

Official Journal

of the European Union

ISSN 1725-2423

C 124

Volume 46

24 May 2003

English edition

Information and Notices

Notice No

Contents

Page

I *Information*

Court of Justice

COURT OF JUSTICE

2003/C 124/01	Judgment of the Court (Sixth Chamber) of 3 April 2003 in Case C-144/00 (Reference for a preliminary ruling from the Bundesgerichtshof): Matthias Hoffmann (VAT — Sixth Directive — Exemptions for certain activities in the public interest — Body — Meaning — Services performed by a natural person — Cultural services by a soloist)	1
2003/C 124/02	Judgment of the Court (Fifth Chamber) of 3 April 2003 in Case C-116/01 (Reference for a preliminary ruling from the Raad van State): SITA EcoService Nederland BV, formerly Verol Recycling Limburg BV v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (Environment — Waste — Regulation (EEC) No 259/93 — Directive 75/442/EEC — Treatment of waste in several stages — Use of waste as fuel in the cement industry and use of incineration residues as raw material in cement manufacture — Classification as a recovery operation or as a disposal operation — Concept of the use of waste principally as a fuel or other means to generate energy)	1
2003/C 124/03	Judgment of the Court (Fifth Chamber) of 3 April 2003 in Case C-277/01 P: European Parliament v Ignacio Samper (Appeals — Officials — Reconstruction of career — Consideration of comparative merits)	2
2003/C 124/04	Case C-70/03: Action brought on 17 February 2003 by the Commission of the European Communities against the Kingdom of Spain	2

EN

Notice No	Contents (continued)	Page
2003/C 124/05	Case C-96/03: Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven by judgment of that Court of 7 January 2003 in the proceedings between A. Tempelman and Directeur van de Rijksdienst voor de keuring van Vee en Vlees	3
2003/C 124/06	Case C-97/03: Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven by judgment of that Court of 7 January 2003 in the proceedings between Mr and Mrs T.H.J.M. van Schajk and Directeur van de Rijksdienst voor de keuring van Vee en Vlees	3
2003/C 124/07	Case C-98/03: Action brought on 28 February 2003 by the Commission of the European Communities against the Federal Republic of Germany	4
2003/C 124/08	Case C-106/03 P: Appeal brought on 27 February 2003 by fax, confirmed by original lodged on 7 March 2003, by Védial SA against the judgment delivered on 12 December 2002 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-110/01 between Védial SA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party being France Distribution	5
2003/C 124/09	Case C-107/03 P: Appeal brought on 27 February 2003 by fax, confirmed by the original lodged on 7 March 2003, by The Procter & Gamble Company against the judgment delivered on 12 December 2002 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-63/01 between The Procter & Gamble Company and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	5
2003/C 124/10	Case C-109/03: Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 8 January 2003 in the case of KPN Telecom B.V. against Onafhankelijke Post en Telecommunicatie Autoriteit; Interested parties: Denda Multimedia B.V. and Denda Directory Services B.V.	6
2003/C 124/11	Case C-116/03 P: Appeal brought on 14 March 2003 by Augusto Fichtner, a former official of the Commission of the European Communities, against the judgment of 16 January 2003 of the Fourth Chamber of the Court of First Instance in Case T-75/00 Augusto Fichtner v Commission	7
2003/C 124/12	Case C-117/03: Reference for a preliminary ruling by the Consiglio di Stato in sede giurisdizionale, Sezione Sesta by order of that Court of 17 December 2002 in the case of Società Italiana Dragaggi s.p.a. against Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma del Friuli Venezia Giulia	7
2003/C 124/13	Case C-124/03: Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 11 March 2003 in the case of (1) Artrada (Freezone) NV, (2) Videmecum BV and (3) Jac. Meisner Internationaal Expeditiebedrijf BV against Rijksdienst voor de Keuring van Vee en Vlees	8
2003/C 124/14	Case C-126/03: Action brought on 20 March 2003 by the Commission of the European Communities against the Federal Republic of Germany	8

