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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

Request by the Council of the European Union for an Opinion pursuant to Article 300(6) EC

(Opinion 1/03)

(2003/C 101/01)

The Court of Justice of the European Communities has received a request for an Opinion pursuant to Article 300(6) EC, lodged at the Court Registry on 10 March 2003 by the Council of the European Union, represented by J. Schutte and J.-P. Hix, acting as Agents.

The Council of the European Union asks the Court of Justice to reply to the following question:

Does conclusion of the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as provided for at points 8 to 12 of this document, fall entirely within the Community's exclusive competence or is competence shared between the Community and the Member States?

JUDGMENT OF THE COURT

of 6 March 2003

in Case C-41/00 P: Interporc Im- und Export GmbH v Commission of the European Communities [1]

(Appeals — Decision 94/90/ECSC, EC, Euratom — Access to documents — Documents held by the Commission and emanating from the Member States or third countries — Authorship rule)

(2003/C 101/02)

(Language of the case: German)

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

In Case C-41/00 P, Interporc Im- und Export GmbH, established in Hamburg (Germany), (Agent: G.M. Berrisch): Appeal against the judgment of the Court of First Instance of the European Communities (First Chamber, Extended Composition) in Case T-92/98 Interporc v Commission [1999] ECR II-3521, seeking to have that judgment set aside in part, the other party to the proceedings being: Commission of the European Communities (Agent: U. Wölker), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, R. Schintgen and C.W.A. Timmermans, Presidents of Chambers, C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), P. Jann, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Interporc Im- und Export GmbH to pay the costs.*

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[1] OJ C 149 of 27.5.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 March 2003

in Case C-240/00: Commission of the European Communities v Republic of Finland [1]

(Directive 79/409/EEC — Protection of wild birds and their habitats — Special protection areas)

(2003/C 101/03)

(Language of the case: Finnish)

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

In Case C-240/00, Commission of the European Communities (Agents: E. Paasivirta and R.B. Wainwright) v Republic of

Finland (Agent: T. Pynnä): Application for a declaration that, by failing to classify special protection areas fully and definitively, the Republic of Finland has failed to fulfil its obligations under Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen and C. Gulmann (Rapporteur), F. Macken and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 6 March 2003, in which it:

(1) *Declares that, by failing to classify fully and definitively the SPAs in its territory, the Republic of Finland has failed to fulfil its obligations under Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.*

(2) *Orders the Republic of Finland to pay the costs.*

([1]) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

of 25 February 2003

in Case C-326/00 (Reference for a preliminary ruling from the Dioikitiko Protodikeio Thessalonikis): Idryma Koinonikon Asfaliseon (IKA) v Vasilios Ioannidis ([1])

(Social security — Hospital treatment of a pensioner during a stay in a Member State other than the State in which he resides — Conditions for funding — Articles 31 and 96 of Regulation (EEC) No 1408/71 — Articles 31 and 93 of Regulation (EEC) No 574/72)

(2003/C 101/04)

(Language of the case: Greek)

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

In Case C-326/00: Reference to the Court under Article 234 EC by the Diikitiko Protodikio Thessalonikis (Greece) for a preliminary ruling in the proceedings pending before that court between Idryma Koinonikon Asfaliseon (IKA) and Vasilios Ioannidis on the interpretation of Articles 31 and 36 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), as amended by Council Regulation (EC) No 3096/95 of 22 December 1995 (OJ 1995 L 335, p. 10), of Articles 31 and 93 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, as amended and updated by Regulation No 2001/83, as amended by Regulation No 3096/95, of Articles 56 and 59 of the EC Treaty (now, after amendment, Articles 46 EC and 49 EC) and 60 of the EC Treaty (now Article 50 EC), and of Article 1 of the Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms, the Court, composed of: G.C. Rodríguez Iglesias, President, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), 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 25 February 2003, in which it has ruled:

1. *Article 31 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, as amended by Council Regulation (EC) No 3096/95 of 22 December 1995, must be interpreted as meaning that enjoyment of the benefits in kind guaranteed by that provision to pensioners staying in a Member State other than their State of residence is not subject to the condition that the illness which necessitated the treatment in question manifested itself suddenly during such a stay, making that treatment immediately necessary. That provision therefore precludes a Member State from subjecting that enjoyment to such a condition.*

2. *Article 31 of Regulation No 1408/71, as amended and updated by Regulation No 2001/83, as amended by Regulation No 3096/95, precludes a Member State from subjecting the enjoyment of the benefits in kind guaranteed by that provision to any authorisation procedure.*

3. *The provision and funding of the benefits in kind referred to in Article 31 of Regulation No 1408/71, as amended and updated by Regulation No 2001/83, as amended by Regulation No 3096/95, must normally take place in accordance with the provisions of that article in conjunction with Article 36 of that regulation and Articles 31 and 93 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, as amended and updated by Regulation No 2001/83, as amended by Regulation No 3096/95.*

4. *Where it appears that the institution of the place of stay has wrongly refused to provide the benefits in kind referred to in Article 31 of Regulation No 1408/71, as amended and updated by Regulation No 2001/83, as amended by Regulation No 3096/95, and the institution of the place of residence, on being advised of that refusal, has declined to contribute, as it is obliged to, to facilitating the correct application of that provision, it is for the latter institution, without prejudice to the possible liability of the institution of the place of stay, to reimburse directly to the insured person the cost of the treatment he has had to bear, so as to guarantee him a level of funding equivalent to that which he would have enjoyed had the provisions of that article been complied with.*

5. *In the latter case, Articles 31 and 36 of Regulation No 1408/71, as amended and updated by Regulation No 2001/83, as amended by Regulation No 3096/95, and Articles 31 and 93 of Regulation No 574/72, as amended and updated by Regulation No 2001/83, as amended by Regulation No 3096/95, preclude national legislation from subjecting such reimbursement to the obtaining of ex post facto authorisation which is granted only in so far as it is shown that the illness which necessitated the treatment in question manifested itself suddenly during the stay, making that treatment immediately necessary.*

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(1) OJ C 335 of 25.11.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 February 2003

in Case C-327/00 (Reference for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia): Santex SpA v Unità Socio Sanitaria Locale n. 42 di Pavia (1)

(Directive 93/36/EEC — Public supply contracts — Directive 89/665/EEC — Review procedures applicable to public contracts — Limitation period — Principle of effectiveness)

(2003/C 101/05)

(Language of the case: Italian)

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

In Case C-327/00: Reference to the Court under Article 234 EC by the Tribunale amministrativo regionale per la Lombardia (Italy) for a preliminary ruling in the proceedings pending before that court between Santex SpA and Unità Socio Sanitaria Locale n. 42 di Pavia, interveners: Sca Mölnlycke SpA, Artsana SpA and Fater SpA, on the interpretation of Article 22 of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and Article 6(2) EU, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), F. Macken and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 February 2003, in which it has ruled:

Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as imposing on the competent national courts, where it is established that, by its conduct, a contracting authority has rendered impossible or excessively difficult the exercise of the rights conferred by the Community legal order on a national of the Union who has been harmed by a decision of that contracting authority, an obligation to allow as admissible pleas in law alleging that the notice of invitation to tender is incompatible with Community law, which are put forward in support of an application for review of that decision, by availing itself, where appropriate, of the possibility afforded by national law of disapplying national rules on limitation periods, under which, when the period prescribed for bringing proceedings for review of the notice of invitation to tender has expired, it is no longer possible to plead such incompatibility.

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(1) OJ C 36 of 4.11.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 27 February 2003

in Case C-373/00 (Reference for a preliminary ruling from the Vergabekontrollsenat des Landes Wien): Adolf Truley GmbH v Bestattung Wien GmbH (1)

(Directive 93/36/EEC — Public supply contracts — Concept of 'contracting authority' — Public-law body — Funeral undertaking)

(2003/C 101/06)

(Language of the case: German)

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

In Case C-373/00: Reference to the Court under Article 234 EC by the Vergabekontrollsenat des Landes Wien (Austria) for a preliminary ruling in the proceedings pending before that

court between Adolf Truley GmbH and Bestattung Wien GmbH, on the interpretation of Article 1(b) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 February 2003, in which it has ruled:

1. *The term 'needs in the general interest' in the second subparagraph of Article 1(b) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts is an autonomous concept of Community law.*

2. *The activities of funeral undertakers may meet a need in the general interest. The fact that a regional or local authority is legally obliged to arrange funerals — and, where necessary, to bear the costs of those funerals — where they have not been arranged within a certain period after a death certificate has been issued constitutes evidence that there is such a need in the general interest.*

3. *The existence of significant competition does not, of itself, allow the conclusion to be drawn that there is no need in the general interest, not having an industrial or commercial character. The national court must assess whether or not there is such a need, taking account of all the relevant legal and factual circumstances, such as those prevailing at the time of establishment of the body concerned and the conditions under which it exercises its activity.*

4. *A mere review does not satisfy the criterion of management supervision in the third indent of the second subparagraph of Article 1(b) of Directive 93/36. That criterion is, however, satisfied where the public authorities supervise not only the annual accounts of the body concerned but also its conduct from the point of view of proper accounting, regularity, economy, efficiency and expediency and where those public authorities are authorised to inspect the business premises and facilities of that body and to report the results of those inspections to a regional authority which holds, through another company, all the shares in the body in question.*

(1) OJ C 372 of 23.12.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 27 February 2003

in Case C-389/00: Commission of the European Communities v Federal Republic of Germany (1)

(Failure to fulfil obligations — Articles 23 and 25 EC — Charge having an equivalent effect- Export of waste — Basle Convention — Regulation No 259/93 — Contribution to a solidarity fund)

(2003/C 101/07)

(Language of the case: German)

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

In Case C-389/00, Commission of the European Communities (Agent: J.C. Schieferer) v Federal Republic of Germany (Agent: B. Muttelsee-Schön, assisted by H.-J. Koch): Application for a declaration that, by enacting the Gesetz über die Überwachung und Kontrolle der grenzüberschreitenden Verbringung von Abfällen (Abfallverbringungsgesetz) (Act on the supervision and control of transboundary shipments of waste; 'the waste shipment act') of 30 September 1994, BGBl. 1994 I, p. 2771), establishing a solidarity fund for the return of waste and requiring exporters of waste, including those exporting to other Member States, to contribute to that fund, the Federal Republic of Germany has failed to fulfil its obligations under Articles 23 EC and 25 EC, the Court (Fifth Chamber), composed of: D.A.O. Edward, acting for the President of the Chamber, A. La Pergola, P. Jann, S. von Bahr and A. Rosas (Rapporteur), Judges; A. Tizzano, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 27 February 2003, in which it:

1. *Declares that, by subjecting shipments of waste to other Member States to a mandatory contribution to the solidarity fund for the return of waste established by the Gesetz über die Überwachung und Kontrolle der grenzüberschreitenden Verbringung von Abfällen (Abfallverbringungsgesetz) of 30 September 1994, the Federal Republic of Germany has failed to fulfil its obligations under Articles 23 EC and 25 EC;*

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

(1) OJ C 4 of 6.1.2001.

JUDGMENT OF THE COURT

(Third Chamber)

of 13 February 2003

in Case C-409/00: Kingdom of Spain v Commission of the European Communities [1]

(State Aid — Transport — Commission notice on the 'de minimis' rule for State aid — Relevant market — Transport services on own account — Transport services for hire or reward — Community guidelines on State aid for environmental protection)

(2003/C 101/08)

(Language of the case: Spanish)

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

In Case C-409/00, Kingdom of Spain (Agent: Mónica López-Monís Gallego) v Commission of the European Communities (Agents: D. Triantafyllou and S. Pardo): Application for annulment of Commission Decision of 26 July 2000 on the aid scheme implemented by Spain for the purchase of commercial vehicles via the Cooperation Agreement of 26 February 1997 between the Ministry of Industry and Energy and the Official Credit Institute (OJ L 212 of 7.8.2001, p. 34), the Court (Third Chamber), composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, F. Macken and J.N. Cunha Rodrigues, Judges; M.S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 13 February 2003, in which it:

1. *Annuls Articles 2 and 4 of Commission Decision 2001/605/EC of 26 July 2000 on the aid scheme implemented by Spain for the purchase of commercial vehicles via the Cooperation Agreement of 26 February 1997 between the Ministry of Industry and Energy and the Official Credit Institute.*

2. *Orders the Commission of the European Communities to pay the costs.*

[1] OJ C 28 of 27.1.2001.

JUDGMENT OF THE COURT

of 6 March 2003

in Case C-466/00 (Reference for a preliminary ruling from the Immigration Adjudicator): Arben Kaba v Secretary of State for the Home Department [1]

(Free movement of workers — Regulation (EEC) No 1612/68 — Social advantage — Right of the spouse of a migrant worker to obtain leave to remain indefinitely in the territory of a Member State)

(2003/C 101/09)

(Language of the case: English)

In Case C-466/00: Reference to the Court under Article 234 EC by the Immigration Adjudicator (United Kingdom) for a preliminary ruling in the proceedings pending before that tribunal between Arben Kaba and Secretary of State for the Home Department, on the interpretation of the general principles of law governing proceedings before the Court of Justice and of Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, P. Jann (Rapporteur), F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 6 March 2003, in which it has ruled:

The reply which the Court, in its judgment in Case C-356/98 Kaba, gave to the questions referred in that case for a preliminary ruling would not have been different had the Court taken into consideration the fact that the situation under national law of the spouse of a migrant worker who is a national of a Member State other than the United Kingdom of Great Britain and Northern Ireland and that of the spouse of a person who is 'present and settled' in the United Kingdom are, according to the referring tribunal, comparable in all respects except with regard to the period of prior residence which is required for the purpose of being granted indefinite leave to remain in the United Kingdom. In view of the fact that the situations are not comparable under Community law, the question whether such a difference in treatment may be justified has no relevance in this regard.

[1] OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 March 2003

in Case C-14/01 (Reference for a preliminary ruling from the Verwaltungsgericht Hannover): Molkerei Wagenfeld Karl Niemann GmbH & Co. KG v Bezirksregierung Hannover [1]

(Common organisation of the markets — Milk and milk products — Scheme of aid for skimmed milk — Validity of Regulation (EC) No 2799/1999 — Powers of the Commission (Article 11(1) of Regulation (EC) No 1255/1999) — Prohibition of discrimination (Article 34(2) EC) — Principles of legal certainty and the protection of legitimate expectations)

(2003/C 101/10)

(Language of the case: German)

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

In Case C-14/01: Reference to the Court under Article 234 EC by the Verwaltungsgericht Hannover (Germany) for a preliminary ruling in the proceedings pending before that court between Molkerei Wagenfeld Karl Niemann GmbH & Co. KG and Bezirksregierung Hannover, on the validity of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder (OJ 1999 L 340, p. 3), the Court (Sixth Chamber), composed of: R. Schintgen, President of the Second Chamber, acting for the President of the Sixth Chamber, V. Skouris (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 6 March 2003, in which it has ruled:

Examination of the question referred for a preliminary ruling has revealed no factor of such a kind as to affect the legality of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder.

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[1] OJ C 79 of 10.3.2001.

