & Dohme GmbH, Haar, Germany, Merck Sharp & Dohme (Italia) SpA., Rome, Italy, Merck Sharp & Dohme, LDA. Paço de Arcos, Portugal, Merck Sharp & Dohme de Espana S.A., Madrid, Spain, Merck Sharp & Dohme Ges.m.b.H., Wien, Austria, Merck & Co. Inc., Whitehouse Station, USA, Dieckmann Arzneimittel GmbH, Haar, Germany, Neopharmed SpA, Rome, Italy, Istituto Gentili SpA., Pisa, Italy, Laboratórios Químico-Farmacêuticos Chibret, LDA., Paço de Arcos, Portugal, Laboratoires Sanofi, Synthelabo France, Paris, France, Boehringer Ingelheim Pharma GmbH & Co.KG, Ingelheim, Germany, VIANEX S.A., Nea Erythrea, Greece, Sigma-Tau Industrie Farmaceutiche Riunite SpA., Rome, Italy, Mediolanum SpA., Milano, Italy, BIOHORM S.A. (Gruppo Uriach), Barcelona, Spain, and LACER S.A., Barcelona, Spain, represented by Dr Georg M. Berrisch and Mr Peter Bogaert, Lawyers.

The applicant claims that the Court should:

- annul the Contested Decision
- order the Commission to pay the applicants' costs

Pleas in law and main arguments

The Applicants in the present case are all Marketing Authorisation Holders (MAH) for the product ZOCORD, which, containing the active ingredient simvastatin, is a lipid-lowering medicine reducing levels of total cholesterol, LDL-C (low density lipoprotein cholesterol), Apo B (Apolipoprotein B) and triglycerides in the blood. It also increases the amount of HDL-C (High density lipoprotein cholesterol) in the blood.

They challenge the decision of the European Agency for the Evaluation of Medicinal Products to initiate a referral procedure under Article 30 of Directive 2001/83/EC of the European Parliament and the Council, of 6 November 2001, of the Community code relating to medicinal products for human use (the Directive)⁽¹⁾, in relation to the aforementioned product.

The Applicants submit that the contested Decision violates Article 30 of the Directive on the following grounds:

- There are no divergent decisions following decisions in accordance with Article 8, 10(1) and 11 of the Directive.
- The contested Decision is a decision to harmonise the summary of product characteristics (SPC) for ZOCORD and associated trade names, and the single proposal of the referral procedure for ZOCORD is to develop and impose the EU-wide harmonised SPC. The Article 30 procedure, however, does not allow for the adoption of a harmonised SPC.
- Before the mutual recognition procedure took effect, pharmaceutical companies were under no obligation to submit identical marketing authorisation applications to different Member States. Applicants could, for example, request approval of different therapeutic uses or presentations, often to take account of differences in national medical practices and customs. Such differences in applications unavoidably result in differences in the approvals, but do not qualify as 'divergent decisions' for the purposes of Article 30. Hence, differences between national approvals resulting from different applications are not covered by Article 30.

- The referral covers the entire content of the SPC. This goes beyond the permissible scope of an Article 30 referral, which must be limited to a 'clearly identified question', according to Article 30, second indent, of the Directive.
- It has not been demonstrated that the contested Decision is based on public health grounds.

⁽¹⁾ OJ L 311, of 28.11.2001, p. 67.

Action brought on 10 February 2003 by Lurgi AG and Lurgi S.p.A. against the Commission of the European Communities

(Case T-42/03)

(2003/C 83/56)

(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 10 February 2003 by Lurgi AG, Frankfurt am Main, Germany, and Lurgi S.p.A., Milan, Italy, represented by Dr Michael Schütte and Prof Massimo Benedetti, Lawyers with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the notice terminating the THERMIE Contract, notified by the Commission's letter of 26 November 2002;
- declare that the Commission is not entitled to claim reimbursement of the funds paid to the contractors under the THERMIE contract BM/1007/94;
- order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

The applicants, together with several other contractors, concluded a contract (THERMIE contract) on 12 December 1994 with the Commission for activities relating to the promotion of energy technology in Europe. The contract was concluded under number BM 1007/1994 IT/DE/UK and its object was the funding and implementation of the project 'Energy farm: an IGCC plant for the production of electricity and heat through gasification of SFR biomass'.