<u>Notice No</u>	<u>Contents (continued)</u>	<u>Page</u>
2003/C 124/15	Case C-128/03 and C-129/03: Reference for a preliminary ruling by the Consiglio di Stato by order of that Court of 14 January 2003 in the appeal brought by AEM SpA (C-128/03) and by AEM Torino SpA (C-129/03) against l'Autorità per l'energia elettrica e per il gas; Third party: ENEL Produzione SpA	9
2003/C 124/16	Case C-130/03: Action brought on 24 March 2003 by the Commission of the European Communities against the Italian Republic	9
2003/C 124/17	Case C-131/03 P: Appeal brought on 25 March 2003 by R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc. and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands	10
2003/C 124/18	Case C-135/03: Action brought on 26 March 2003 by the Commission of the European Communities against the Kingdom of Spain	11
2003/C 124/19	Case C-139/03: Action brought on 27 March 2003 by the Commission of the European Communities against the Federal Republic of Germany	12
2003/C 124/20	Case C-141/03: Action brought on 28 March 2003 by the Commission of the European Communities against the Kingdom of Sweden	12
2003/C 124/21	Case C-142/03: Action brought on 31 March 2003 by the Commission of the European Communities against the Kingdom of Spain	13
2003/C 124/22	Case C-144/03: Action brought on 31 March 2003 by Commission of the European Communities against the Portuguese Republic	13
2003/C 124/23	Case C-146/03 P: Appeal brought on 31 March 2003 by Philip Morris International, Inc., against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands	13

<u>Notice No</u>	Contents (continued)	Page
2003/C 124/24	Case C-154/03: Action brought on 3 April 2003 by the Commission of the European Communities against Ireland	14
2003/C 124/25	Case C-160/03: Action brought on 8 April 2003 by the Kingdom of Spain against Eurojust	15
2003/C 124/26	Case C-164/03: Action brought on 9 April 2003 by the Commission of the European Communities against the Republic of Austria	16
2003/C 124/27	Removal from the register of Case C-107/02	16
	 COURT OF FIRST INSTANCE	
2003/C 124/28	Judgment of the Court of First Instance of 6 March 2003 in Cases T-228/99 and T-233/99: Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission of the European Communities (State aid — Commission's lack of competence — Infringement of the rights of the defence — Infringement of essential procedural requirements — Concept of aid — Infringement of Articles 87 EC and 295 EC — Market economy investor — Appropriate rate of remuneration — Infringement of the obligation to state reasons)	17
2003/C 124/29	Judgment of the Court of First Instance of 6 March 2003 in Joined Cases T-61/00 and T-62/00: Associazione Produttori Olivicoli Laziali (APOL) and Associazione Italiana Produttori Olivicoli (AIPO) v Commission of the European Communities (Agriculture — EAGF — Regulation (EEC) No 355/77 — Regulation (EEC) No 4253/88 Community Financial Assistance — Aid for the processing and marketing of agricultural products — Procedure to annul aid — Failure to comply with the conditions of grant — Force majeure — Principle of proportionality)	17
2003/C 124/30	Judgment of the Court of First Instance of 19 March 2003 in Case T-213/00: CMA CGM and Others v Commission of the European Communities (Competition — Agreement between members of a liner conference and independent shipping companies — Charges and surcharges — Legal basis — Regulation (EEC) No 4056/86 — Regulation (EEC) No 1017/68 — Relevant market — Proof of infringement — Limitation period — Fine)	18
2003/C 124/31	Judgment of the Court of First Instance of 12 March 2003 in Case T-174/01: Jean M. Goulbourn v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Community trade mark — Opposition procedure — Application for Community word mark Silk Cocoon — Earlier word mark COCOON — Proof of genuine use of earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 — Right to be heard)	18
2003/C 124/32	Judgment of the Court of First Instance of 19 March 2003 in Joined Cases T-188/01, T-189/01 and T-190/01: Vassilios Tsarnavas v Commission of the European Communities (Officials — Admissibility — Promotion — Consideration of comparative merits of officials from different services)	19