JUDGMENT OF THE COURT

of 25 February 2003

in Case C-59/01: Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil obligations — Directive 92/49/EEC — Freedom to set premiums and abolition of prior or systematic controls over premiums and contracts — Gathering of information)

(2003/C 101/11)

(Language of the case: Italian)

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

In Case C-59/01, Commission of the European Communities (Agents: C. Tufvesson and A. Aresu) v Italian Republic (Agent: U. Leanza, assisted by G. de Bellis): Application for a declaration that, by introducing and maintaining in force rate-freezing rules applicable to all contracts of insurance in respect of third-party liability arising from the use of motor vehicles in relation to risks situated within Italian territory, without distinguishing between insurance companies having their head office in Italy and those carrying on business in Italy through branch offices or under the freedom to provide services, in breach of:

(a) the principle of the freedom to set premiums and the abolition of prior or systematic controls over premiums and contracts, as dealt with in Articles 6, 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1);

(b) the provisions of Article 44 of that directive, which concern arrangements for gathering information on the amount of the premiums, claims and commission, the frequency and average cost of claims, and the exchange of information between the regulatory authorities of the home Member State and those of the host Member State,

the Italian Republic has failed to fulfil its obligations under that directive, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, P. Jann, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues

(Rapporteur) and A. Rosas, Judges; S. Alber, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 25 February 2003, in which it:

1. *Declares that, by introducing and maintaining in force rate-freezing rules applicable to all contracts of insurance in respect of third-party liability arising from the use of motor vehicles in relation to risks situated within Italian territory, without distinguishing between insurance companies having their head office in Italy and those conducting their business in Italy through branch offices or under the freedom to provide services, in breach of the principle of freedom to set premiums referred to in Articles 6, 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), the Italian Republic has failed to fulfil its obligations under that directive;*

2. *Dismisses the remainder of the application;*

3. *Orders each party to bear its own costs.*

([1]) OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT

of 6 March 2003

in Case C-213/01 P: T Port GmbH & Co. KG v Commission of the European Communities ([1])

(Appeal — Bananas — Imports from ACP States and non-member countries — Calculation of annual reference quantity allocated to operators — Imports in accordance with interim measures ordered by a national court in interlocutory proceedings — Action for damages)

(2003/C 101/12)

(Language of the case: German)

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

In Case C-213/01 P: T Port GmbH & Co. KG, established in Hamburg (Germany) (lawyer: G. Meier) — appeal against the judgment of the Court of First Instance (Fifth Chamber) of 20 March 2001 in Case T-52/99 (ECR II-981), seeking to have that judgment set aside in part, the other party to the proceedings being Commission of the European Communities, (Agents: K.-D. Borchardt and M. Niejahr), which contends that 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, D.A.O. Edward, A. La Pergola, P. Jann and V. Skouris, F. Macken and N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders T Port GmbH & Co. KG to pay the costs.*

([1]) OJ C 245 of 1 September 2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 27 February 2003

in Case C-320/01 (Reference for a preliminary ruling from the Arbeitsgericht Lübeck): Wiebke Busch v Klinikum Neustadt GmbH & Co. Betriebs-KG ([1])

(Equal treatment for men and women — Article 2(1) of Directive 76/207/EEC — Protection of pregnant women)

(2003/C 101/13)

(Language of the case: German)

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

In Case C-320/01: Reference to the Court under Article 234 EC by the Arbeitsgericht Lübeck (Germany) for a preliminary ruling in the proceedings pending before that court between Wiebke Busch and Klinikum Neustadt GmbH & Co. Betriebs-KG, on the interpretation of Article 2(1) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, P. Jann, S. von Bahr and A. Rosas, Judges; D. Ruiz-Jarabo Colomer, Advocate

General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 27 February 2003, in which it has ruled:

1. *Article 2(1) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions is to be interpreted as precluding a requirement that an employee who, with the consent of her employer, wishes to return to work before the end of her parental leave must inform her employer that she is pregnant in the event that, because of certain legislative prohibitions, she will be unable to carry out all of her duties.*

2. *Article 2(1) of Directive 76/207 is to be interpreted as precluding an employer from contesting under national law the consent it gave to the reinstatement of an employee to return before the end of her parental leave on the grounds that it was in error as to her being pregnant.*

([1]) OJ C 303 of 27.10.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 February 2003

in Case C-415/01: Commission of the European Communities v Kingdom of Belgium ([1])

(Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas)

(2003/C 101/14)

(Language of the case: French)

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

In Case C-415/01, Commission of the European Communities (Agents: G. Valero Jordana and J. Adda) v Kingdom of Belgium (Agent: C. Pochet): Application for a declaration that, in so far as the Région flamande (Flemish Region) has failed to transpose Article 4(1) and (2) of and Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), to demarcate special protection areas within its territory capable of being relied upon as against third parties, and to adopt the measures necessary to ensure that the classification of a site as a special protection area automatically and simultaneously entails the application of a system of protection and conservation complying with Community law, the Kingdom of Belgium has failed to fulfil its obligations under Article 4(1) and (2) in conjunction with Article 4(4), as partially amended, of Directive 79/409 in accordance with Article 7 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), by Article 6(2) to (4) of the latter directive, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, C. Gulmann (Rapporteur), F. Macken and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 27 February 2003, in which it:

1. *Declares that, in so far as the Région flamande has failed to transpose Article 4(1) and (2) of and Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, to demarcate special protection areas within its territory capable of being relied upon as against third parties, and to adopt the measures necessary to ensure that the classification of a site as a special protection area automatically and simultaneously entails the application of a system of protection and conservation complying with Community law, the Kingdom of Belgium has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409 and the first sentence of Article 4(4) thereof, as amended, in accordance with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, by Article 6(2) to (4) of the latter directive;*

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

([1]) OJ C 369 of 22.12.2001.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 6 March 2003

in Case C-478/01: Commission of the European Communities v Grand Duchy of Luxembourg [1]

(Failure by a Member State to fulfil its obligations — Freedom to supply services — Patent agents — Choice of domicile with an approved agent — Article 10 EC — Member States' duty of cooperation)

(2003/C 101/15)

(Language of the case: French)

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

In Case C-478/01, Commission of the European Communities (Agent: M. Patakia) v Grand Duchy of Luxembourg (Agent: J. Faltz): Application for a declaration that, by maintaining the obligation for patent agents, when supplying services, either to be domiciled in Luxembourg or, failing such domicile, to opt for domicile with an approved agent, and by failing to supply information concerning the precise conditions for the application of Article 85(2) of the Law of 20 July 1992 amending the rules on patents (Mémorial A 1992, p. 1530), and Articles 19 and 20 of the Law of 28 December 1998 governing access to occupations in craft trades, business and industry, and to certain liberal professions (Mémorial A 1998, p. 1494), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC et seq. and Article 10 EC respectively, the Court (Fourth Chamber), composed of: C.W.A. Timmermans, President of the Chamber, D.A.O. Edward and A. La Pergola (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2003, in which it:

1. *Declares that, having regard to the requirement that patent agents, when supplying services, should elect domicile with an approved agent, and having regard to the fact that the Luxembourg Government has not provided information concerning the precise conditions for the application of Article 85(2) of the Law of 20 July 1992 amending the rules on patents and Articles 19 and 20 of the Law of 28 December 1998 governing access to occupations in craft trades, business and industry, and to certain liberal professions, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC and Article 10 EC.*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

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[1] OJ C 84 of 6.4.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 March 2003

in Case C-485/01 (Reference for a preliminary ruling from the Tribunal civile e penale di Trento): Francesca Caprini v Conservatore Camera di Commercio, Industria, Artigianato e Agricoltura (CCIAA) [1]

(Directive 86/653/EEC — Self-employed commercial agents — National legislation requiring enrolment of a commercial agent in a register provided for that purpose as a prior condition of registration in the register of undertakings)

(2003/C 101/16)

(Language of the case: Italian)

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

In Case C-485/01: Reference to the Court under Article 234 EC by the Tribunale civile e penale di Trento (Italy) for a preliminary ruling in the proceedings pending before that court between Francesca Caprini and Conservatore Camera di Commercio, Industria, Artigianato e Agricoltura (CCIAA), on the interpretation of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2003, in which it has ruled:

On a proper reading, Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents does not preclude national legislation from making registration of a commercial agent in the register of undertakings subject to that agent's enrolment in a register provided for that purpose, on condition that non-registration in the register of undertakings does not affect the validity of an agency contract which that agent has concluded with his principal or that

the consequences of such non-registration do not adversely affect in any other way the protection which that directive confers on commercial agents in their relations with their principals.

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(1) OJ C 44 of 16.2.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 6 March 2003

in Case C-6/02: Commission of the European Communities v French Republic (1)

(Failure by a Member State to fulfil obligations — Free movement of goods — Measures having equivalent effect — Indication of provenance — Regional labels)

(2003/C 101/17)

(Language of the case: French)

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

In Case C-6/02, Commission of the European Communities (Agents: H. van Lier and J. Adda) v French Republic (Agents: G. de Bergues and A. Colomb): Application for a declaration that, by maintaining the national legal protection afforded to the name 'Salaisons d'Auvergne' and to the regional labels 'Savoie', 'Franche-Comté', 'Corse', 'Midi-Pyrénées', 'Normandie', 'Nord-Pas-de-Calais', 'Ardennes de France', 'Limousin', 'Languedoc-Roussillon' and 'Lorraine', the French Republic has failed to fulfil its obligations under Article 28 EC, the Court (Third Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur) and F. Macken, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2003, in which it:

1. *Declares that, by maintaining the national legal protection afforded to the name 'Salaisons d'Auvergne' and to the regional labels 'Savoie', 'Franche-Comté', 'Corse', 'Midi-Pyrénées', 'Normandie', 'Nord-Pas-de-Calais', 'Ardennes de France', 'Limousin', 'Languedoc-Roussillon' and 'Lorraine', the French Republic has failed to fulfil its obligations under Article 28 EC;*

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

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(1) OJ C 56 of 2.3.2002.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 6 March 2003

in Case C-211/02: Commission of the European Communities v Grand Duchy of Luxembourg (1)

(Failure by a Member State to fulfil obligations — Failure to transpose Directive 97/66/EC within the prescribed periods)

(2003/C 101/18)

(Language of the case: French)

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

In Case C-211/02, Commission of the European Communities (Agent: C. Schmidt) v Grand Duchy of Luxembourg (Agent: N. Mackel): Application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ 1998 L 24, p. 1), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive, the Court (Fourth Chamber), composed of: C.W.A. Timmermans, President of the Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 6 March 2003, in which it:

1. *Declares that, by failing, within the prescribed periods, to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

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(1) OJ C 180 of 27.7.2002.

ORDER OF THE COURT

(Fifth Chamber)

of 27 February 2003

In Joined Cases C-307/00 to C-311/00 (Reference for a preliminary ruling from the Raad van State): Oliehandel Koeweit BV (C-307/00), Slibverwerking Noord-Brabant NV, Glückauf Sondershausen Entwicklungs- und Sicherungsgesellschaft mbH (C-308/00), PPG Industries Fiber Glass BV (C-309/00), Stork Veco BV (C-310/00), Sturing Afvalverwijdering Noord-Brabant NV, Afvalverbranding Zuid Nederland NV, Mineralplus Gesellschaft für Mineralstoffaufbereitung und Verwertung mbH, formerly UTR Umwelt GmbH (C-311/00) and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer [1]

(Article 104(3) of the Rules of Procedure — Environment — Directive 75/442/EEC on waste — Regulation (EEC) No 259/93 concerning the shipment of waste — Directive 75/439/EEC on the disposal of waste oils — Classification — Waste disposal and recovery operations — Objections to shipments — Legal basis — Illegal shipments)

(2003/C 101/19)

(Language of procedure: Dutch)

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

In Joined Cases C-307/00 to C-311/00: References to the Court under Article 234 EC by the Raad van State (Netherlands) for preliminary rulings in the proceedings pending before that court between Oliehandel Koeweit BV (C-307/00), Slibverwerking Noord-Brabant NV, Glückauf Sondershausen Entwicklungs- und Sicherungsgesellschaft mbH (C-308/00), PPG Industries Fiber Glass BV (C-309/00), Stork Veco BV (C-310/00), Sturing Afvalverwijdering Noord-Brabant NV, Afvalverbranding Zuid Nederland NV, Mineralplus Gesellschaft für Mineralstoffaufbereitung und Verwertung mbH, formerly UTR Umwelt GmbH (C-311/00) and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, on the interpretation 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), Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31) and Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 87/101/EEC of 22 December 1986 (OJ 1987 L 42, p. 43), and on the validity of Article 4(3)(b)(i) of Regulation No 259/93, the Court (Fifth Chamber), composed of: D.A.O. Edward, acting for the President of the Fifth Chamber, A. La Pergola (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges; P. Léger, Advocate General; R. Grass, Registrar, has made an order on 27 February 2003, the operative part of which is as follows:

1. *Recovery operations involving the recycling or reclamation of metals and metal compounds or the recycling or reclamation of other inorganic materials, as referred to in operations R4 and R5, respectively, of Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and by Commission Decision 96/350/EC of 24 May 1996, may also cover the re-use referred to in Article 3(1)(b)(i) of that directive. Those operations do not necessarily imply that the substance in question undergoes processing, can be used several times or can subsequently be reclaimed.*

2. *A waste treatment operation may not be classified simultaneously as both disposal and recovery within the meaning of Directive 75/442, as amended by Directive 91/156 and by Decision 96/350. Where an operation, having regard solely to its wording, may a priori be covered by a disposal operation set out in Annex IIA to that directive or a recovery operation referred to in Annex IIB to that directive, it must be determined on a case-by-case basis whether the main objective of the operation in question is that the waste should serve a useful purpose, by replacing the use of other materials which would have had to be used to fulfil that function, and in such a case to uphold the classification as recovery.*

3. *The classification chosen by the competent authorities of the Member State of destination as regards a given waste treatment operation does not prevail over the classification chosen by the competent authorities of the Member State of dispatch, any more than the classification chosen by the latter prevails over that chosen by the competent authorities of the Member State of destination.*

4. *It follows from the system put in place by 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 that, when the competent authority of the Member State of dispatch forms the view that the purpose of a waste shipment has been incorrectly classified as recovery in the notification, that authority must base its objection to the shipment on the ground of that error in classification, without reference to a particular provision of that regulation which, such as Article 4(3)(b)(i) in particular, defines the objections which Member States may make to shipments of waste for disposal.*

5. *Having regard to Article 8(2)(b) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 87/101/EEC of 22 December 1986, the shipment of waste oils containing more than 50 ppm of PCB for use as a fuel constitutes illegal traffic in waste within the meaning of Article 26(1)(e) of Regulation No 259/93, to which the competent authority is required to object on the ground solely of that illegality, without reference to any of the specific provisions of that regulation setting out the objections which Member States may raise to waste shipments.*

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(1) OJ C 335 of 25.11.2000.

ORDER OF THE COURT

(Fourth Chamber)

of 25 February 2003

in Case C-445/01 (reference for a preliminary ruling from the Tribunale di Biella): Roberto Simoncello, Piera Boerio v Direzione Provinciale di Lavoro (1)

(Freedom of establishment — Freedom of movement for workers — Public undertaking — Requirements concerning hiring of workers — Inadmissibility)

(2003/C 101/20)

(Language of the case: Italian)

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

In Case C-445/01: reference to the Court under Article 234 EC from the Tribunale di Biella (Italy) for a preliminary ruling in the proceedings pending before that court between Roberto Simoncello, Piera Boerio and Direzione Provinciale di Lavoro — on the interpretation of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC), and Article 90 of the EC Treaty (now Article 86 EC) — the Court (Fourth Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, A. La Pergola and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 25 February 2003, in which it has ruled:

The reference for a preliminary ruling made by the Tribunale di Biella by order of 18 October 2001 is inadmissible.

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(1) OJ C 84 of 6 April 2002.

ORDER OF THE COURT OF JUSTICE

(Fourth Chamber)

of 5 December 2002

in Case C-461/01 P: Polyxeni Tessa and Andreas Tessas v Council of the European Union (1)

(Appeal — State aid — Decision adopted on the basis of the third subparagraph of Article 93(2) of the EC Treaty (now the third subparagraph of Article 88(2) EC — Application for annulment — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2003/C 101/21)

(Language of the case: Greek)

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

In Case C-461/01 P, Polyxeni Tessa and Andreas Tessas, residing in Larissa (Greece), (lawyer: A. Tessas) — appeal against the order of the Court of First Instance of the European Communities (Fourth Chamber Extended Composition) of 11 September 2001 in Case T-270/99 Tessa and Tessas v Council [2001] ECR II-2401, and seeking the annulment of that order, the other parties to the proceedings being: the Council of the European Union, (Agents: J. Carbery and D. Zahariou), and the Hellenic Republic, (Agents: I. Chalkias and P. Mylonopoulos), — the Court of Justice (Fourth Chamber), composed of M. Timmermans, (Judge-Rapporteur), President of the Chamber, D.A.O. Edward and S. von Bahr, Judges; Advocate General F.G. Jacobs; Registrar: R. Grass, made an order on 5 December 2002, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Ms Tessa and Mr Tessas will bear their own costs and pay those of the Council. The Hellenic Republic will bear its own costs.*

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(1) OJ C 17 of 19.1.2002.

ORDER OF THE COURT

(Second Chamber)

of 12 February 2003

in Case C-23/02 (Reference for a preliminary ruling from the Cour de cassation): Office national de l'emploi v Mohamed Alami [1]

(Article 104(3) of the Rules of Procedure — EEC-Morocco Cooperation Agreement — Article 41 — Principle of non-discrimination in the field of social security — Scope — Unemployment benefit)

(2003/C 101/22)

(Language of the case: French)

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

In Case C-23/02: Reference to the Court under Article 234 EC by the Belgian Cour de cassation for a preliminary ruling in the proceedings pending before that court between Office national de l'emploi and Mohamed Alami, on the interpretation of Article 41 of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed at Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1), the Court (Second Chamber), composed of: R. Schintgen (Rapporteur), President of the Chamber, V. Skouris and N. Colneric, Judges; S. Alber, Advocate General; R. Grass, Registrar, has made an order on 12 February 2003, the operative part of which is as follows:

On its proper construction, Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed at Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 precludes a host Member State from refusing to grant a worker of Moroccan nationality resident in its territory the benefit of a seniority supplement increasing the basic amount of unemployment benefit on the sole ground that there is no international agreement providing that account is to be taken of work carried out by that worker in another Member State, even though no such condition is imposed on workers who are nationals of that host Member State.

(1) OJ C 97 of 20.4.2002.

ORDER OF THE COURT

(First Chamber)

of 27 February 2003

in Case C-82/02 (Reference for a preliminary ruling from the Hof van Cassatie): Agence Maritime Lalemant NV v Malzfabrik Tivoli GmbH, Malteurop GIE, Belgisch Interventie- en Restitutiebureau and between Malzfabrik Tivoli GmbH and Belgisch Interventie- en Restitutiebureau [1]

(Article 104(3) of the Rules of Procedure — Agriculture — Export refunds — Conditions for payment — Leaving the geographical territory of the Community — Definition)

(2003/C 101/23)

(Language of the case: Dutch)

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

In Case C-82/02: Reference to the Court under Article 234 EC by the Hof van Cassatie (Belgium) for a preliminary ruling in the proceedings pending before that court between Agence Maritime Lalemant NV and Malzfabrik Tivoli GmbH, Malteurop GIE, Belgisch Interventie- en Restitutiebureau and between Malzfabrik Tivoli GmbH and Belgisch Interventie- en Restitutiebureau, on the interpretation of Article 9(1) of Commission Regulation (EEC) No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1979 L 317, p. 1), as amended by Commission Regulation (EEC) No 3826/85 of 23 December 1985 (OJ 1985 L 371, p. 1), the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, after informing the referring court that the Court proposes to give its decision by reasoned order pursuant to Article 104(3) of the Rules of Procedure, after inviting the persons referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations they might have in that regard, has made an order on 27 February 2003, the operative part of which is as follows:

Article 9(1) of Commission Regulation (EEC) No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EEC) No 3826/85 of 23 December 1985 must be interpreted as meaning that the expression 'geographical territory of the Community' refers to a physical concept and that the requirement that the product in respect of which export refunds have been applied for must have left the geographical territory of the Community is not satisfied either by placing the product under customs control or by bringing it within the customs warehousing procedure.