On 30 May 1997 a contract was concluded between one of the applicants, Lurgi SpA, and the coordinator of the project, Bioelettrica, relating to the construction of a plant for the atmospheric gasification of biomass. During the engineering works, the applicant identified certain technical difficulties. These difficulties were brought to the attention of the Commission and the other contractors.

On 6 September 2001, the Commission notified Bioelettrica that it was terminating the contract because of the failure to commence the works under the THERMIE contract. Bioelettrica contested this termination of the contract before the Court of First Instance in Case T-287/01, Bioelettrica/Commission.

On 23 July 2002, the Commission sent a further notice indicating that it would terminate the contract due to non-performance by the contractors unless they performed their obligations within 30 days. The Commission mainly criticised the delays of the project. In a letter dated 26 November 2002, the Commission stated that it considered the contract terminated. This termination of the contract is being contested in the present case.

In support of their application, the applicants invoke an infringement of the formal requirements in the decision making procedure of the Commission. According to the applicants, all acts of the Commission have to be taken under the principle of collegiality as set forth in Article 219 of the EC Treaty and Article 1 of the procedural rules of the Commission ⁽¹⁾. The applicants submit that the decision terminating the contract had a substantial financial impact for the contractors and involves a difficult technical and legal assessment of the contract and its purpose. Therefore, the applicants claim that the decision to terminate the contract could not be considered as an execution of an act at an administrative or management level and that the decision had to be taken by the College of Commissioners.

Furthermore, the applicants invoke the wrongful application of the THERMIE contract. The applicants submit in this respect that there is no justification for a termination of the contract for non-performance by the contractors. According to the applicants, this provision is not applicable when there are reasonable technical or economic grounds for non-performance. In the present case, there was a need to make modifications to the original technology causing serious economic risks.

Finally, the applicants submit that the behaviour of the Commission prevents the Commission from invoking non-performance as a ground for termination of the contract. In this respect, the applicants invoke Article 1460 of the Italian Civil Code and the principle *inadimplenti non est adimplentum*.

⁽¹⁾ Rules of Procedure of the Commission [C(2000) 3614] (OJ L 308 of 8 December 2000, p. 26).

Action brought on 11 February 2003 by Leali S.p.A. against Commission of the European Communities

(Case T-46/03)

(2003/C 83/57)

(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 11 February 2003 by Leali S.p.A., represented by Giovanni Vezzoli and Gianluca Belotti, lawyers.

The applicant claims that the Court should:

- principally, annul the contested decision;
- or, alternatively, reduce the fine imposed,
- order the defendant to pay the costs.

Pleas in law and main arguments

This action is directed against the same decision as that contested in Case T-27/03 S.P. v Commission. The pleas in law and main arguments are similar to those in the abovementioned case.

Removal from the register of Case T-187/94 ⁽¹⁾

(2003/C 83/58)

(Language of the Case: German)

By order of 11 December 2002 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-187/94: Theresia Rudolf v Council of the European Union and Commission of the European Communities.

⁽¹⁾ OJ C 174 of 25.6.1994.

Removal from the register of Case T-43/01 ⁽¹⁾

(2003/C 83/59)

(Language of the Case: French)

By order of 10 January 2003 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-43/01: Jean-Jacques Rateau v Commission of the European Communities.

⁽¹⁾ OJ C 118 of 21.4.2001.

Communities ordered the removal from the register of Case T-288/01: OPI Products, Inc. v Office for Harmonisation in the Internal Market.

⁽¹⁾ OJ C 31 of 2.2.2002.

Removal from the register of Case T-192/02 ⁽¹⁾

(2003/C 83/61)

(Language of the Case: English)

By order of 23 January 2003 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-192/02: G.D. Searle LLC v Office for Harmonisation in the Internal Market.

⁽¹⁾ OJ C 202 of 24.8.2002.

Removal from the register of Case T-288/01 ⁽¹⁾

(2003/C 83/60)

(Language of the Case: English)

By order of 7 January 2003 the President of the Fourth Chamber of the Court of First Instance of the European

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(Notices)

(2003/C 83/62)

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

OJ C 70, 22.3.2003

Past publications

OJ C 55, 8.3.2003

OJ C 44, 22.2.2003

OJ C 31, 8.2.2003

OJ C 19, 25.1.2003

OJ C 7, 11.1.2003

OJ C 323, 21.12.2002

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