Notice No	Contents (continued)	Page
2003/C 124/33	Judgment of the Court of First Instance of 5 March 2003 in Case T-273/01: Innova Privat-Akademie GmbH v Commission of the European Communities (Community trade mark — Invalidity proceedings — ‘BSS’ — Article 51 of Regulation (EC) No 40/94 — Absolute ground for refusal — Article 7(1)(d) of Regulation No 40/94 — Distinctive character acquired through use — Articles 7(3) and 51(2) of Regulation No 40/94)	19
2003/C 124/34	Judgment of the Court of First Instance of 5 March 2003 in Case T-293/01: Donatella Ineichein v Commission of the European Communities (Temporary staff — Daily subsistence allowance — Place of recruitment — Evidence)	19
2003/C 124/35	Judgment of the Court of First Instance of 13 March 2003 in Case T-166/02: José Pedro Pessoa e Costa v Commission of the European Communities (Officials — Decision to institute disciplinary proceedings — Decision rejecting a request for transfer to the European Monitoring Centre for Drugs and Drug Addiction)	20
2003/C 124/36	Order of the Court of First Instance of 20 March 2003 in Case T-76/94: Rendert Jansma v Council of the European Union and Commission of the European Communities (Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer having entered into a non-marketing undertaking — Sale of the SLOM holding — Limitation period — No need to adjudicate)	20
2003/C 124/37	Order of the Court of First Instance of 6 March 2003 in Case T-226/00 DEP and T-227/00 DEP: Nan Ya Plastics Corporation and Far Eastern Textiles Ltd v Council of the European Union (Taxation of costs)	21
2003/C 124/38	Case T-17/03: Action brought on 16 January 2003 by Schmitz-Gotha Fahrzeugwerke GmbH against the Commission of the European Communities	21
2003/C 124/39	Case T-28/03: Action brought by Alsen AG against the Commission of the European Communities on 31 January 2003	22
2003/C 124/40	Case T-52/03: Action brought on 13 February 2003 by Knauf Westdeutsche Gipswerke KG against the Commission of the European Communities	22
2003/C 124/41	Case T-66/03: Action brought on 26 February 2003 by Koffiebranderij en Theehandel ‘Drie Mollen sinds 1818’ B.V. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	23
2003/C 124/42	Case T-67/03: Action brought on 27 February 2003 by Henkel KGaA against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) .	24
2003/C 124/43	Case T-73/03: Action brought on 26 February 2003 by Bernard Zaoui, Lucien Zaoui and Déborah Stain, née Zaoui against the Commission of the European Communities	24

<u>Notice No</u>	Contents (continued)	Page
2003/C 124/44	Case T-74/03: Action brought on 3 March 2003 by Intech EDM B.V. against the Commission of the European Communities	25
2003/C 124/45	Case T-80/03: Action brought on 3 March 2003 by Lucchini S.p.A. against the Commission of the European Communities	26
2003/C 124/46	Case T-85/03: Action brought on 5 March 2003 by the Government of the Cayman Islands against the Commission of the European Communities	26
2003/C 124/47	Case T-99/03: Action brought on 13 March 2002 by María Luisa Atienza Morales against the Commission of the European Communities	27
2003/C 124/48	Case T-107/03: Action brought on 20 March 2003 by Regione Marche against Commission of the European Communities	28
2003/C 124/49	Case T-111/03: Action brought on 27 March 2003 by T against Commission of the European Communities	28
2003/C 124/50	Removal from the register of Case T-77/00	29
2003/C 124/51	Removal from the register of Case T-208/02	29
2003/C 124/52	Removal from the register of Case T-245/02	29

II *Preparatory Acts*

.....

III *Notices*

2003/C 124/53	Last publication of the Court of Justice in the <i>Official Journal of the European Union</i> OJ C 112, 10.5.2003	30
---------------	--	----

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Sixth Chamber)

of 3 April 2003

in Case C-144/00 (Reference for a preliminary ruling from the Bundesgerichtshof): Matthias Hoffmann ⁽¹⁾

(VAT — Sixth Directive — Exemptions for certain activities in the public interest — Body — Meaning — Services performed by a natural person — Cultural services by a soloist)

(2003/C 124/01)

(Language of the case: German)

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

In Case C-144/00: Reference to the Court under Article 234 EC by the Bundesgerichtshof (Germany) for a preliminary ruling in the criminal proceedings before that court against Matthias Hoffmann, on the interpretation of Article 13A(1)(n) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Sixth Chamber), composed of: J.-P. Puissechot (Rapporteur), President of the Chamber, R. Schintgen, V. Skouris, F. Macken and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 3 April 2003, in which it has ruled:

1. Article 13A(1)(n) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, is to be interpreted to the effect that the expression 'other [recognised] cultural bodies' does not exclude soloists performing individually.