(1) OJ C 131 of 1.6.2002.

ORDER OF THE COURT OF JUSTICE

(First Chamber)

of 30 January 2003

in Case C-176/02 P: Laboratoire Monique Rémy SAS v Commission of the European Communities [1]

(Appeal — Action seeking annulment — Inadmissibility on grounds of lateness — Appeal manifestly inadmissible)

(2003/C 101/24)

(Language of the case: French)

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

In Case C-176/02 P: Laboratoire Monique Rémy SAS, having its registered office in Grasse (France), represented by J.-F. Pupel, avocat — Appeal against the order of the Court of First Instance of the European Communities (First Chamber) of 21 March 2002 in Case T-218/01 Laboratoire Monique Rémy v Commission [2002] ECR II-2139, seeking to have that order set aside, the other party to the proceedings being: Commission of the European Communities (Agent: A. Bordes) — The Court (First Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and A. Rosas, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has made an order on 30 January 2003, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The company Laboratoire Monique Rémy SAS shall bear the costs.*

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[1] OJ C 169 of 13.7.2002.

Reference for a preliminary ruling by the Verwaltungsgericht Koblenz by order of that Court of 4 December 2002 in the dispute of administrative law between Eiterköpfe and Land Rheinland-Pfalz

(Case C-6/03)

(2003/C 101/25)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht Koblenz (Administrative Court, Koblenz) of 4 December 2002, received at the Court Registry on 8 January 2003, for a preliminary ruling in the dispute of administrative law between Eiterköpfe and Land Rheinland-Pfalz on the following questions:

1. On a proper construction of Article 5(1) of Council Directive 1999/31/EC [1] laying down Community requirements for a strategy for the reduction of biodegradable waste going to landfills, can that provision be transposed into national law in the form of measures imposing more stringent requirements, in accordance with Article 176 EC, which differ from those set out in Article 5(2) of the directive (reduction by a specific calendar year of biodegradable municipal waste going to landfills to a specific percentage of the total amount by weight of biodegradable municipal waste) in that municipal waste and waste that can be deposited in the same way as municipal waste may be landfilled only if the appropriate 'organic component of dry residue of the original substance' classification criterion (expressed as either combustion loss or TOC) is satisfied?

2. a) If so, are the Community requirements laid down in Article 5(2) of the directive to be construed as meaning that the targets for reduction set out in that provision, namely:

   — 75 % of the total amount by weight by 16 July 2006,

   — 50 % of the total amount by weight by 16 July 2009, and

   — 35 % of the total amount by weight by 16 July 2016,

   are met, having regard to the Community law principle of proportionality, by a national provision under which: the organic content of dry residue of the original substance in the case of municipal waste and waste that can be deposited in the same way as municipal waste must, by 1 June 2005, be no more than either 5 % by mass, expressed as combustion loss, or 3 % by mass, expressed as TOC; from 1 March 2001, waste subject to mechanical and biological treatment may be landfilled at existing sites until 15 July 2009 at the latest, or even beyond that date in certain cases, only if the organic content of dry residue of the original substance is no more than 18 % by mass, expressed as TOC, and the biodegradability of the dry residue of the original substance is no more than 5 mg/g, expressed as aerobic activity (AT_4), or 20 l/kg, expressed as the gas formation rate in the fermentation test (GB_{21})?

b) Under the Community law principle of proportionality, is the discretion to be exercised in assessing the impact of overlaying waste that has not been treated prior to landfill with waste treated by thermal or mechanical and biological processes prior to landfill wide or narrow? Does the principle of proportionality permit hazards caused by waste treated prior to landfill by mechanical processes alone to be offset by other safeguards?

(1) OJ L 182 of 16.7.1999, p. 1 (Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste).

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Chancery Division, by order of that court dated 18 December 2002, in the case of Société de produits Nestlé SA against Unilever plc

(Case C-7/03)

(2003/C 101/26)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Chancery Division, dated 18 December 2002, which was received at the Court Registry on 9 January 2003, for a preliminary ruling in the case of Société de produits Nestlé SA and Unilever plc on the following questions:

1. When considering signs which consist of the shape of goods, what is meant by 'the nature of the goods themselves' in Art 3(1)(e) of the Trade Marks Directive 89/104 (1)? and in particular does that nature arise from:

   (a) the specification of goods for which the trade mark is registered (or applied for);

   (b) the kind of goods for which the mark is used regarded as articles of commerce;

   (c) only the inherent nature of non-man made articles; or

   (d) the shape of the goods which makes the product different in appearance from similar competitive products;

   (e) something else, and if so what?

2. Where the shape of a product which has been on the market is merely shown to be recognised by a substantial proportion of the relevant public as denoting the goods of a particular trader is that sufficient of itself to prove that the shape has acquired a distinctive character within the meaning of Art 3(3) of the Directive?

3. If that is insufficient, must it also be proved that the shape is used and relied upon by the relevant public as a guarantee of trade origin?

4. If the preponderance of the public recognise a shape mark as the product of one trader but a significant minority also regard other shapes in use by other traders as the shape applied for, has the shape mark acquired a 'distinctive character' within the meaning of Art 3(3) of the Directive?

(1) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40 11.2.1989, p. 1).

Reference for a preliminary ruling by the Oberlandesgericht Naumburg by order of that Court of 8 January 2003 in the procurement review proceedings, Parties to the proceedings being 1. The City of Halle, 2. RPL Recyclingpark Lochau GmbH and 3. The Thermische Restabfall- und Energieverwertungsanlage TREA Leuna consortium

(Case C-26/03)

(2003/C 101/27)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht Naumburg (Higher Regional Court, Naumburg) of 8 January 2003, received at the Court Registry on 23 January 2003, for a preliminary ruling in the procurement review proceedings, Parties to the proceedings being 1. The City of Halle, 2. RPL Recyclingpark Lochau GmbH and 3. The Thermische Restabfall- und Energieverwertungsanlage TREA Leuna consortium, on the following questions:

I. 1. Does the first sentence of Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (1), as replaced by Article 41 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (2), require Member States to ensure that a decision taken by a contracting authority to award a public contract otherwise than by means of a procedure which complies with the directives relating to the award of public contracts may be reviewed effectively and as rapidly as possible?

2. Does the first sentence of Article 1(1) of Directive 89/665 require Member States to ensure that decisions of contracting authorities made prior to the issue of a formal invitation to tender, in particular the decision of the preliminary questions as to whether a particular procurement process falls within the personal or material scope of application of the directives relating to the award of public contracts or, by way of exception, is outside the scope of procurement law, may be reviewed effectively and as rapidly as possible?

3. If question I.1 is answered in the affirmative and question I.2 is answered in the negative: is the obligation of a Member State to ensure that a decision taken by a contracting authority to award a public contract otherwise than by means of a procedure which complies with the directives relating to the award of public contracts may be reviewed effectively and as rapidly as possible satisfied where review procedures cannot be raised until a specified, formal stage in the procurement has been reached, for example the commencement of oral or written negotiations with a third party?

II. 1. Where a contracting authority such as a regional or local authority plans to conclude in writing, with an entity which is formally distinct from it ('the contracting partner'), a service contract for pecuniary interest which would fall within Directive 92/50 relating to the coordination of procedures for the award of public service contracts, but, by way of exception, the contract would not be a public service contract for the purposes of Article 1(a) of Directive 92/50, as amended by the 1994 Acts of Accession ([3]) and European Parliament and Council Directive 97/52/EC ([4]), if the contracting partner were to be deemed to be part of the public administration or, as the case may be, of the contracting authority's undertaking ('procurement-exempt self-supply'), does the mere fact that a private undertaking is a shareholder in the contracting partner always preclude the classification of such a contract as a procurement-exempt self-supply?

2. If question II.1 is answered in the negative: what are the criteria for determining whether a contracting partner whose shareholders include a private person ('semi-public company') is to be deemed to be part of the public administration or, as the case may be, of the contracting authority's undertaking? Specifically:

2.1. Is a semi-public company to be deemed to be part of the contracting authority's undertaking in terms of structure and degree of control where the contracting authority 'controls' it, for example within the meaning of Article 1(2) and Article 13(1) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ([5]), as amended by the 1994 Acts of Accession ([6]) and by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ([7])?

2.2. Does any influence the private co-shareholder in the semi-public company is entitled in law to exert over the contracting partner's strategic objectives and/or individual decisions relating to the management of its undertaking preclude attributing the semi-public company to the contracting authority's undertaking?

2.3. Is a semi-public company to be deemed to be part of the contracting authority's undertaking in terms of structure and degree of control where, so far as the procurement process in question is concerned, the latter has a comprehensive right of direction in respect only of decisions relating to concluding the contract and supplying the services under it?

2.4. Is a semi-public company to be deemed to be part of the contracting authority's undertaking in terms of carrying out the essential part of its activities together with the contracting authority where at least 80 % of the undertaking's average turnover within the Community during the past three years in the services sector has derived from the supply of services to the contracting authority or undertakings affiliated to or forming part of the contracting authority (or, where the mixed undertaking has been in operation for less than three years, it is expected that it will satisfy this 80 % rule)?

([1]) OJ L 395 of 30.12.1989, p. 33.
([2]) OJ L 209 of 24.07.1992, p. 1.
([3]) OJ C 241 of 29.8.1994, p. 233.
([4]) OJ L 328 of 13.10.1997, p. 1.
([5]) OJ L 199 of 9.8.1993, p. 84.
([6]) OJ C 241 of 29.8.1994, p. 228.
([7]) OJ L 101 of 16.2.1998, p. 1.

Reference for a preliminary ruling by the Bundesgerichtshofes by order of that Court of 17 December 2002 in the appeal proceedings brought by Pharmacia & Upjohn S.p.A

(Case C-31/03)

(2003/C 101/28)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesgerichtshofes (Federal Court) of 17 December 2002, received at the Court Registry on 27 January 2003, for a preliminary ruling in the appeal proceedings brought by Pharmacia & Upjohn S.p.A on the interpretation of Article 19(1) of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ 1992 L 182, p. 1; hereinafter 'the Protection Certificate Regulation'):

Is the grant of a supplementary protection certificate in a Member State of the Community on the basis of a medicinal product for human beings authorised in that Member State precluded by an authorisation to place the same product on the market as a veterinary medicinal product granted in another Member State of the Community before the date specified in Article 19(1) of the Protection Certificate Regulation, or is the sole determining factor the date on which the product was authorised in the Community as a medicinal product for human beings?

Action brought on 4 February 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-42/03)

(2003/C 101/29)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 4 February 2003 by the Commission of the European Communities, represented by T. van Rijn, Legal Adviser, and S. Pardo Quintillán, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court of Justice should:

— declare that:

  — by having failed to determine the appropriate detailed rules for the use of the fishing quotas allocated to it in the fishing years 1990, 1991, 1992, 1993, 1994, 1995, 1996 and 1997;

  — by having failed to ensure compliance with the Community rules on conservation through adequate monitoring of fishing activities and appropriate inspections of the fishing fleet and of landings and recording of catches for the fishing years 1990, 1991, 1992, 1993, 1994, 1995, 1996 and 1997;

  — by not having temporarily prohibited fishing from vessels flying the Spanish flag or registered in Spanish territory when the quotas allocated to Spain were deemed to be exhausted in the fishing years 1990, 1991, 1992, 1993, 1994, 1995, 1996 and 1997 and by having finally prohibited it when the quotas had already been exceeded; and

  — by having failed to take legal or administrative action against the master or other person responsible for overfishing in the fishing years 1990, 1991, 1992, 1993, 1994, 1995, 1996 and 1997;

  the Kingdom of Spain has failed to fulfil its obligations under Article 5(2) of Regulation (EEC) No 170/83 [1], Article 9(2) of Regulation (EEC) No 3760/92 [2], Article 1 and Article 11(1) and (2) of Regulation (EEC) No 2241/87 [3] and Article 2, Article 21(1) and (2) and Article 31 of Regulation (EEC) No 2847/93 [4];

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

— Infringement of Article 5(2) of Regulation (EEC) No 170/83, Article 9(2) of Regulation (EEC) No 3760/92: those provisions impose a general obligation on Member States to determine, in accordance with the applicable Community law, detailed rules for the use of the fishing quotas allocated to them. The data on overfishing which are cited in the reasoned opinions sent to Spain give an overall picture of how often over a period of time and how significantly the quotas were exceeded [5]. They show that the Kingdom of Spain has failed to fulfil its obligation to put in place, in accordance with the applicable Community legislation, appropriate and effective measures for utilisation of the fishing quotas allocated to it for the fishing years 1990 to 1997.

— Infringement of Article 1(1) of Regulation (EEC) No 2241/87 and Article 2 of Regulation (EEC) No 2847/93: proper management of fishing quotas also calls for appropriate supervision and monitoring to ensure that restrictions on

fishing are actually complied with. The data on overfishing mentioned above make it clear that the Spanish authorities have not effectively implemented the control measures necessary to protect against overfishing, in particular fishing in the absence of a quota, specifically through adequate inspection of landings and recording of catches and landings.

— Infringement of Article 11(2) of Regulation (EEC) No 2241/87 and Article 21(2) of Regulation (EEC) No 2847/93: Spain did not monitor thoroughly enough the information that it received on catches and how they evolved and therefore fishing of the stocks referred to in the reasoned opinions relating to the fishing years 1990 and 1997 was prohibited too late once the relevant quotas had already been exceeded.

Compliance with quotas is an absolute obligation, breach of which is not dependent on any proof that other Member States have suffered harm or that the conservation objectives pursued have been jeopardised by endangering the relevant stocks.

— Infringement of Article 1(2) of Regulation (EEC) No 2241/87 and Article 31 of Regulation (EEC) No 2847/93: the Spanish authorities did not supply appropriate or persuasive data on any legal action taken against those responsible for exceeding fishing quotas or for catches made in the absence of a quota for cod and mackerel stocks in 1991, cod in 1992, cod in 1994, Greenland halibut and redfish in 1995 and 'other species' in 1996.

(1) Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ L 24 of 27.1.1983, p. 1).

(2) Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ L 389 of 31.12.1992, p. 1).

(3) Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ L 207 of 29.7.1987, p. 1).

(4) Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ L 261 of 20.10.1993, p. 1).

(5) On the basis of the information officially provided by Spain: in 1990, overfishing totalling 1 186,6 tonnes; in 1991, overfishing totalling 1 728 tonnes; in 1992, overfishing totalling 2 196 tonnes; in 1993, overfishing totalling 179 tonnes; in 1994, overfishing totalling 378 tonnes; in 1995, overfishing totalling 3 209 tonnes and 528 tonnes in the absence of a quota; in 1996, overfishing totalling 39 tonnes and 23 tonnes in the absence of a quota; in 1997, overfishing amounting to 72 tonnes.

Reference for a preliminary ruling by the Epitropi Antagonismou by order of that Court of 22 January 2003 in the case of Sinetairismos Farmakopion Aitolias & Akarnanias — SIFAIT and Others against GLAXOWELLCOME AEVE (subsequently called GLAXOSMITHKLINE AEVE)

(Case C-53/03)

(2003/C 101/30)

Reference has been made to the Court of Justice of the European Communities by order of the Epitropi Antagonismou (Competition Commission) of 22 January 2003, received at the Court Registry on 5 February 2003, for a preliminary ruling in the case of Sinetairismos Farmakopion Aitolias & Akarnanias — SIFAIT and Others against GLAXOWELLCOME AEVE (subsequently called GLAXOSMITHKLINE AEVE) on the following questions:

1. Where the refusal of an undertaking holding a dominant position to meet fully the orders sent to it by pharmaceutical wholesalers is due to its intention to limit their export activity and, thereby, the harm caused to it by parallel trade, does the refusal constitute per se an abuse within the meaning of Article 82 EC? Is the answer to that question affected by the fact that the parallel trade is particularly profitable for the wholesalers because of the different prices, resulting from State intervention, in the Member States of the European Union, that is to say by the fact that pure conditions of competition do not prevail in the pharmaceuticals market, but a regime which is governed to a large extent by State intervention? Is it ultimately the duty of a national competition authority to apply Community competition rules in the same way to markets which function competitively and those in which competition is distorted by State intervention?

2. If the Court holds that limitation of parallel trade, for the reasons set out above, does not constitute an abusive practice in every case where it is engaged in by an undertaking holding a dominant position, how is possible abuse to be assessed? In particular:

   2.1. Do the percentage by which normal domestic consumption is exceeded and/or the loss suffered by an undertaking holding a dominant position compared with its total turnover and total profits constitute appropriate criteria? If so, how are the level of that percentage and the level of that loss determined (the latter as a percentage of turnover and total profits), above which the conduct in question may be abusive?

2.2. Is an approach entailing the balancing of interests appropriate, and, if so, what are the interests to be compared? In particular:

(a) is the answer affected by the fact that the ultimate consumer/patient derives limited financial advantage from the parallel trade and

(b) is account to be taken, and to what extent, of the interests of social insurance bodies in cheaper medicinal products?

2.3. What other criteria and approaches are considered appropriate in the present case?

Action brought on 14 February 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-61/03)

(2003/C 101/31)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 14 February 2003 by the Commission of the European Communities, represented by L. Ström and X. Lewis, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

— declare that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 37 of the Euratom Treaty by failing to provide the Commission with general data relating to any plan for the disposal of radioactive waste in whatever form resulting from the decommissioning operations of the JASON reactor; and

— order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that the United Kingdom has failed to fulfil its obligations under Article 37 of the Euratom Treaty to provide the Commission with general data relating to any plan for the disposal of radioactive waste in whatever form resulting from the decommissioning operations of the JASON reactor, thus making it impossible for the Commission to determine whether the implementation of such a plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State.

Action brought on 14 February 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-62/03)

(2003/C 101/32)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 14 February 2003 by the Commission of the European Communities, represented by X. Lewis and M. Konstantinidis, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that, by failing to adopt all the measures necessary to comply with its obligations under Articles 1(a), 1(e), 1(f), 2(1)(b), 3, 4, 5, 7, 8, 12, 13 and 14 of Council Directive 75/442/EEC of 15 July 1975 on waste [1], as amended by Council Directive 91/156/EEC of 18 March 1991 [2], the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under the Directive and under the Treaty establishing the European Community;

2) order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

Directive 91/156/EEC required Member States to bring into force such laws, regulations and administrative provisions as are necessary to comply with that directive no later than 1 April 1993, and to inform the Commission forthwith. Article 2(2) thereof provides that Member States shall communicate to the Commission the texts of the main provisions of national law that they adopt in the field governed by the directive.

As a result of an assessment of the national legislation communicated as transposing the directive the Commission found a number of inconsistencies and gaps in the United Kingdom's transposition and concludes that Articles 1(a), 1(e), 1(f), 2(1)(b), 3, 4, 5, 7, 8, 12, 13 and 14 of the directive have not been correctly transposed into the United Kingdom legislation.

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[1] OJ L 194, 25.7.1975, p. 39.
[2] OJ L 78, 26.3.1991, p. 32.

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

(Case C-64/03)

(2003/C 101/33)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 14 February 2003 by the Commission of the European Communities, represented by Jürgen Grunwald, Legal Adviser to the Commission of the European Communities, and Hans Støvlbæk, of the Legal Service of the Commission of the European Communities, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, 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 98/30/EC [1] of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, the Federal Republic of Germany has failed to fulfil its obligations under Article 29 of that directive;

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

Pleas in law and main arguments

Although the period for transposition of Directive 98/30/EC expired on 10 August 2000, the Federal Republic of Germany has thus far failed to transpose at all or failed to transpose adequately a number of provisions of that directive.

— The Federal Republic of Germany has failed totally to transpose:

  — Article 5 in conjunction with Articles 7(3) and 10(3): it is clear that there have been no notifiable and technically verifiable 'technical rules establishing the minimum technical design and operational requirements' for the 'connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines'. At any rate, no such technical rules have been notified to the Commission, nor is the Commission aware of any such rules;

  — Articles 14 to 16: there are no provisions dealing with access to the system. The reference to prohibitions under competition law is not sufficient as these do not contain any rules on access;

  — Articles 12 and 13: there are no rules under the laws specifically governing natural gas which deal with the unbundling of the accounts of integrated natural gas undertakings;

— The Federal Republic of Germany has failed adequately to transpose:

  — Article 2: defining provisions contained in a measure of Community law must, inasmuch as they are — as here — necessary for the proper application of the Community provisions by national bodies, be correctly transposed in national law;

  — Articles 7(2) and 10(2): the general competition rules under national law apply only to undertakings in a dominant market position and for that reason do not constitute an adequate transposition of the prohibition of discrimination;

  — Article 15(1) in conjunction with Article 17(1): unlike the position in the electricity sector, German law does not provide for an obligation to state reasons in the event of refusal to grant access to the system;

  — Article 18: no criteria governing the designation of eligible customers have been published or notified to the Commission;

  — Article 21(2): the arbitration authority provided for in Article 21(2) has not been designated.

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[1] OJ L 204 of 21.7.1998, p. 1.

Action brought on 19 February 2003 by the Kingdom of Spain against the Commission of the European Communities

(Case C-73/03)

(2003/C 101/34)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 19 February 2003 by the Kingdom of Spain, represented by S. Ortiz Vaamonde, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision of 11 December 2002 ([1]), in so far as it finds that the subsidising of loans and guarantees for owners of agricultural holdings and the extension of tax benefits to the transfer of agricultural land and holdings constitute State aid incompatible with the Treaty;

— order the Commission to pay the costs.

Pleas in law and main arguments

(The extension of certain tax benefits to transfers of land)

— This does not constitute State aid since certain undertakings or the production of certain goods are not specifically favoured: the measure entails a lower tax burden for the seller of the land and has an impact on the owner (farmer) purchasing land: not as to the amount but as to the greater availability of land for sale because of the lower capital gains tax charge for the seller.

— (in the alternative) The aid is compatible with the Community guidelines for State aid in the agricultural sector: A farmer who invests in the acquisition of land, and is the owner of a priority holding, by definition satisfies the requirements set out in point 4.1 of the Community guidelines as regards the economic viability of the holding and the occupational skill required for the grant of structural aid cofinanced by the EU under the Regulation on improving the efficiency of agricultural structures in force at the material time.

(The subsidising of loans and guarantees for owners of agricultural holdings

— This does not constitute State aid within the meaning of Article 87 EC since it does not affect trade between Member States: The Spanish measure entailing the subsidising of loans was actually symbolic in the face of a sector which felt that its economic viability was seriously threatened by the exceptional fuel-price increase. It is paradoxical that a palliative measure of such a slight unitary significance should give rise to a decision of incompatibility with the common market when it was adopted as an alternative to a reduction in taxes of a much larger amount, against which the Commission had publicly advised but which was adopted in other Member States such as France, Germany or Italy. It can in no way be maintained that Spanish operators enjoyed an economic advantage to which those of other Member States did not have access.

— (In the alternative) If State aid is found to exist, it is compatible with the common market in the light of Article 87(2)(b) EC: neither the objective nor the result of the alleged aid was to cover loss suffered by the farmer: the intention was to make it easier for him to obtain a loan from financial institutions so that the loans would make up for the lack of liquidity brought about by the disproportionate increase in costs caused by the steep rises in fuel prices. If, following the Commission's recommendation not to reduce the special tax on fuel oils or value added tax, no alternative measures were adopted, Spanish farmers would become less competitive in their trade by comparison with States which implemented permitted, although not recommended, tax reductions.

— (In the alternative) Compatibility of the measures in the light of Article 87(3)(c) EC.

([1]) Relating to measures taken by Spain to support agriculture following the fuel price increase.

Reference for a preliminary ruling by the Østre Landsret by order of that Court of 14 February 2003 in the case of SmithKline Beecham plc against Lægemiddelstyrelsen; interveners being Synthon BV and Genthon BV

(Case C-74/03)

(2003/C 101/35)

Reference has been made to the Court of Justice of the European Communities by order of the Østre Landsret (Eastern Regional Court) of 14 February 2003, received at the Court Registry on 19 February 2003, for a preliminary ruling in the case of SmithKline Beecham plc against Lægemiddelstyrelsen (Danish Medicinal Products Administration); interveners being Synthon BV and Genthon BV on the following questions:

Question 1

Is it compatible with point 8(a)(iii) of Article 4 of the First Medicinal Products Directive (Directive 65/65/EEC [1], as amended) for a product to be authorised under the abridged application procedure when a salt of the active substance in the product is changed from the one used in the reference product?

Question 2

Can the abridged application procedure be used when an applicant, on its own initiative or at the request of national health authorities, submits additional documentation in the form of certain pharmacological or toxicological tests or clinical trials with a view to demonstrating that the product is 'essentially similar to' the reference product?

[1] Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by Law, Regulation or Administrative Action relating to proprietary medicinal products (OJ B 22 of 9.2.1965, p. 369).

Action brought on 19 February 2003 by the Commission of the European Communities against Ireland

(Case C-75/03)

(2003/C 101/36)

An action against Ireland was brought before the Court of Justice of the European Communities on 19 February 2003 by the Commission of the European Communities, represented by Nicola Yerrell, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

(1) find that Ireland has failed in its obligations under the EC Treaty by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 98/50/EC of 29th June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses [1], or by failing to ensure that employers' and employees' representatives have introduced the necessary provisions by agreement, and/or by failing to inform the Commission thereof; and

(2) condemn Ireland to bear the costs of the procedure.

Pleas in law and main arguments

Article 249 EC, under which a directive shall be binding, as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired on 17 July 2001 without Ireland having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission.

[1] OJ L 201 of 17.7.1998, p. 88.

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

(Case C-77/03)

(2003/C 101/37)

An action against the Federal Republic of Germany 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 Carlos Gómez de la Cruz, 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 [1] of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs and/or by failing to inform the Commission of those provisions, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition expired on 28 October 2001.

[1] OJ L 289 of 28.10.1998, p. 28.

Appeal brought on 20 February 2003 (by fax on 19 February 2003) by the Commission of the European Communities against the judgment delivered on 5 December 2002 by the Fourth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-114/00 between Aktionsgemeinschaft Recht und Eigentum eV and Commission of the European Communities, supported by the Federal Republic of Germany

(Case C-78/03 P)

(2003/C 101/38)

An appeal against the judgment delivered on 5 December 2002 by the Fourth Chamber, Extended Composition, of the Court of First Instance of the European Communities in Case T-114/00 [1] between Aktionsgemeinschaft Recht und Eigentum eV and Commission of the European Communities, supported by the Federal Republic of Germany, was brought before the Court of Justice of the European Communities on 20 February 2003 (by fax on 19 February 2003) by the Commission of the European Communities, represented by James Flett, of its Legal Service, and Viktor Kreuschitz, Legal Adviser, with an address for service in Luxembourg.

The appellant claims that the Court of Justice should:

— set aside the judgment of the Court of First Instance of 5 December 2002 in Case T-114/00 Aktionsgemeinschaft Recht und Eigentum eV v Commission;

— give a final decision in the case and in so doing dismiss the application as inadmissible on the ground that the contested act is not of individual concern, within the meaning of the fourth paragraph of Article 230 EC, to the applicant; or

— refer the case back to the Court of First Instance with regard to the question of admissibility; and

— order the applicant to pay the costs of Case T-114/00 and of this appeal.

Pleas in law and main arguments

The Court of First Instance erred

— inasmuch as it found that its conclusion that the applicant was individually concerned by the contested act was not contradicted by the fact that the contested act is a measure of general scope; and that the contested act affects the applicant (or one of the applicant's members) by reason of certain attributes peculiar to the applicant or by reason of particular circumstances in which the applicant is differentiated from all other persons. The Court of First Instance thereby infringed Articles 230, 232 and 234 EC as interpreted by the Court of Justice;

— inasmuch as its findings were made on the basis that for the purposes of the criterion of individual concern under Article 230 EC the competitive relationship (where competition constitutes the decisive criterion) is not the same as when that criterion is applied to decisions under Article 88(2) EC and Article 88(3) EC in the sphere of State aid, so that admissibility is subject to different criteria. The Court of First Instance thereby infringed Articles 230, 232 and 234 EC as interpreted by the Court of Justice;

— inasmuch as it applied a criterion of competitive relationship (the applicant's position under competition law must be affected) which is different from, and less strict than, the criterion established by the Court of Justice (the applicant's position under competition law must be appreciably affected). The Court of First Instance thus infringed Articles 230, 232 and 234 EC as interpreted by the Court of Justice;

— inasmuch as it included in the judgment, of its own motion, without hearing the views of the Commission, the intervener or the applicant, a ground of action for the purposes of Article 230 EC which was not contained in the application, namely the allegation that the Commission — unjustifiably — adopted its decision without initiating the procedure under Article 88(2) EC. The Court of First Instance thereby infringed Article 230 EC, the Statute, the Rules of Procedure and a general principle of Community law — the Commmission's right to a fair hearing;

— inasmuch as it found that the applicant was affected in its capacity as negotiating partner and was therefore individually concerned by the contested act. The Court of First Instance thereby infringed Articles 230, 232 and 234 EC as interpreted by the Court of Justice as well as the Statute, the Rules of Procedure and a general principle of Community law — the Commission's right to a fair hearing;

— inasmuch as it did not set out with sufficient clarity the reasons on which the contested judgment was based. The Court of First Instance thereby infringed Article 253 EC;

— inasmuch as it found, with regard to the applicant's advice during the procedure under the provisions on State aid, that on the one hand the applicant had not been consulted and on the other hand had been consulted sufficiently for it to have acquired the status of a negotiating partner. By at least one of these findings or — in the Commission's view — by both findings, the Court of First Instance completely distorted the facts of

the case and made a manifest error of assessment. The Court of First Instance thus infringed Articles 230, 232 and 234 EC as well as the Statute and the Rules of Procedure.

(1) OJ C 44 of 22.2.2003.

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

(Case C-79/03)

(2003/C 101/39)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 21 February 2003 by the Commission of the European Communities, represented by Gregorio Valero Jordana, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by tolerating the practice of hunting with birdlime in the Autonomous Community of Valencia, governed by Decree 135/2000 of 12 September 2000 of the Government of Valencia laying down conditions and requirements for the granting of special permits for the hunting of thrush with birdlime in the Community of Valencia, the Kingdom of Spain has failed to fulfil its obligations under Article 8(1) and Article 9(1) of Council Directive 79/409/EEC (1) of 2 April 1979 on the conservation of wild birds.

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The 'parany' is an arrangement intended for the capture of thrush (2), which requires the use of small twigs impregnated with birdlime. Hunting with birdlime is a non-selective method of capture, as referred to in Annex IV(a) to Directive 79/409/EEC and, accordingly, prohibited under Article 8 thereof, since it cannot be guaranteed that birds of the species listed in Annex I to Directive 79/409/EEC or other protected migratory or non-hunting species are not caught in the parany and trapped in the lime.

The Commission takes the view that there are alternative methods for capturing thrushes with the aim of avoiding damage to crops, such as hunting with rifles or employing auditory or visual deterrents using flare guns, vibrating tapes or a combination of such methods. In other Spanish regions (Andalusia, Castilla-La Mancha, etc) there are extensive areas of olive groves and vineyards where hunting with lime is not permitted and where hunting with rifles in autumn and winter is considered adequate protection.

Finally, the derogation under Article 9(1)(c) of Directive 79/409/EEC cannot apply in view of the fact that the parany is a non-selective hunting method and the high number of specimens captured.

(1) OJ 1979 L 103, p. 1.

(2) According to Article 4(1) of Decree 135/2000, 'the only species whose capture is permitted are the following: song thrush (Turdus philomenus), fieldfare (Turdus pilares), redwing (Turdus iliacus) and mistle thrush (Turdus viscivorus)'.

Action brought on 24 February 2003 (by fax on 21 February 2003) by the Commission of the European Communities against the Republic of Austria

(Case C-81/03)

(2003/C 101/40)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 24 February 2003 (by fax on 21 February 2003) by the Commission of the European Communities, represented by Maria Patakia, Legal Adviser in the Commission's legal service and Claudia Schmidt, a member of the Commission's legal service, with an address for service at the office of Luis Escobar Guerrero, a member of the Commission's legal service, Wagner Centre C 254, Luxembourg-Kirchberg.

The Commission claims that the Court should:

1. declare that, by prohibiting, under Paragraph 7a of the Bundesgesetz über die Regelung der gehobenen medizinisch-technischen Dienste (Federal Law on the Regulation of Higher Medico-Technical Services; 'MTD-Gesetz'), the independent exercise in Austria of certain medico-technical professions (laboratory, radiological and orthoptic services), the Republic of Austria has failed to fulfil its obligations under Articles 43 and 49 EC;

2. order the Republic of Austria to pay the costs.

Pleas in law and main arguments

Medico-technical laboratory, radiology and orthoptic services may not be exercised on an independent basis in Austria. For the exercise of those three professions, an employment relationship is necessary. A member of those professional categories from another Member State, where the exercise of those professions on an independent basis is entirely normal, therefore has no opportunity to carry on his or her profession in Austria as an independent. That national measure therefore undoubtedly constitutes an obstacle to the freedom of establishment and the freedom to provide services.

The Commission finds the Republic of Austria's argument to justify that measure unconvincing. It has not been sufficiently demonstrated that salaried employment relationships in the paramedical sector concerned are in themselves sufficient to ensure, or at least better able to ensure, a higher level of health. The prohibition under Austrian law of the exercise of those three professions on an independent basis constitutes an unjustified restriction and therefore an infringement of the freedom of establishment and the freedom to provide services laid down by Articles 43 and 49 EC.

Action brought on 25 February 2003 by the Commission of the European Communities against the Italian Republic

(Case C-82/03)

(2003/C 101/41)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 25 February 2003 by the Commission of the European Communities, represented by Antonio Aresu, acting as Agent.

The applicant claims that the Court should:

a) find that the Italian Republic, by failing to offer the Commission any genuine cooperation in a case concerning the health and safety of workers, has failed to fulfil its obligations under Article 10 EC, and

b) order the Italian Republic to pay the costs.