2. The heading of Article 13A of that directive does not, of itself, entail restrictions on the possibilities of exemption provided for by that provision.

⁽¹⁾ OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 3 April 2003

in Case C-116/01 (Reference for a preliminary ruling from the Raad van State): SITA EcoService Nederland BV, formerly Verol Recycling Limburg BV v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer ⁽¹⁾

(Environment — Waste — Regulation (EEC) No 259/93 — Directive 75/442/EEC — Treatment of waste in several stages — Use of waste as fuel in the cement industry and use of incineration residues as raw material in cement manufacture — Classification as a recovery operation or as a disposal operation — Concept of the use of waste principally as a fuel or other means to generate energy)

(2003/C 124/02)

(Language of the case: Dutch)

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

In Case C-116/01: Reference to the Court under Article 234 EC by the Raad van State (Netherlands) for a preliminary ruling in the proceedings pending before that court between SITA EcoService Nederland BV, formerly Verol Recycling Limburg BV and Minister van Volkshuisvesting, Ruimtelijke Ordening

en Milieubeheer, on the interpretation of 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 Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, A. La Pergola (Rapporteur), P. Jann and A. Rosas, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 3 April 2003, in which it has ruled:

1. *Where a waste treatment process comprises several distinct stages, it must be classified as a disposal operation or a recovery operation within the meaning of 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, for the purpose of implementing 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, as amended by Council Regulation (EC) No 120/97 of 20 January 1997, taking into account only the first operation that the waste is to undergo subsequent to shipment;*
2. *The calorific value of waste which is to be combusted is not a relevant criterion for the purpose of determining whether that operation constitutes a disposal operation as referred to in point D10 of Annex IIA to Directive 75/442, as amended by Directive 91/156 and by Decision 96/350, or a recovery operation as referred to in point R1 of Annex IIB thereof. Member States may establish distinguishing criteria for that purpose, provided that those criteria comply with those laid down in the Directive.*

⁽¹⁾ OJ C 161 of 2.6.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 3 April 2003

in Case C-277/01 P: European Parliament v Ignacio Samper⁽¹⁾

(Appeals — Officials — Reconstruction of career — Consideration of comparative merits)

(2003/C 124/03)

(Language of the case: French)

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

In Case C-277/01 P, European Parliament (Agents: H. von Herten and D. Moore): Appeal against the judgment of the

Court of First Instance of the European Communities (Fourth Chamber) of 3 May 2001 in Case T-99/00 Samper v Parliament [2001] ECR-SC I-A-111 and II-507, seeking to have that judgment set aside, the other party to the proceedings being: Ignacio Samper employee of the European Parliament, resident in Madrid (Spain), (represented by E. Boigelot), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, A. La Pergola, P. Jann and S. von Bahr (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 3 April 2003, in which it has ruled:

1. *Annuls the judgment of the Court of First Instance of 3 May 2001 in Case T-99/00 Samper v Parliament;*
2. *Refers the case back to the Court of First Instance for it to give judgment on the claims by Mr Samper for annulment of the decision of the European Parliament of 9 June 1999 reconstructing his career, in so far as it sets at 1 January 1998 the date for his promotion to Grade A 4 to take effect;*
3. *Reserves the costs.*

⁽¹⁾ OJ C 245 of 1.9.2001.