Pleas in law and main arguments

In 2000 the Commission received a complaint from an economic operator alleging wrongful implementation in Italian law of Council Directive 89/655/EEC [1] of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Despite being contacted by the Commission on numerous occasions, the Italian authorities have failed to provide any information on the complainant's allegations. That failure to communicate information repeatedly requested by the Commission constitutes a failure to fulfil the obligation, imposed on Member States by Article 10 EC, to offer genuine cooperation to the Community institutions.

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[1] OJ L 393 of 30.12.1989, p. 13.

Action brought on 26 February 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-84/03)

(2003/C 101/42)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 26 February 2003 by the Commission of the European Communities, represented by G. Valero Jordana and K. Wiedner, with an address for service in Luxembourg.

The applicant claims that the Court of Justice should:

1. declare that, by failing correctly to incorporate into national law Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts [1] and Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts [2] and, in particular:

   — by excluding from the scope of Royal Legislative Decree 2/2000 of 16 June approving the revised and codified Public Contracts Law by, specifically,

Article 1(3) thereof private-law undertakings fulfilling the criteria referred to in the three indents of the second subparagraph of Article 1(b) of each of the abovementioned directives;

— by providing an absolute exclusion from the scope of the Public Contracts Law by Article 3(1)(c) thereof for cooperation agreements between public authorities and other public undertakings including, therefore, agreements which are public contracts for the purposes of the directives; and

— by permitting, in Article 141(a) and Article 182(a) and (g) of the Public Contracts Law, the negotiated procedure to be used in two cases which are not provided for in the directives;

the Kingdom of Spain has failed to fulfil its obligations under Community law;

2. order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

These are apparent from the form of order sought.

([1]) OJ L 199 of 9.8.1993, p. 1.
([2]) OJ L 199 of 9.8.1993, p. 54.

Action brought on 27 February 2003 by the Commission of the European Communities against the Grand-Duchy of Luxembourg

(Case C-89/03)

(2003/C 101/43)

An action against the Grand-Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 27 February 2003 by the Commission of the European Communities, represented by L. Ström and B. Stromsky, acting as Agents, with an address for service in Luxembourg.

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

— declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses ([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 that directive;

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

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 30 June 1994.

([1]) OJ L 121 of 15.5.1993, p. 20.

Action brought on 28 February 2003 by Commission of the European Communities against Portuguese Republic

(Case C-93/03)

(2003/C 101/44)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 28 February 2003 by the Commission of the European Communities, represented by Karen Banks and Miguel França, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by failing to adopt and 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 communicate those provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 19 of that directive;

— order the Portuguese Republic 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 october 1998, p. 28.

Action brought on 28 February 2003 by the Commission of the European Communities against the Council of the European Union

(Case C-94/03)

(2003/C 101/45)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 28 February 2003 by the Commission of the European Communities, represented by Götz zur Hausen, Lena Ström and Elisabetta Righini, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

— annul Council Decision of 19 December 2002 approving, on behalf of the European Community, the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade ([1]); and

— order the Council to pay the costs.

Pleas in law and main arguments

The Commission's request for annulment of the Decision is founded on the violation of the Treaty resulting from the erroneous choice of legal basis. The question of the legal basis for the conclusion of the agreement cannot be regarded as purely formal in nature. Rather, the choice between Articles 133 and 175 EC has important implications for the division of competence between the Community and its Member States. As the Court has stated repeatedly, the Community's competence in the field of trade is exclusive in nature. This exclusivity is indispensable in order to ensure a coherent and effective defence of the Community's interest in the field of international trade. In contrast, as follows from the second subparagraph of Article 174(4) EC, the Community's external competencies in the field of the environment are concurrent with those of the Member States. The choice of the legal basis has also consequences with regard to the procedures for the adoption of the Community act.

By basing its Decision concerning the conclusion of the PIC Convention on Article 175(1) rather than Article 133 EC, the Council has therefore violated the exclusive competence of the Community for the conclusion of the PIC Convention.

([1]) OJ L 63 of 6.3.2003, p. 27.

Reference for a preliminary ruling by the Tribunal du Travail de Bruxelles by judgment of that Court of 13 February 2003 in the case of Mr Vincenzo Piliego against Centre Public d'Aide Sociale de Bruxelles, C.P.A.S.

(Case C-95/03)

(2003/C 101/46)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal du Travail de Bruxelles (Labour Court, Brussels) of 13 February 2003, received at the Court Registry on 4 March 2003, for a preliminary ruling in the case of Mr Vincenzo Piliego against Centre Public d'Aide Sociale de Bruxelles, C.P.A.S. on the following questions:

1. Is Council Regulation (EEC) No 1612/68 of 15 October 1968 ([1]) to be interpreted as applying to a national of a Member State who resides in another Member State in order to seek employment there, who is housed in a hostel approved by the public authorities where he performs genuine and effective work in return for board and lodging as part of a programme of rehabilitation by work arranged by that institution, and who applies to the social assistance services of the host State for a social benefit under a non-contributory system guaranteeing minimum financial means of subsistence?

2. In the alternative, is Community law, and especially Articles 12 EC, 17 EC and 18 EC, to be interpreted as meaning that notwithstanding the restrictions imposed by the domestic legislation of the host State, a citizen of the Union lawfully residing in a Member State of which he is not a national is entitled, on the same conditions as nationals of the host State, to social benefits under a non-contributory system guaranteeing minimum financial means of subsistence? What if the host State decides to terminate the residence permit of such European citizen because he does not have adequate resources to avoid becoming a burden on its social assistance system?

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

Action brought on 4 March 2003 by the Commission of the European Communities against Ireland

(Case C-99/03)

(2003/C 101/47)

An action against Ireland was brought before the Court of Justice of the European Communities on 4 March 2003 by the Commission of the European Communities, represented by James Flett, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/52/EC of the Commission of 26 July 2000 amending Directive 80/723/EC on the transparency of financial relations between Member States and public undertakings [1], or in any event by failing to communicate them forthwith to the Commission, Ireland has failed to fulfil its obligations under the Treaty and the Directive;

2) order Ireland to pay the costs.

Pleas in law and main arguments

Article 249 EC, under which a directive shall be binding, as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. When that period expired on 31 July 2001 Ireland had failed to adopt the measures necessary to comply with the directive referred to in the conclusions of the Commission, or in any event had failed to inform the Commission of such measures.

[1] OJ L 193 of 29.7.2000, p. 75.

Reference for a preliminary ruling by the Tribunale di Milano — Prima sezione penale by order of that Court of 26 November 2002 in the criminal proceedings against Alfonso Galeazzo and Marco Benatti

(Case C-101/03)

(2003/C 101/48)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Milano — Prima sezione penale (Milan District Court, First Criminal Chamber) of 26 November 2002, received at the Court Registry on 4 March 2003, for a preliminary ruling in the criminal proceedings against Alfonso Galeazzo and Marco Benatti on the following questions:

1. Does Article 6 of Directive 68/151/EEC [1] on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community concern not only cases of failure to publish the balance sheet and profit and loss account, but also cases where those documents are published but their contents are false, given that the harm to the interests of members and third parties is clearly greater in the latter case? Is the directive intended in that respect to lay down a minimum level of protection at Community level leaving it to the Member States to put in place means of protection against the submitting of false balance sheets or the publishing of false company accounts?

2. Do the criteria of effectiveness, proportionality and dissuasiveness, which the penalties to be adopted by the Member States under Council Directive 68/151 must satisfy in order to be regarded as appropriate, refer to the nature or type of penalty considered in the abstract, or rather to its application in practice having regard to the structural characteristics of the legal system within which it takes effect?

3. Are the principles set out in Council Directive 78/660/EEC [2] of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, Council Directive 83/349/EEC [3] of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts and Council Directive 90/605/EEC [4] of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those directives, upon which national measures relating to the drafting and contents of annual accounts and annual reports, in particular, of capital companies, must be based, to be interpreted as precluding a Member State from setting minimum thresholds below which inaccurate statements in annual accounts and annual reports relating to companies limited by shares, partnerships limited by shares and limited liability companies are not punishable?

[1] OJ, English Special Edition 1968 (I), p. 41.
[2] OJ 1978 L 222, p. 11.
[3] OJ 1983 L 193, p. 1.
[4] OJ 1990 L 317, p. 60.

Reference for a preliminary ruling by the Tribunale di Brindisi — Ufficio per le Indagini Preliminari by order of that Court of 14 January 2003 in the criminal proceedings against Gianfranco Casale and Giuseppe Eugenio Caroli

(Case C-102/03)

(2003/C 101/49)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Brindisi — Ufficio per le Indagini Preliminari (Brindisi District Court, Office of the Investigating Judge) of 14 January 2003, received at the Court Registry on 5 March 2003, for a preliminary ruling in the criminal proceedings against Gianfranco Casale and Giuseppe Eugenio Caroli on the following questions:

1. With reference to the duty of each Member State to adopt 'appropriate penalties' for the infringements established by the first and fourth directives (Directive 68/151/EEC [1] and Directive 78/660/EEC [2]), must the directives themselves and in particular the combined provisions of Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 [3] and Directive 90/605 [4]), be interpreted as meaning that that legislation precludes a law of a Member State which, in amending the system of penalties already in force in respect of company law offences concerning the infringement of the obligations imposed in order to safeguard the principle of public and accurate information on companies, lays down a sanctionative system which in the specific instance is not informed by the criteria of effectiveness, proportionality and dissuasiveness of the sanctions imposed in order to ensure that that principle is upheld?

2. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which does not make it a punishable offence for companies to infringe obligations concerning disclosure and the provisions of accurate information on certain company documents (including the balance sheet and the profit and loss account) where the disclosure of false company accounts or the failure to provide information result in a distortion of the financial results for a given period, or a distortion in the net assets, which does not exceed a certain percentage threshold?

3. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which does not make it a punishable offence for companies to infringe obligations concerning disclosure and the provision of accurate information where statements are made which, although aimed at deceiving members or the public with a view to securing an unjust profit, are the consequence of estimated valuations which, taken individually, depart from actual values to an extent not greater than a certain threshold?

4. Irrespective of progressive limits or thresholds, must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which does not make it a punishable offence for companies to infringe obligations concerning disclosure and the provision of accurate information where the false statements or the fraudulent omissions and, thus, the disclosures and statements which do not give a true and fair view of the company's assets and liabilities and financial position do not distort 'to an appreciable extent' the company's assets, liabilities and financial position (even though it is for the national legislature to define the concept of 'appreciable distortion'?

5. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which, in response to an infringement by companies of those obligations concerning disclosure and the provision of accurate information imposed on them in order to safeguard 'the interests of both members and third parties', allows only members and creditors to seek imposition of a penalty, thereby excluding third parties from any general and effective protection?

6. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a

Member State which, in response to the infringement by companies of those obligations concerning disclosure and the provision of accurate information imposed on them in order to safeguard 'the interests of both members and third parties', provides for prosecution machinery and a sanctionative system which are markedly differentiated, whereby the possibility of the imposition of a punishment upon complaint being made, together with more serious and effective penalties, is reserved solely for infringements occasioning loss to members and creditors?

(1) First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (English special edition...: Series-I I Chapter 1968(I), p. 41).

(2) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (OJ L 222 of 14.8.1978, p. 11).

(3) Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (OJ L 193 of 18.7.1983, p. 1).

(4) Council Directive 90/605/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives (OJ L 317 of 16.11.1990, p. 60).

Reference for a preliminary ruling by the Gerechtshof te Amsterdam by order of that Court of 12 December 2002 in the case of St Paul Dairy Industries NV against Unibel Exser BVBA

(Case C-104/03)

(2003/C 101/50)

Reference has been made to the Court of Justice of the European Communities by order of the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam) of 12 December 2002, received at the Court Registry on 6 March 2003, for a preliminary ruling in the case of St Paul Dairy Industries NV against Unibel Exser BVBA on the following questions:

— Does the provision in Article 186 et seq. of the Netherlands Code of Civil Procedure concerning the 'preliminary hearing of witnesses prior to the bringing of proceedings' come within the scope of the Brussels Convention in light of the fact also that, as provided for in that legislation, it seeks not only to enable material evidence to be taken from witnesses shortly after the facts in dispute and to prevent evidence from being lost but also, and in particular, to provide an opportunity for persons involved in an action subsequently brought before the civil courts — those considering bringing such an action, those who anticipate that the action will be brought against them, or third parties otherwise concerned by such an action — to obtain advance clarification of the facts (with which they are perhaps not entirely familiar), so as to enable them better to assess their position, particularly also with regard to the issue of identification of the party against whom proceedings must be instituted?

— If so, can the provision in that case constitute a measure within the meaning of Article 24 of the Brussels Convention?

Removal from the register of Case C-435/01 (1)

(2003/C 101/51)

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-435/01: Commission of the European Communities v Kingdom of Belgium.

(1) OJ C 17 of 19.1.2002.

Removal from the register of Case C-324/02 (1)

(2003/C 101/52)

By order of 10 February 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-324/02: Commission of the European Communities v Kingdom of Spain.

(1) OJ C 274 of 9.11.2002.

Removal from the register of Case C-331/02 [1]

(2003/C 101/53)

By order of 31 January 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-331/02: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

[1] OJ C 274 of 9.11.2002.

Removal from the register of Case C-339/02 [1]

(2003/C 101/54)

By order of 13 February 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-339/02: Commission of the European Communities v Portuguese Republic.

[1] OJ C 305 of 7.12.2002.

Removal from the register of Case C-344/02 [1]

(2003/C 101/55)

By order of 6 February 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-344/02: Commission of the European Communities v French Republic.

[1] OJ C 261 of 26.10.2002.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 February 2003

in Case T-7/01: Norman Pyres v Commission of the European Communities [1]

(Member of the temporary staff — Extension of contract — Term)

(2003/C 101/56)

(Language of the case: English)

In Case T-7/01, Norman Pyres, former member of the temporary staff of the Commission of the European Communities, residing in Brussels (Belgium), represented by G. Vandersanden and L. Levi, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agent: J. Currall): Application for annulment of the Commission's decision to extend the applicant's temporary staff contract for a term limited to six months, the Court of First Instance (P. Mengozzi, Single Judge); J. Plingers, Administrator, for the Registrar, has given a judgment on 6 February 2003, in which it:

1. *Dismisses the action;*

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

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[1] OJ C 95 of 24.3.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 January 2003

in Case T-99/01: Mystery drinks GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition procedure — Earlier national trade mark Mixery — Application for Community word mark MYSTERY — Proof of use of earlier mark — Relative ground for refusal — Article 8(1)(b) of Regulation No 40/94)

(2003/C 101/57)

(Language of the case: German)

In Case T-99/01, Mystery drinks GmbH, in judicial liquidation, established in Eppertshausen (Germany), represented by T. Jestaedt, V. von Bomhard and A. Renck, lawyers, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, B. Weggenmann and C. Røhl Søberg), the intervener before the Court of First Instance being Karlsberg Brauerei KG Weber, established in Homburg (Germany), represented by R. Lange: Action brought against the decision of the Third Chamber Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 February 2001 (Case R 251/2000-3), concerning the registration of the sign MYSTERY as a Community trade mark, which was opposed by the national trade mark Mixery, the Court of First Instance (Second Chamber), composed of: R.M. Moura Ramos, President, J. Pirrung and A.W.H. Meij, Judges, Registrar: D. Christensen, Administrator, has given a judgment on 15 January 2003, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 February 2003

in Case T-333/01: Karl L. Meyer v Commission of the European Communities [1]

(OCT — Action for damages — Duty of publication and control — Causal link)

(2003/C 101/58)

(Language of the case: French)

In Case T-333/01, Karl L. Meyer, residing at Uturoa (French Polynesia), represented by J.-D. des Arcis, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agents: M.-J. Jonczy and B. Martenczuk): Application for compensation for damage allegedly suffered by the applicant because of alleged maladministration by the Commission in the application of decisions on the association of the overseas countries and territories, the Court of First Instance (Third Chamber), composed of: K. Lenaerts,

President, J. Azizi and M. Jaeger, Judges; B. Pastor, Deputy Registrar, has given a judgment on 13 February 2003, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 68 of 16.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 February 2003

in Case T-30/02: Wolfgang Leonhardt v European Parliament ([1])

(Officials — Reports — Promotion — Amendment to the rules — Transitional measures)

(2003/C 101/59)

(Language of the case: French)

In Case T-30/02: Wolfgang Leonhardt, an official of the European Parliament, residing in La Hulpe (Belgium), represented by H. Tagaras, avocat, against European Parliament (Agents: H. von Hertzen and D. Moore) — application for annulment of the Parliament's decision of 11 June 2001 resetting at zero the tally of promotion points held by the applicant on 1 January 2000 — the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, R.M. Moura Ramos and H. Legal, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 11 February 2003, the operative part of which is as follows:

1. *The Parliament's decision of 11 June 2001 resetting at zero the tally of promotion points held by Mr Leonhardt on 1 January 2000 is annulled.*

2. *The Parliament shall bear the costs.*

([1]) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 27 September 2002

in Case T-211/02: Tideland Signal Limited v Commission of the European Communities ([1])

(Public procurement — Rejection of tender — Failure to exercise power to seek clarification of tender — Action for annulment — Expedited procedure)

(2003/C 101/60)

(Language of the case: English)

In Case T-211/02: Tideland Signal Limited, of which the registered office is in Redhill, Surrey (United Kingdom), represented by C Thomas and C Kennedy-Loest, Solicitors, against Commission of the European Communities (Agent: J Forman) — application for annulment of the Commission decision of 17 June 2002 rejecting the applicant's tender in procurement procedure EuropeAid/112336/C/S/WW — TACIS — (Re-tender) — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 27 September 2002, in which it:

1. *Annuls the Commission decision of 17 June 2002 rejecting the tender submitted by Tideland Signal Limited for Lot 1 in the tender procedure for EuropeAid/112336/C/S/WW — TACIS — (Re-tender);*

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

([1]) OJ C 219 of 14.9.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 13 December 2002

in Case T-81/01: Marc Oscar Henri Verdoodt and Ingrid Edmondus Malvina Rademakers-Verdoodt v Commission of the European Communities ([1])

(Action for annulment — Action becoming devoid of purpose — No need to adjudicate — Award of costs)

(2003/C 101/61)

(Language of the case: Dutch)

In Case T-81/01: Marc Oscar Henri Verdoodt and Ingrid Edmondus Malvina Rademakers-Verdoodt, living in Schoten

(Belgium), represented by M. van Dam, Avocat, against the Commission of the European Communities (Agents: H. van Vliet and W. Wils) — application for the annulment of Commission Decision SG (2001) D/286098 of 9 February 2001, whereby the Commission rejected the application by the applicant for exclusion of the boat Arizona from the scope of Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport (OJ 1999 L 90, p. 1) — the Court of First Instance (Third Chamber), composed of K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; H. Jung, Registrar, has made an order on 13 December 2002, in which it:

1) *Declares that there is no further need to adjudicate;*

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

([1]) OJ C 186, 30.6.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 11 February 2003

in Case T-83/02: Jan Pflugradt v European Central Bank ([1])

(Staff of the European Central Bank — Formal warning — Measure having an adverse effect — Pre-litigation procedure — Inadmissibility)

(2003/C 101/62)

(Language of the case: German)

In Case T-83/02: Jan Pflugradt, residing in Frankfurt-am-Main (Germany), represented by N. Pflüger, Rechtsanwalt, with an address for service in Luxembourg, against European Central Bank (Agents: V. Saintot, T. Gilliams and B. Wägenbaur) — application for the annulment of the letter of 28 February 2002 by which the European Central Bank informed the applicant that a formal-warning procedure was being instituted against him — the Court of First Instance (Fifth Chamber), composed of: R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges; H. Jung, Registrar, has made an order on 11 February 2003, the operative part of which is as follows:

1. *The application is inadmissible.*

2. *Each party shall bear its own costs.*

([1]) OJ C 118 of 18.5.2002.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 31 January 2003

in Case T-224/02 R: Miguel Forcat Icardo v Commission of the European Communities

(Proceedings for interim measures — Officials — Inadmissibility — Urgency — No urgency)

(2003/C 101/63)

(Language of the case: French)

In Case T-224/02 R: Miguel Forcat Icardo, an official of the Commission of the European Communities, residing in Brussels, represented by M.A. Lucas, avocat, against Commission of the European Communities (Agents: J. Currall and H. Tserepa-Lacombe) — application, essentially, in the first place, for compliance with the Commission's undertaking to second the applicant to the United Nations Organisation for Food and Agriculture in Rome and, second, for suspension of the applicant's staff report of 18 March 2002 covering the period from 1999 to 2001 — the President of the Court of First Instance has made an order on 31 January 2003, the operative part of which is as follows:

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

2. *The costs are reserved.*

ORDER OF THE COURT OF FIRST INSTANCE

of 3 February 2003

in Case T-253/02: Chafiq Ayadi v Council of the European Union and Commission of the European Communities ([1])

(Action for annulment — Council Regulation — Action brought against the Council and the commission — Partial inadmissibility)

(2003/C 101/64)

(Language of the case: English)

In Case T-253/02: Chafiq Ayadi, residing in Dublin, represented by A. Lyon, Solicitor, and S. Cox, Barrister, against Council of the European Union (Agents: M. Vitsentzatos and M. Bishop) and Commission of the European Communities (Agents: M. Wilderspin and C. Brown) — application for partial

annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9), — the Court of First Instance (Second Chamber), composed of N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges; H. Jung, Registrar, made an order on 3 February 2003, the operative part of which is as follows:

1. *The action is dismissed as inadmissible in so far as it is directed against the Commission.*

2. *The applicant is ordered to pay the costs relating to this part of the action.*

([1]) OJ C 289 of 23.11.2002.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 19 December 2002

in Case T-320/02 R: Monika Esch-Leonhardt and Others v European Central Bank

(Proceedings for interim relief — Urgency — No urgency)

(2003/C 101/65)

(Language of the case: German)

In Case T-320/02 R: Monika Esch-Leonhardt, residing in Frankfurt-am-Main (Germany), Tillmann Frommhold, residing in Karben (Germany), and Emmanuel Larue, residing in Frankfurt-am-Main, represented by B. Karthaus, Rechtsanwalt, with an address for service in Luxembourg, against European Central Bank (Agents: T. Gilliams, G. Gruber and B. Wägenbaur) — application for the temporary removal of a document from the personal files of the applicants — the President of the Court of First Instance made an order on 19 December 2002, the operative part of which is as follows:

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

2. *The costs are reserved.*

Action brought on 18 December 2002 by Success-Marketing Unternehmensberatungesellschaft m.b.H. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-380/02)

(2003/C 101/66)

(Language of the case: to be determined in accordance with Article 131(2) of the Rules of Procedure — Application drafted in German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 18 December 2002 by Success-Marketing Unternehmensberatungesellschaft m.b.H., Linz (Austria), represented by G. Secklehner, Rechtsanwalt, with an address for service in Luxembourg. Additional party before the Board of Appeal: Chipita International S.A., Athens.

The applicant claims that the Court should:

— set aside the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 2 October 2002 ([1]);

— order the Office to allow restitution in integrum;

— order the Office to pay all the costs of the proceedings, including those for the procedure before the Board of Appeal.

Pleas in law and main arguments

The applicant applied to the Office for registration of the word mark 'PAN & CO' for goods and services of classes 11, 30, 35, 37 and 42 (Application No 634287). Chipita International S.A., owner of the pictorial mark 'PAN SPEZIALITÄTEN' for goods of class 30 (Community Mark No 382374) lodged an opposition to such registration.

The Opposition Division set a time-limit for the applicant to submit its position on the opposition. The applicant did not submit a position within that time-limit. By decision of

22 September 1999, the Opposition Division held the opposition to be justified and dismissed the application for certain goods of class 30.

The applicant argued that it was only in the context of an enquiry with the Office that it learned that opposition to the mark had been raised as early as 1998, and that up to that point it had received no notification that an opposition had been lodged.

In June 2000, the applicant made an application for restitutio in integrum in accordance with Article 78 of Regulation (EC) No 40/94, an application for inspection of the files and an application for costs. The Opposition Division dismissed the application for restitutio in integrum by decision of 25 October 2000. By the contested decision, the Board of Appeal dismissed the applicant's appeal.

The applicant argues that the contested decision infringed essential procedural requirements, the Treaty and Regulation (EC) No 40/94. It argues that it was deprived of the possibility of defending its right to a fair hearing, as it was unable to contact the opposing party during the 'cooling-off' period in order to make a settlement, and it was not possible for it either to submit its reaction to the opposition or to lodge an appeal within the time-limits against the decision of the Opposition Division. Accordingly, despite using all the care required in the circumstances, the applicant was prevented from complying with Office's time-limits and is therefore, it submits, entitled to restitutio in integrum.

The legal argument of the Board of Appeal, that an application for restitutio in integrum is possible only within a year after the expiry of the missed time-limit, cannot be accepted. Under that argument, the possibility of restitution is removed by a restrictive interpretation of Article 78 of Regulation (EC) No 94/40 in the very circumstances where protection is most needed, namely when no written document whatever was served.

Finally, proof of service merely in the form of a fax confirmation which the Office may have can never be sufficient.

(1) Decision of the First Board of Appeal in Case R 26/2001-1.

Action brought on 3 February 2003 by Leder & Schuh AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-32/03)

(2003/C 101/67)

(Language of the case: to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 3 February 2003 by Leder & Schuh AG, Graz (Austria), represented by W. Kellenter and A. Schaffge, lawyers. Schuhpark Fascies GmbH, Warendorf (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 November 2002, in the amended version of 9 December 2002, in Case R 494/1999-3;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	The Applicant
Community trade mark sought:	The word mark 'JELLO SCHUHPARK' for products in Classes 18, 25 and 28 (particularly leather and imitations of leather, products of those materials in so far as they fall within Class 18, clothing, footwear and toys — Application No 107367
Proprietor of mark or sign cited in the opposition proceedings:	Schuhpark Fascies GmbH
Mark or sign cited in opposition:	German word mark 'Schuhpark' for products in Class 25 (particularly boots, ankle boots, slippers, shoes and sandals)

Decision of the Opposition Division:	Dismissal of the applicant's application for 'clothing, footwear and toys'. Dismissal of the opposition as to the remainder.
Decision of the Board of Appeal:	Dismissal of the applicant's appeal.
Pleas in law:	— infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1]; — absence of risk of confusion; — little distinctive character of the opposing trade mark — lack of similarity of trade marks — products largely dissimilar.

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

Action brought on 4 February 2003 by André Hecq and Syndicat des Fonctionnaires Internationaux et Européens (SFIE) against Commission of the European Communities

(Case T-34/03)

(2003/C 101/68)

(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 4 February 2003 by André Hecq, residing in Mondercange (Luxembourg), and Syndicat des Fonctionnaires Internationaux et Européens (SFIE), whose main offices are in Brussels, represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

— annul the decsion of the appointing authority of 4 October 2002, notified to the applicant on 9 October 2002 but received by him on 25 October 2002, rejecting the applicant's complaint, lodged on 24 April 2002, pursuant to Article 90(2) of the Staff Regulations in which he criticised various decisions, in particular:

  — two separate decisions notified on 15 January 2002 and 23 January 2002 respectively;

  — the decision of the College of Commissioners of 5 December 2001 improperly terminating the framework agreement of 20 September 1974, reiterating its approval of 'operational rules concerning the levels of concertation, the concertation body and the relevant procedures' dated 20 January 2000 and an alleged 'agreement' of 4 April 2001 on the 'resources to be made available to the central and the local staff committees and the unions';

— annul, to the extent necessary, the abovementioned decisions of 15 January 2002, 23 January 2002 and 5 December 2001;

— order the defendant to pay damages amounting to EUR 100 000;

— order the defendant to pay the costs of of the action, pursuant to Article 69(2) of the Rules of Procedure and the expenses necessarily incurred for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers, under Article 73(b) of those rules.

Pleas in law and main arguments

The applicant is an official of the Commission and secretary general of the 'Syndicat des Fonctionnaires Internationaux et Européens' (SFIE) trade union.

In support of his application, the applicant alleges, first, infringement of the framework agreement of 20 September 1974, in particular of the final provisions thereof, and breach of the general principles of contract law. According to the applicant, the framework agreement does not provide for unilateral termination.

The applicant also alleges infringement of Articles 11 and 12 of the framework agreement of 20 September 1974 in that the abovementioned provisions had not been agreed to by all the unions.

The applicant alleges next infringement of Article 24a of the Staff Regulations, Articles 18, 19 and 20 of the framework agreement of 20 September 1974, manifest error of assessment and breach of the principle of non-discrimination. According to the applicant, the criteria relating to representativeness are erroneous and arbitrary and favour certain unions.

Finally, the applicant alleges breach of the principle of non-discrimination in that the contested decisions deprived the union of which the applicant is the secretary general of all manner of human and material resources without taking account of its representativeness.

Action brought on 31 January 2003 by José Pedro Pessoa e Costa against Commission of the European Communities

(Case T-36/03)

(2003/C 101/69)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 31 January 2003 by José Pedro Pessoa e Costa, residing in Brussels, represented by Albert Coolen, Jean-Noël Louis et Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that the Commission commited an administrative fault by not reinstating the applicant to the first vacancy at Grade A 5 commensurate with his abilities;

— order the Commission to reconstitute his career and, in particular, to pay him the remuneration to which he is entitled in respect of the period from 1 August to 31 December 2001 together with default interest calculated at the rate of 1.5 % per annum;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official working for the defendant, on leave on personal grounds until 30 June 2001, requested his reinstatement, in accordance with Article 40(4)(d) of the Staff Regulations of officials of the European Communities. On 30 May 2002, the applicant lodged a complaint claiming that the defendant had failed to reinstate him to the first vacancy corresponding to his grade and abilities. The applicant claims that that complaint was partially rejected so far as concerns compensation for the material damage he allegedly suffered in the period between 1 July and 31 December 2001 and has made the present application. In support of his arguments, he alleges infringement of the abovementioned article of the Staff Regulations.

Action brought on 7 February 2003 by DaimlerChrysler AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-39/03)

(2003/C 101/70)

(Language of the case: to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 7 February 2003 by DaimlerChrysler AG, Stuttgart, Germany, represented by M. Trimborn, lawyer. AXON Leasing GmbH, Grasbrunn, Germany, was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of 4 November 2002 in appeal No R 329/2001-4 and dismiss the appeal;

— order the defendant Office to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant
Community trade mark sought:	The word mark 'AXOR' for goods and services in Classes 12 and 37 (automobiles and parts therefor (included in Class 12) and motor vehicle maintenance and repair) — application No 1111061
Proprietor of mark or sign cited in the opposition proceedings:	AXON Leasing GmbH

Mark or sign cited in opposition:	The German word/figurative mark 'AXON' (No 1108589) for goods and services in classes 10, 12, 35 and 36
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and referral of the case back to the Opposition Division
Pleas in law:	— There is no similarity between the marks opposed, within the meaning of Article 8(1)(b) of Regulation (EC) No 40/94 [1]. — There is no likelihood of confusion.

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

Action brought on 10 February 2003 by Julián Murúa Entrena against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-40/03)

(2003/C 101/71)

(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 10 February 2003 by Julián Murúa Entrena, residing in El Ciego, Álava (Spain), represented by Ignacio Temiño Ceniceros, lawyer.

The applicant claims that the Court should:

— annul the contested decision refusing the Community trade-mark application No 62.588 in Class 33;

— order the parties to bear their own costs and half of the common costs.

Pleas in law and main arguments

Applicant for Community trade mark:	Applicant
Community trade mark sought:	Figurative mark 'Julián Murúa Entrena' — Application No 62.588 for products in Class 33 (wines).
Proprietor of mark or sign cited in the opposition proceedings:	Bodegas Murúa S.A.
Mark or sign cited in opposition:	Spanish trade mark 'MURUA' and international registration No 482.779 having effect in Germany, France, Austria, Switzerland and Benelux for products in Class 33.
Decision of the Opposition Division:	Opposition accepted.
Decision of the Board of Appeal:	Appeal dismissed.
Pleas in law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

Action brought on 10 February 2003 by La Maison de l'Europe Avignon-Méditerranée against Commission of the European Communities

(Case T-43/03)

(2003/C 101/72)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 February 2003 by La Maison de l'Europe Avignon-Méditerranée, established in Avignon (France), represented by François Martineau, lawyer.

The applicant claims that the Court should:

— order the defendant to pay EUR 100 000 to make good the damage suffered by La Maison de l'Europe Avignon-Méditerranée as a result of the disclosure of deceitful,

or at the very least confidential, information by the representative of the European Commission in Marseille;

— order the defendant to pay all the recoverable costs, which amounts to EUR 10 000.

Pleas in law and main arguments

The applicant claims that, during a meeting in Marseille on 23 January 2003, a representative of the defendant divulged deceitful or at the very least confidential information. Such disclosure resulted in damage for which it seeks compensation in the present application. In support of its arguments, the applicant alleges non-contractual liability of the defendant in the context of Article 288 EC and alleged breach of the confidentiality obligation imposed on the representative of the defendant by Article 287 EC.

Action brought on 7 February 2003 by Giorgio Lebedef and Others against Commission of the European Communities

(Case T-44/03)

(2003/C 101/73)

(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 7 February 2003 by Giorgio Lebedef, residing in Senningerberg (Luxembourg), and 49 other officials, represented by Gilles Bounéou, lawyer, with an address for service in Luxembourg.

The applicants claim that the Court should:

— annul the decision of the competent hierarchical authority changing, in respect of 1993, 1994 and 1995 or the period within those years during which the applicants were officials of the Commission in Luxembourg, the procedure for calculating the annual expense of travelling to Greece in respect of the journey via Brindisi, as taken into consideration for certain destinations;

alternatively,

— annul the decision of the competent hierarchical authority to reimburse, in respect of 1993, 1994 and 1995 or the period within those years during which the applicants were officials of the Commission in Luxembourg, the cost of the sea passage from Brindisi to various Greek frontier posts (Corfu, Igoumenitsa, Patras) on the basis of an 'aircraft type seat' ticket;

— annul all the applicants' reimbursement statements implementing the decisions annulment of which is sought;

— pay the applicants the entire amount which is outstanding as a result of the implementation of the decisions annulment of which is sought, together with interest at the legal rate;

— order the Commission to pay the costs, expenses and fees incurred.

Pleas in law and main arguments

In the present case, the applicants seek the annulment of the decision of the Commission changing the procedure for calculating the annual expense of travelling to Greece.