Action brought on 17 February 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-70/03)

(2003/C 124/04)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 17 February 2003 by the Commission of the European Communities, represented by Isabel Martínez del Peral and Miguel França, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. *Declare that, by failing to transpose fully into its national law Articles 5 and 6(2) of Directive 93/12/EEC⁽¹⁾ of 5 April 1993 on unfair terms in consumer contracts, the Kingdom of Spain has failed to fulfil its obligations under the Treaty and under that directive;*

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

Pleas in law and main arguments

- Incorrect implementation of Article 5 of the Directive. The Law transposing Article 5 of Directive 93/13/EEC into Spanish law fails to mention that the rule that the interpretation that is the most favourable to the consumer is to prevail is not to apply in the context of the procedures laid down in Article 7(2) of the Directive (prohibitory actions). Thus a situation is created in which consumers run the risk that the interpretation rule may go counter to their interests, inasmuch as it will be an obstacle to the removal from contracts with consumers, by means of a prohibitory action, unclear terms which, according to a 'normal' interpretation, are unfair;
- incorrect implementation of Article 6(2) of the Directive: by referring to the provision 'in Article 5 of the 1980 Rome Convention on the Law applicable to Contractual Obligations', the Spanish Law limits the protection offered by the Directive to consumers, by introducing a twofold restriction. Thus, the Directive provides for the protection of all consumers in all contracts concluded with a seller or supplier, whereas the Spanish Law provides such protection only for certain types of contract and only where certain conditions are satisfied, a twofold restriction prohibited by the Directive.

(¹) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95 of 21.4.1993, p. 29).

Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven by judgment of that Court of 7 January 2003 in the proceedings between A. Tempelman and Directeur van de Rijksdienst voor de keuring van Vee en Vlees

(Case C-96/03)

(2003/C 124/05)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van Beroep voor het Bedrijfsleven (Administrative Court for Trade and Industry) of 7 January 2003, received at the Court Registry on 4 March 2003, for a preliminary ruling in the proceedings between A. Tempelman and Directeur van de Rijksdienst voor de keuring van Vee en Vlees on the following questions:

1. May a Member State derive from Community law the power to decide to kill animals which are suspected of being infected or contaminated with the foot-and-mouth virus?

2. Does Directive 85/511/EEC (¹), as amended by Directive 90/423/EEC (²), afford the Member States scope to (order or) take supplementary national measures to control foot-and-mouth disease?
3. What limits does Community law place on a Member State with regard to taking supplementary national measures other than those provided for in Directive 85/511/EEC, as amended by Directive 90/423/EEC?

(¹) OJ L 315 [1985], p. 11.

(²) OJ L 224 [1990], p. 13.

Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven by judgment of that Court of 7 January 2003 in the proceedings between Mr and Mrs T.H.J.M. van Schajk and Directeur van de Rijksdienst voor de keuring van Vee en Vlees

(Case C-97/03)

(2003/C 124/06)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van Beroep voor het Bedrijfsleven (Administrative Court for Trade and Industry) of 7 January 2003, received at the Court Registry on 4 March 2003, for a preliminary ruling in the proceedings between Mr and Mrs T.H.J.M. van Schajk and Directeur van de Rijksdienst voor de keuring van Vee en Vlees on the following questions:

1. May a Member State derive from Community law the power to decide to kill animals which are suspected of being infected or contaminated with the foot-and-mouth virus?
2. Does Directive 85/511/EEC (¹), as amended by Directive 90/423/EEC (²), afford the Member States scope to (order or) take supplementary national measures to control foot-and-mouth disease?
3. What limits does Community law place on a Member State with regard to taking supplementary national measures other than those provided for in Directive 85/511/EEC, as amended by Directive 90/423/EEC?

(¹) OJ L 315 [1985], p. 11.

(²) OJ L 224 [1990], p. 13.

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

(Case C-98/03)

(2003/C 124/07)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 28 February 2003 by the Commission of the European Communities, represented by Ulrich Wölker, Legal Adviser of the Commission of the European Communities, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that

- by not providing for the duty to carry out an assessment of the implications in the case of certain projects outside special areas of conservation, as referred to in Article 4(1) of Council Directive 92/43/EEC ⁽¹⁾ of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, which pursuant to Article 6(3) and (4) of the directive are to be subject to such an assessment irrespective of whether those projects are likely to have a significant effect on an area of special conservation;
- by authorising emissions in a special area of conservation, irrespective of whether they are likely to have a significant effect on that area;
- by derogating from the scope of the provisions concerning the protection of species in the case of certain non-deliberate effects on protected animals;
- by failing to ensure compliance with the criteria for derogation set out in Article 16 of the directive in the case of certain activities which are supposed to be compatible with conservation of an area;
- by retaining provisions on the application of pesticides which do not take sufficient account of the protection of species;
- by failing to notify fishery catch legislation and/or to ensure that such legislation contains adequate bans on fishing, the Federal Republic of Germany has failed to fulfil its obligations under the directive.

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

Pleas in law and main arguments

- Provisions designed to transpose Article 6(3) of the directive are to be evaluated in terms of whether they require an assessment of the implications in the case of all projects likely to have a significant effect on special areas of conservation. Whether a particular effect may be significant cannot be decided solely by reference to the project, but only by taking into consideration the conservation aims of each individual area of conservation which may be affected and the nature and extent of the habitats and species present in each individual area. However, the definition of 'projects' contained in Paragraph 10(1)(11)(b) and (c) of the Bundesnaturschutzgesetz (Federal Law on Nature Conservation) does not take into account areas of conservation. Even if theoretical evidence is produced to show that, despite the restrictions contained in the definition, all conceivable projects likely to have a significant effect on special areas of conservation are in fact covered, there would still be no guarantee that projects with atypical effects of, in principle, a less apparent nature would be covered if they were likely to be significant in an actual individual case. In particular, small habitats containing unusual species may react much more sensitively to influences than may be anticipated by provisions concerning projects, which standardise categories.
- It is contrary to Article 6(3) and (4) of the directive for regard not to be had to pollution by noxious substances outside a (not clearly defined) area where the effects of a project are felt, which is the position under Paragraph 36 of the Bundesnaturschutzgesetz.
- Restricting the protection of sites where animals nest, breed, live or find refuge to cases where there are deliberate effects (Paragraph 43(4) of the Bundesnaturschutzgesetz) is not consistent with Article 12(1)(d) of the directive, the clear wording of which indicates that intention is not necessary in the context of the prohibition concerning deterioration or destruction of breeding sites or resting places.
- Paragraph 43(4) of the Bundesnaturschutzgesetz also provides for derogations from the provisions concerning the protection of species in favour of intervention or measures already authorised, without taking into account the fact that at the time of authorisation it may not yet have been known that a protected species is affected.

⁽¹⁾ OJ L 206 of 22.7.1992, p. 7.

Appeal brought on 27 February 2003 by fax, confirmed by original lodged on 7 March 2003, by Védial SA against the judgment delivered on 12 December 2002 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-110/01 between Védial SA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party being France Distribution

(Case C-106/03 P)

(2003/C 124/08)

An appeal against the judgment delivered on 12 December 2002 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-110/01 between Védial SA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party being France Distribution, was brought before the Court of Justice of the European Communities on 27 February 2003 by fax, confirmed by original lodged on 7 March 2003, by Védial SA.

The appellant claims that the Court should:

- set aside the judgment of the Court of First Instance of 12 December 2002 in Case T-110/01 and accordingly
 - acting pursuant to Article 54 of the Statute of the Court of Justice, give final judgment in the matter, granting the forms of order sought by the applicant before the Court of First Instance;
 - .in the alternative: refer the case back to the Court of First Instance for judgment;
- in any case: order OHIM to pay the costs.

Pleas in law and main arguments

- Plea alleging breach of the 'principle of party disposition'
The 'principle of party disposition' is a general principle of law under which the parties exercise, in principle, sole control over legal proceedings. It is they who delimit the subject-matter of the dispute. The Court of First Instance certainly acted in breach of the 'principle of party disposition' by holding, contrary to the agreement of the parties on this point, that there was no similarity between the conflicting trade marks.
- Plea alleging breach of the right to a fair hearing
The Court of First Instance also acted in breach of the right to a fair hearing since it undermined the applicant's legitimate expectation as to the delimitation of the dispute.
- Plea alleging infringements of the concept of 'likelihood of confusion' and the concept of 'public' within the meaning of Article 8(1)(b) of Regulation No 40/94 ⁽¹⁾
The contested judgment rules out the likelihood of confusion on the ground that the public 'will not

attribute the same commercial origin to the goods in question'. However, a likelihood of confusion also exists where the public may believe that the goods come from undertakings which are connected only economically. Moreover, the Court of First Instance rejected any likelihood of confusion on the ground that 'even though there is identity and similarity between the goods covered by the conflicting marks, the visual, aural and conceptual differences between the signs' mean that there is no likelihood of confusion, whereas the question is not whether there are differences between the conflicting marks, but whether there is identity or similarity between them and whether, considered as a whole with the identity or similarity of the goods, the degrees of those similarities are such that there is a likelihood of confusion.