In support of the (main and alternative) arguments for annulment, the applicants essentially rely on six pleas in law alleging, first, infringement of Article 71 of the Staff Regulations and of Articles 7 and 8 of Annex VII thereto; second, breach of the principle of non-discrimination; third, infringement of the rights of the defence; fourth, breach of the principle that arbitrary procedures are prohibited and of the obligation to provide a statement of reasons; fifth, breach of the principle of the protection of legitimate expectations and of the rule 'patere legem quam ipse fecisti'; and sixth, breach of the duty to have regard for the welfare and interests of officials.

Action brought on 6 February 2003 by Riva Acciaio S.p.A. against the Commission of the European Communities

(Case T-45/03)

(2003/C 101/74)

(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 6 February 2003 by Riva Acciaio S.p.A., represented by Aurelio Pappalardo, Massimo Merola, Maurizio Pappalardo and Federica Martin, lawyers.

The applicant claims that the Court should:

Primarily:

1. annul Article 1 of the decision in so far as it states that the applicant was involved in a single, comprehensive and ongoing cartel in the Italian market for solid and hollow round reinforcing rods, the purpose of effect of which was to fix prices by, inter alia, restricting or controlling production or sales;

2. annul Article 2 of the Commission's decision in so far as it imposes a fine of EUR 26,9 million on the applicant;

In the alternative:

— reduce the fine of EUR 26,9 million imposed on the applicant by Article 2 of the decision, and

In any event:

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the same decision as that challenged in Case T-27/03 S.P. v Commission.

The pleas in law and principal arguments are similar to those in that case.

Action brought on 6 February 2003 by Jose Maria Sison against the Council of the European Union and the Commission of the European Communities

(Case T-47/03)

(2003/C 101/75)

(Language of the case: English)

An action against the Council of the European Union and the Commission of the European Communitie was brought before the Court of First Instance of the European Communities on 6 February 2003 by Jose Maria Sison, Utrecht, the Netherlands, represented by Mr Jan Fermon, Lawyer.

The applicant claims that the Court should:

— partially annul, on the basis of Article 230, EC Treaty, Council Decision 2002/947/EC of 12 December 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/460/EC (OJ L 337, p. 85) and more specifically annul Article 1, point 1.25 of said decision and annul partially Article 1, point 2.14 of said decision insofar as it mentions the name of the applicant;

— declare illegal, on the basis of Article 241, EC Treaty, Council Regulation EC 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, p. 7);

— require the Community to compensate the applicant on the basis of article 235 and 288 in an amount to be fixed ex aequo et bono of not less than EUR 100 000;

— require the respondent parties to bear the costs of suit.

Pleas in law and main arguments

The applicant lives in the Netherlands and, in 1992, was recognized as a refugee in accordance with the Geneva Refugee Convention because of valid reasons of fear of persecution in the Philippines. The applicant was active in the Communist Party of the Philippines and is a consultant for the negotiating panel of the National Democratic Front of the Philippines in the peace negotiations with the government.

On 28 October 2002, the Council adopted decision 2002/848/EC [1] and included the applicant on the list made pursuant to article 2 (3) of Regulation 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism [2]. The applicant was also included in the list adopted by decision 2002/974/EC [3] of 12 December 2002. This last act is being contested in the present application.

In support of its application, the applicant invokes a violation of the obligation to state reasons, a patent error of judgment and a violation of the principle of sound administration. The applicant indicates that he has not, as an alias, Armando Liwanag and is not in charge of the New People's Army (NPA). The applicant furthermore claims that the contested decision violates the principle of proportionality and the freedom of circulation of capital.

The applicant also invokes the violation of several general principles of Community Law, such as the principles enshrined in Articles 6, 7, 10 and 11 of the European Convention on Human Rights and Article 1 of the First Protocol thereto.

The applicant finally invokes the illegality of Regulation 2580/2001. According to the applicant, the Council had no competence to adopt this regulation. The applicant claims that Articles 60, 301 and 308 of the EC Treaty are not sufficient nor do they explicitly authorise the Council to issue such a regulation. In this respect, the applicant also invokes a violation of the principle of proportionality, the principle of legal certainty and a misuse of power by the Council.

(1) 2002/848/EC: Council Decision of 28 October 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/460/EC (OJ L 295, p. 12).
(2) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, p. 7).
(3) 2002/974/EC: Council Decision of 12 December 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/848/EC (OJ L 337, p. 85).

Action brought on 10 February 2003 by Schneider Electric S.A. against Commission of the European Communities

(Case T-48/03)

(2003/C 101/76)

(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 10 February 2003 by Schneider Electric S.A., whose registered office is at Rueil-Malmaison (France), represented by Antoine Winckler and Marc Pittie, lawyers.

The applicant claims that the Court should:

— annul all the provisions of the Commission decision of 4 December 2002 based on Article 6(1)(c) of Council Regulation (EEC) No 4064/89 (Case COMP/M.2283 Schneider/Legrand);

— annul all the provisions of the Commission decision of 13 December 2002 whereby the Commission closed Case COMP/M.2283 Schneider/Legrand;

— order production of the market studies carried out in November 2002 in the context of Case COMP/M.2283;

— order the Commission to produce, on the assumption that they exist, the minutes of the meeting of the Commission at which the decision to close the case was adopted and the decision delegating a power of signature to the Director-General for Competition and authorising him to sign the decision closing the case;

— order the Commission to reimburse the costs incurred in connection with the present actions.

Pleas in law and main arguments

On 10 October 2001, the Commission adopted a decision declaring Schneider's public exchange offer in respect of all the shares in Legrand held by the public to be incompatible with the common market (1). As Schneider had closed its public offer before that decision was taken, the Commission adopted a further decision of 30 January 2002 ordering Schneider to divest itself of Legrand. The applicant challenged both these decisions in Cases T-301/01 and T-77/02. The Court of First Instance annulled the decisions by judgment of 22 October 2002.

On 4 December 2002, the Commission adopted a decision to initiate proceedings, after declaring that the concentration raised serious doubts as to its compatibility with the common market and opened the second phase investigation. The applicant subsequently informed the Commission that as it had divested itself of Legrand, on 10 December, the proceedings had become devoid of purpose. On 13 December 2002, the Commission closed the file (2).

In the present case, the applicant challenges the Commission decisions of 4 and 13 December 2002. The applicant states that the true effect of the decisions is to prohibit irremediably the union between Schneider and Legrand. In light of the obligation to implement the divestiture decision in good faith and the fact that it was impossible to secure provision by financial investors of the amounts necessary for an additional period in excess of four months, the deadline for disposing of

Legrand was set at 5 December 2002. According to the applicant, these economic consequences and the obligation to comply in good faith with the judgments of the Court of First Instance meant that the Commission was required to pay particular attention when resuming the investigation of the case.

In support of its action, the applicant claims, first, that the Commission did give effect to the judgment of the Court of First Instance in Case T-310/01. The applicant states that the Commission resumed the proceedings at 'stage I', whereas the Court of First Instance had held that its examination should be recommenced at the stage at which the Commission had committed its procedural error, i.e. at the time of communicating the statement of objections.

Second, the applicant claims that there has been a breach of its rights of defence. It maintains that the Commission did not communicate the objections which it intended to use against it within the prescribed period and with the clarity which would give it the proper opportunity to submit corrective measures. The applicant further states that the Commission refused to grant any access to the results of the market studies which it carried out for the purpose of evaluating the scope of the corrective measures proposed by the applicant.

Third, the applicant claims that there has been an infringement of the principle of good administration, in that the Commission distorted the corrective measures in the questionnaire drawn up for the purpose of the market studies and did not take into account certain factual matters which qualified the results.

Fourth, the applicant relies on a number of errors of law and of manifest errors of assessment. The applicant claims that the Commission ignored the consequences of its decisions by stating that serious doubts still existed concerning the compatibility of the operation with the common market. According to the applicant, the Commission therefore failed, contrary to the second paragraph of Regulation No 4064/89 [3] and to the judgment of the Court of First Instance, to adopt a definitive position. Furthermore, the Commission is also alleged to have applied a stricter standard of proof to the facts in issue than that laid down in Article 2(2) of Regulation No 4064/89.

The applicant further claims that the Commission at no time approached the level of proof required to demonstrate the effects of a conglomerate of this type.

Last, the applicant states that the Commission made errors of law and errors of assessment when analysing the corrective measures proposed by the applicant. Thus, the Commission rejected those measures by making its assessment subordinate to that of a national court and by waiving its exclusive power to control concentrations of a Community dimension.

The applicant also claims that the Commission made a manifest error of assessment in considering that the corrective measures proposed were insufficient in the light of the allegedly inadequate industrial viability of the undertakings disposed of. In addition, it claims that the Commission infringed the principle of proportionality by refusing to take into account the potential acquirers of the shares disposed of and an alternative proposal to dispose of a significant shareholding. Last, the applicant claims that the Commission infringed Regulation No 4064/89 by refusing to analyse the applicant's undertakings as to conduct.

Last, the applicant claims that the decision to close the proceedings is vitiated by an error of law, since it has no legal basis in Regulation No 4064/89 or in any other principle of law. In that regard, the applicant also relies on an infringement of the principle of collegiality of the Commission.

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(1) Case COMP/M.2283 — Schneider/Legrand.

(2) Initiation of proceedings and abandonment of the planned concentration (Case COMP/M.2283 — Schneider/Legrand II) (Text with EEA relevance) (OJ 2003 C 29, p. 5).

(3) Council Regulation (EEC) No 4064/89/EEC of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1).

Action brought on 6 February 2003 by Gunda Schumann against the Commission of the European Communities

(Case T-49/03)

(2003/C 101/77)

(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 6 February 2003 by Gunda Schumann, resident in Berlin, represented by I. Bock, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of 4 June 2002 whereby the selection board in Competition COM/A/11/01 eliminated the applicant at the conclusion of the preliminary tests and did not admit her to the following tests, and also annul the decision of 19 July 2002 whereby the same selection board confirmed its first decision after re-examination; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant took part in the preliminary tests of Open Competition COM/A/11/01. By the decision of the selection board of 4 June 2002, the applicant was informed that she had not attained the minimum number of points required and could therefore not be admitted to the further tests in the competition. In the annex to the decision, it was explained that one question of the test had been annulled, and that therefore only 39 answers had been taken into consideration in evaluating the tests.

The applicant argues that the two decisions against which her action is brought infringe the principle of proportionality, inasmuch as it was not necessary, in order to ensure equality of treatment between candidates and an objective assessment of the aptitudes of all the participants in the competition, retrospectively to annul a question of the test in all the language versions, whereas all that was needed was to remove irregularities appearing in only one of them. Those decisions were, moreover, disproportionate in that they did not take account of the necessary balance between the general interest and individual interests. It was the annulment of one question and, therefore, the failure to take the effectively 'correct' answer into account, which caused the selection board not to admit the applicant to the subsequent stages of the preliminary tests. This is therefore a case of hardship, which the selection board has not treated as such.

Action brought on 10 February 2003 by Gyproc Benelux N.V. against Commission of the European Communities

(Case T-50/03)

(2003/C 101/78)

(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 10 February 2003 by Gyproc Benelux N.V., whose registered office is at Wijnegem (Belgium), represented by Jean-François Bellis, Peter L'Ecluse and Martin Favart, lawyers.

The applicant claims that the Court should:

— substantially reduce the fine imposed on Gyproc by the decision of the Commission of 27 November 2002 in Case COMP/E-1/37.152 — Plasterboard relating to a proceeding pursuant to Article 81 EC;

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision which is the subject-matter of this application concerns an arrangement between BPB, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and the applicant on the plasterboard market. The applicant does not deny the existence of certain practices which the Commission held to be infringements. It never the less drew the defendant's attention to the fact that the scope of the complaints against it should significantly reduce over time, space and intensity.

In support of its claims, the applicant alleges that the Commission committed an error of assessment and infringed Article 81 of the EC Treaty by considering that it exchanged data on the volume of sales on the German, United Kingdom, French and Benelux markets between June 1996 and November 1998.

The applicant also takes the view that the defendant committed an error of assessment and infringed Article 15(2) of Regulation No 17 and the guidelines on the calculation of fines, Article 253 of the EC Treaty and the principles of proportionality, equal of treatment, fairness and of the protection of legitimate expectations:

— by failing to take into account, first, the very small overall size of the of the applicant and the 'one-item' nature of its business and, secondly, the absence of any illegal conduct on the part of the applicant on the UK market, or on the French or Benelux markets between June 1996 and April 1998.

— by failing to take account, as mitigating circumstances, first, of the role as 'follower' of the applicant and, secondly, of the ceasing of the infringement by the applicant as soon as the Commission intervened.

Action brought on 11 February 2003 by Pi-Design AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-51/03)

(2003/C 101/79)

(Language of the case: Danish)

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 11 February 2003 by Pi-Design AG, Triengen (Switzerland), represented by Jacob S Ørndrup, lawyer

The applicant claims that the Court should:

— annul the decision of the defendant of 5 December 2002 in Case No R452/2001-2 concerning EC trade mark application No 000353854;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark sought:	A three-dimensional trade mark in the form of a 'cafetière' (push-down coffee pot) — application No 353854
Goods or services:	Nice classification 21 (non-electric coffee makers)
Decision before the Board of Appeal:	Refusal of registration by the examiner
Decision of Board of Appeal:	Dismissal of appeal
Pleas in law:	— The defendant's decision is contrary to Article 7(1)(b) of Regulation No 40/94 [1]: — The trade mark has the necessary distinctive character. — The fact that the plaintiff's cafetière design is copied should not in itself lead to the trade mark application's being refused on grounds of lack of distinctive character. — There is no basis for stating that the cafetière in question is a manifestation of the 'usual shape of the product'.

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

Action brought on 14 February 2003 by BPB plc against the Commission of the European Communities

(Case T-53/03)

(2003/C 101/80)

(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 14 February 2003 by BPB plc, Slough, United Kingdom, represented by Thomas Sharpe QC and Mr Alexandre Nourry, Solicitor with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul Articles 1 and 2 of the contested Decision insofar as it relates to BPB

— In the alternative, annul Article 3 of the Decision insofar as it relates to BPB or, in the further alternative, reduce the fine imposed on BPB to such amount as the Court determines in accordance with law

— Subject to the annulment of Article 3 of the Decision or the reduction in the fine, order repayment of the principal sum paid by BPB together with such interest as the Court should determine in accordance with law

— Order the Commission to pay BPB's costs.

Pleas in law and main arguments

By its decision which forms the subject matter of the present action, the defendant found that the applicant and three other undertakings, namely Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux, had infringed Article 81 paragraph 1 EC by participating in a complex and continuing agreement from 1992 until 1998 with the object of stabilising the principal EU markets in plasterboard. The applicant denies that any agreement of the type alleged existed.

In support of its application the applicant submits the following contentions:

— the defendant violated the rights of the defence and the principle of equality of arms. More specifically, the applicant alleges that the defendant used information obtained from a third party as well as information contained in the replies of the other parties to the defendant, and that all of that information was not revealed to the applicant.

— the evidence advanced by the defendant does not substantiate its claims and the defendant has failed to meet the high standard of proof which the applicant considers is required in such proceedings.

— the defendant made manifest errors in its assessment of information, leading it to an incorrect decision and misuse of its powers.

— the defendant violated Article 253, EC, in that it failed to provide sufficient or adequate reasons for its decision

The applicant further contends that in setting the fine the defendant misapplied its powers under Article 15, paragraph 2, of Regulation 17/62 and its own Guidelines on setting fines, violated the principles of Community law and acted unreasonably. In particular, the applicant contends that:

— the basic amounts of the fine imposed for gravity and duration are disproportionate, arbitrary, and contrary to the principles of proportionality and equal treatment

— the 50 % uplift for aggravating circumstances is excessive and disproportionate and offends the principle of equal treatment

— the defendant failed to take account of any attenuating circumstances

— the defendant erred in its application of its Leniency Notice in violation of the principles of equal treatment and legitimate expectation

Action brought on 14 February 2003 by Lafarge SA against Commission of the European Communities

(Case T-54/03)

(2003/C 101/81)

(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 14 February 2003 by Lafarge SA, established in Paris, represented by Henry Lesguillons, Nathalie Jalbert-Doury, Jean-Cyril Bermond, Antoine Winckler, François Brunet and Igor Simic, lawyers.

The applicant claims that the Court should:

— annul the decision adopted by the Commission of the European Communities on 27 November 2002 in Case COMP/E-1/37.152 in so far as it concerns Lafarge SA and Lafarge Gypsum International SA;

— in the alternative, annul or reduce the amount of the fine imposed on it by that decision;

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

Pleas in law and main arguments

The decision which is the subject of the present application concerns an agreement or arrangement between BPB, Gebruder Knauf Westdeutsche Gipswerke AG, Gyproc Benelux and the applicant on the plasterboard market.

In support of its claims, the applicant alleges that the Commission infringed Article 81 of the EC Treaty and committed manifest errors of assessment inasmuch as the decision finds that Lafarge SA committed a single complex continuous infringement, which the applicant denies.

The applicant also takes the view that:

— the defendant infringed its right to a fair hearing guaranteed under Article 6 of the ECHR;

— the defendant infringed essential procedural requirements and rights of the defence. In that respect, the applicant claims that the defendant used statements from the parties made during the procedure and that the proceedings were vitiated by constant infringements of the principle of equality of arms;

— the defendant infringed the principle of impartiality.

In support of its claims the applicant alleges, in the alternative, that the defendant infringed Article 15(2) of Regulation No 17, Article 253 EC and the principles of proportionality and of equal treatment by:

— imposing on the applicant a fine in excess of 10 % of its worldwide turnover;

— imposing on the applicant an global fine in respect of allegedly discrete infringements;

— increasing the 'starting amount' as a deterrent and on the ground of aggravating circumstances;

— applying an excessive multiplication factor;

— not reducing the fine on the ground of attenuating circumstances or by virtue of the 'Amnesty Notice' ([1]).

([1]) Published in OJ 1996 C 207 p. 4.

Action brought on 12 February 2003 by Philippe Brendel against Commission of the European Communities

(Case T-55/03)

(2003/C 101/82)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 February 2003 by Philippe Brendel, residing in Brussels, represented by Georges Vandersanden and Laure Levi, lawyers.

The applicant claims that the Court should:

— annul the decision taken by the appointing authority of 3 May 2002 classing the applicant in Grade A 7, Step 2 with effect from 16 March 2001 and, so far as is necessary, annul the decision of 25 October 2002, notified on 4 November 2002, to reject the applicant's complaint;

— order the defendant to pay the balance of the remuneration consisting of the difference between the remuneration corresponding to classification in Grade A 7, Step 2, and the remuneration corresponding to classification in the next higher grade and step, together with default interest at 5,7 % per annum as from 16 March 2001;

— order the defendant to pay damages and interests assessed, ex æquo et bono, at EUR 500 a month as from 16 March 2001 until the date they are paid;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in these proceedings challenges the decision of the appointing authority refusing to classify him in Grade A6, Step 3, on his taking up his duties with the defendant following competition EUR/A/154 for the recruitment of administrators (career bracket A 7/A 6) in auditing and accounting.

In support of his claims he alleges:

— infringement of Article 31(2) of the Staff Regulations, of the decision of 1 September 1983 on the criteria applicable to appointment to grade and classification in step on recruitment and of the Administrative Guide;

— infringement of the principle patere quam ipse legem fecisti and of equal treatment;

— that there was in the circumstances a manifest error of assessment;

— disregard of the duty to have regard to the interests of officials and the duty to state reasons;

— infringement of Article 39 EC.

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

(Case T-56/03)

(2003/C 101/83)

(Language of the case: Italian)

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

European Communities on 10 February 2003 by Bioelettrica S.p.A., represented by Ombretta Fabe Dal Negro, lawyer.

The applicant claims that the Court should:

— declare that the European Commission has failed to perform Contract BM/1007/94 of 12 December 1994 (thermie programme);

— declare the contract terminated by the Commission;

— in any event, order the European Commission to pay to the applicant compensation — to be decided in separate proceedings — by way of compensation of the damages sustained by the applicant as a result of the failure of the project;

— in the alternative, declare in any event that Bioelettrica owes no debt to the European Community in respect of the funding received to date or any interest on the same, and

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action concerns the same project as that in which the Commission's decision to withdraw is challenged in Case T-287/01 Biolettrica v Commission [1] and T-42/03 Lurgi AG and Lurgi S.p.A. v Commission [2]. The applicant relies upon the statements made by the Commission in the context of the termie project, as follows:

— 6.9.2001 the Commission stated that the contract was at an end;

— 20.11.2001 the contract was regarded as still being in effect;

— 1.3.2002 the Commission confirmed that the contract was still in effect;

— 26.11.2002 the Commission stated that the contract was at an end, having been terminated not on 26.11.2002 but on 6.9.2001.

The applicant submits that the Court of First Instance has not considered the merits of the Commission's second revocation of the contract, that being in issue in Case T-287/01, or the lawfulness of the revocation of 6 September 2001, which was based on Article 8(2)(f) of the General Conditions, Annex II to the contract, whereas the termination of 26 November 2002 is based on Article 8(2)(d) of the General Conditions.

The pleas in law and principal arguments are similar to those in Case T-287/01.

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[1] OJ C 31 of 2.2.2002, p. 15.
[2] Not yet published.

Action brought on 20 February 2003 by Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation) against the Commission of the European Communities

(Case T-58/03)

(2003/C 101/84)

(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 20 February 2003 by Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation), represented by Giovanni Vezzoli, Gianluca Belotti and Elisabetta Stefania Piromalli, lawyers.

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, reduce the fine imposed to take account of the fact that conduct subsequent to its going into liquidation (25 November 1998/4 December 1998) cannot be imputed to Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation) and to take account of wrongful application of the increase in respect of duration to the whole of the basic fine as well as the specific financial situation of Acciaierie e Ferriere Leali Luigi S.p.A. (in liquidation), and

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the same decision as that challenged in Case T-27/03 S.P. v Commission. The pleas in law and principal arguments are similar to those in that case. Of particular importance are pleas alleging infringement of the rights of the defence in the procedure conducted by the

Commission and inequality of treatment in that the Commission recognised in the case of another undertaking involved in the same procedure mitigating factors which it denied the applicant.

Action brought on 19 February 2003 by TQ3 Travel Solutions GmbH and TQ3 Travel Solutions EMEA GmbH against the Commission of the European Communities

(Case T-59/03)

(2003/C 101/85)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 February 2003 by TQ3 Travel Solutions GmbH, Bremen, Germany, and TQ3 Travel Solutions EMEA GmbH, Bremen, Germany, represented by Dr Thomas Jestaedt, Mr Christopher Thomas and Dr Thomas Loest, Lawyers.

The applicant claims that the Court should:

— annul the Commission decision of 9 December 2002 rejecting the applicant's complaint in Case COMP/A.38321/D2-TQ3 Travel Solutions GmbH/Opodo Limited;

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

The applicants are active in the travel agency business, especially for business passenger air transport services and connected services.

On 3 November 2000, a joint venture agreement setting up Opodo Limited, an online travel portal created by nine of the largest European airlines, was notified to the Commission. Following the Notice published by the Commission setting out the undertakings proposed by the notifying parties and the intention of the Commission to clear the joint venture, one of the applicants filed a formal complaint against the creation of Opodo, alleging infringements of Article 81 and 82 of the EC Treaty. In the contested Decision, the Commission rejects the complaint of the applicant.

In support of their application, the applicants invoke a manifest error of assessment and an infringement of the Commission's obligation to investigate complaints with due diligence, with respect to the risk of coordination under Article 81(1) EC Treaty.

Opodo is a joint selling agency set up by competitors representing most of the airline sector and provides, according to the applicants, a significant opportunity for those airlines to align their prices. The applicants claim that the Commission made a manifest error of assessment in reaching its conclusion that the undertakings will ensure that Opodo is not used for the exchange of commercially sensitive information and that Opodo will not be used as a vehicle for the shareholders to coordinate their competitive behaviour. The applicants invoke furthermore an infringement of the obligation of the Commission to investigate complaints with due diligence, an infringement of the applicant's right to receive a response to its complaint, and a manifest error of assessment with respect to the distortion of competition in the distribution of airline tickets under Article 81(1) EC Treaty.

According to the applicants, the Commission failed to address the specific concern in the complaint that the Opodo infringed Article 81(1) EC Treaty because it was intended to and would have the effect of enabling the airlines to secure joint control of the distribution of airline tickets, forcing independent travel agencies out of the market.

Finally, the applicants invoke an infringement of the obligation of the Commission to investigate complaints with due diligence, an error of law and a manifest error of assessment with respect to discrimination under Article 82(2) EC Treaty.

According to the applicants, the Commission failed to investigate with due diligence the price comparisons provided in the complaint showing apparent discrimination. The applicants claim the Commission made an error of law in taking the position that the denial of lower priced tickets might be justified by the fact that the applicants focus on business travellers and made an error of assessment when rejecting the relevance of the price comparisons.

Action brought on 20 February 2003 by Regione Siciliana against the Commission of the European Communities

(Case T-60/03)

(2003/C 101/86)

(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 20 February 2003 by Regione Siciliana, represented by Giacomo Aiello (Avvocato dello Stato).

The applicant claims that the Court should:

— annul the Commission's decision of 11 December 2002 (C(2002)4905) concerning the cancellation of the contribution of the European Regional Development Fund (ERDF) towards an infrastructure investment of no less than ECU 15 million in Italy (region: Sicily) and the recovery of the advance paid by the Commission as part of that contribution, and

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is directed against the cancellation of the European Regional Development Fund (ERDF) contribution of LIT 94 940 620 056 towards the creation of a reservoir by means of damming the Gibbesi River in order to ensure a reliable water supply to the industrial centre proposed for the Commune of Licata and to improve irrigation to an area of approximately one thousand hectares.

In support of its application, the applicant argues infringement of Article 24 of Regulation (EEC) No 4253/88, as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 amending Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments [1] in that the Commission's decision to cancel the contribution was based on the assumption that there had been a change in the intended use of the construction, that reason not being included in Article 24 and inapplicable in any event on the facts of the present case.

— The applicant also alleges that the Commission abused its powers by distorting the facts in that the contested decision cancelled the Community contribution without a proper legal basis and in the absence of factual circumstances such as might warrant cancellation.

— The applicant also alleges that the Commission gave an insufficient statement of reasons on a decisive point in as much as it found irregularities and problems in the financial management of the project which, however, have no relevance to the cancellation of the Community contribution.

[1] OJ L 193 of 31.7.1993, p. 20.

Action brought on 18 February 2003 by Irwin Industrial Tool Company against the Office for Harmonization in the Internal Market

(Case T-61/03)

(2003/C 101/87)

(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 18 February 2003 by Irwin Industrial Tool Company, Hoffman Estates, USA, represented by Mr Graham Farrington, Solicitor.

The applicant claims that the Court should:

— annul the Decision of the Defendant's Third Board of Appeal of 20 November 2002; and

— order the Defendant to remit the application to its Examination Division for re-examination of Community Trade Mark number 1760867 and/or order the Defendant to remit the application to its Board of Appeal to consider the appeal under the provisions of Article 7(1)(b) of Community Trade Mark Regulation EC No 40/94 which it declined to do on the original appeal.

Pleas in law and main arguments

Trade mark concerned:	QUICK-GRIP. — Application No 1760867.
Product or service:	'Hand tools, clamps, c-clamps, bar clamps, hold-down clamps, welding clamps, chain clamps, locking bar clamps, locking hold-down clamps, locking pipe clamps, pipe clamps, part and fittings for the aforesaid goods' in International Class 8.
Decision challenged before the Board of Appeal:	Refusal of registration.
Pleas in Law relied on:	Incorrect application of Article 7(1)(b) and (c) of the Regulation No 40/94.

Action brought on 24 February 2003 by Georges Vassilakis against Commission of the European Communities

(Case T-62/03)

(2003/C 101/88)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 24 February 2003 by Georges Vassilakis, residing in Brussels, represented by Georgy Manalis, lawyer.

The applicant claims that the Court should:

— annul the decision of the Commission of the European Communities, as the appointing authority, not to include the applicant's name in the list of officials promoted to Grade A 5 in the 2002 exercise to promote officials from one career to the next, as mentioned in Administrative Information No 40-2002 of 17 May 2002;

— annul the list of officials promoted to A 5 in the 2002 exercise to promote officials from one career to the next, as mentioned in Administrative Information No 40-2002 of 17 May 2002, insofar as it does not include the applicant's name;

— annul the implied rejection of the applicant's complaint of 16 July 2002;

— order the Commission to pay the costs even in the event that the present application is dismissed.

Pleas in law and main arguments

In support of his arguments, the applicant alleges, first, lack of a statement of reasons. The applicant claims furthermore that the assessment of the comparative merits of the officials eligible for promotion was incorrect and that it was not carried out in relation to all the officials eligible for promotion.

Action brought on 25 February 2003 by Fondation Alsace against Commission of the European Communities

(Case T-65/03)

(2003/C 101/89)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 February 2003 by Fondation Alsace, whose registered office is at Strasbourg (France), represented by François Ruhlmann, lawyer.

The applicant claims that the Court should:

— annul the decision of the Commission of 20 December 2002 or, in the alternative, the preceding decision related to it;

— order the Commission to pay the Association Fondation Alsace EUR 3 000 by way of preparation allowance and costs of proceedings;

— order the European Commission to pay all the costs of the proceedings.

Alternatively:

— grant the Association Fondation Alsace the longest period possible for payment.

Pleas in law and main arguments

The present application is directed against a decision of the Commission of 20 December 2002 requiring the Fondation Alsace to repay to it EUR 18 000 (principal sum) as a result of its failure to fulfil subvention agreement PSS*/0534, concerning the organisation in Strasbourg of a conference from 29 June to 2 July 1992 entitled: 'Quel avenir pour la xénotransplantation et éthique et xénotransplantation'. According to the Commission, the applicant failed to fulfil one of its obligations, namely to provide scientific reports.

In support of its claims, in addition to pleading lack of a statement of reasons, the applicant alleges:

— expiry of time-limits to bring an action for restitution inasmuch as reimbursement of the subsidy in question is required more than 10 years after it was granted;

— manifest error of assessment in the present case, in that the condition relating to distribution of scientific reports was met, having regard to the nationality and number of participants at the conference who were all leading specialists in the field with which the conference was concerned.

Action brought on 28 February 2003 by Miguel Angel Poveda Morillas against the European Parliament

(Case T-69/03)

(2003/C 101/90)

(Language of the Case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 28 February 2003 by Miguel Angel Poveda Morillas, residing in Folkestone (United Kingdom), represented by Patrick Goergen, avocat, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the European Parliament of 3 June 2002 refusing to grant to the applicant the resettlement allowance provided for under Article 6 of Annex VII to the Staff Regulations;

— order the European Parliament to grant to the applicant the resettlement allowance provided for under Article 6 of Annex VII to the Staff Regulations with retroactive effect from 1 June 2002;

— order the European Parliament to pay all the costs of the proceedings.

Pleas in law and main arguments

The applicant, who is a former official of the European Parliament, was retired with entitlement to receive an invalidity pension as from 1 June 1999. On 31 May 2002 the applicant submitted to the defendant an application for the resettlement allowance provided for under Article 6 of Annex VII to the Staff Regulations, stating that he had, on the previous day, definitively resettled in England. Following the defendant's rejection of that application, the applicant brought the present action, invoking three pleas in law in support thereof:

— manifest error of assessment;

— breach of the provisions of the second subparagraph of Article 6(4) of Annex VII to the Staff Regulations;

— infringement of the obligation to state reasons.

Action brought on 28 February 2003 by Herbert Meister against Office for Harmonization in the Internal Market (OHIM)

(Case T-76/03)

(2003/C 101/91)

(Language of the case: French)

An action against the Office for Harmonization in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 28 February 2003 by Herbert Meister, residing in Muchamiel (Spain), represented by Georges Vandersanden, lawyer.

The applicant claims that the Court should:

— annul the decision of 22 April 2002 of the President of the Office transferring the applicant together with his post as legal adviser to the Vice-President for Legal Affairs with effect from 1 May 2002;

— order the applicant's rights to be fully restored, which means retransferring him and his post to his original department, in its original structure;

— order the defendant to make good the non-material damage suffered, evaluated provisionally at EUR 50 000, subject to adjustment;

— order the defendant to pay the costs.

Pleas in law and main arguments

Until 1 May 2002, the applicant, an official at the Office for Harmonization in the Internal Market (OHIM), held the post of Head of Service of the Cancellation Division. By the decision being contested in the present action, the applicant was transferred as legal adviser to Vice-President for Legal Affairs. In support of his claims for annulment, the applicant pleads:

— erroneous and inadequate statement of reasons for the decision of 22 April 2002;

— breach of the principle of proportionality and of freedom of expression;

— infringement of the rights of defence, in particular the right to be heard;

— breach of the principle of sound administration; and

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

Action brought on 3 March by Tomás Salazar Brier against Commission of the European Communities

(Case T-83/03)

(2003/C 101/92)

(Language of the case: Spanish)

An action against Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 March 2003 by Tomás Salazar Brier, residing in Brussels, represented by Ramón García-Gallardo Gil-Fournier and Dolores Domínguez Pérez, Members of the Madrid and La Coruña Bars respectively.

The applicant claims that the Court should:

— declare invalid the decision of 24 February 2003, implicit in the Commission's silence, refusing to grant an expatriation allowance and, therefore, the other realted allowances, in accordance with the Lozano case-law;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward earlier in Case T-205/02 Salvador García v Commission [1], Case T-298/02 Ana Herero Romeu v Commission [2] and T-299/02 Dedeu v Commission [2].

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[1] OJ C 219 of 14 September 2002, p. 22.
[2] OJ C 289 of 23 November 2002, p. 38.

Removal from the register of Case T-305/01 [1]

(2003/C 101/93)

(Language of the Case: French)

By order of 29 January 2003 the President of the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-305/01: Thalassa Seafoods S.A. v Commission of the European Communities.

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[1] OJ C 56 of 2.3.2002.

Removal from the register of Case T-84/02 [1]

(2003/C 101/94)

(Language of the Case: French)

By order of 30 January 2003 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-84/02: Armand de Buck v Commission of the European Communities.

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[1] OJ C 131 of 1.6.2002.

Removal from the register of Case T-244/02 [1]

(2003/C 101/95)

(Language of the Case: English)

By order of 27 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-244/02: G.D. Searle LLC v Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM).

[1] OJ C 247 of 12.10.2002.

Removal from the register of Case T-345/02 [1]

(2003/C 101/96)

(Language of the Case: English)

By order of 23 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-345/02: European Dynamics v Commission of the European Communities.

[1] OJ C 19 of 25.1.2003.

III

(Notices)

(2003/C 101/97)

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

OJ C 83, 5.4.2003

Past publications

OJ C 70, 22.3.2003

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

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