In addition, the Court of First Instance did not apply the interdependence rule clearly. The Court of First Instance did not raise the point that the claimed low degree of similarity between the marks was not offset by the high degree of similarity between the goods and the strongly distinctive character of the applicant's trade mark.

Finally, the Court of First Instance infringed the concept of 'likelihood of confusion' by limiting the public concerned to the 'targeted public', the latter comprising only consumers likely to acquire the marked goods, whereas the public concerned consists of all persons likely to be confronted with the mark, which is very different.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 14.1.1994, p. 1).

Appeal brought on 27 February 2003 by fax, confirmed by the original lodged on 7 March 2003, by The Procter & Gamble Company against the judgment delivered on 12 December 2002 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-63/01 between The Procter & Gamble Company and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-107/03 P)

(2003/C 124/09)

An appeal against the judgment delivered on 12 December 2002 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-63/01 between The Procter & Gamble Company and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of Justice of the European Communities on 27 February 2003 by fax, confirmed by the original lodged on 7 March 2003, by The Procter & Gamble Company.

The appellant claims that the Court should:

- set aside the judgment of the Court of First Instance of 12 December 2002 in Case T-63/01 and, in consequence thereof,
- primarily: apply Article 54 of the Statute of the Court of Justice and give final judgment in the matter, upholding the form of order sought by the appellant before the Court of First Instance;
- in the alternative: refer the case back to the Court of First Instance for judgment;
- in any event: order OHIM to pay the costs.

Pleas in law and main arguments

- Plea alleging breach of the presumption that documents may be relied on or inconsistency in the grounds of the judgment:

Contrary to what the Court of First Instance states, the sign reproduced does not present any of the 24 rectangles or any of the six parallelograms of which a rectangular parallelepiped consists.

- Plea alleging misconstruction of the concept of distinctive character:

When it is necessary to determine whether a sign is capable of fulfilling its function as an individual mark for specific goods or services, when the merits of an application for registration as an individual mark for those goods and services are being examined, it is necessary to reason in terms of the presumed perception of the use which might be made of the sign and not in terms of the actual perception of any actual use already made of the sign. The Court of First Instance maintains that the distinctive character of the sign must be assessed in relation 'to the perception of the relevant public'. In that regard, the relevant public consists of all persons likely to find themselves in the presence of the sign and cannot therefore be reduced to the much more restricted circle of consumers likely to acquire the goods or services which the sign is supposed to designate.

Furthermore, the Court of First Instance indirectly but definitely misconstrued the concept of distinctive character when it failed to rule on whether or not the sign was incapable of distinguishing one bar of soap from another as coming from a specific undertaking, but rather whether the imperfect picture of that sign had such capacity.

Last, the Court of First Instance misunderstood the concept of distinctive character by completely disregarding the multifunctionality of signs. It is not because it might be presumed that, in the presence of the sign in

issue, the public will perceive above all or primarily a sign that fulfils a technical or ornamental function that the performance of its function as an individual trade mark would be precluded or even reduced.

Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 8 January 2003 in the case of KPN Telecom B.V. against Onafhankelijke Post en Telecommunicatie Autoriteit; Interested parties: Denda Multimedia B.V. and Denda Directory Services B.V.

(Case C-109/03)

(2003/C 124/10)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) of 8 January 2003, received at the Court Registry on 10 March 2003, for a preliminary ruling in the case of KPN Telecom B.V. against Onafhankelijke Post en Telecommunicatie Autoriteit; Interested parties: Denda Multimedia B.V. and Denda Directory Services B.V. on the following questions:

1. Is 'relevant information' in Article 6(3) of Directive 98/10/EC⁽¹⁾ to be interpreted as meaning only the numbers together with the name, address, town/city and postcode of the person to whom the number has been issued and any entry as to whether the number is used (exclusively) as a fax line published by the organisations concerned or does 'relevant information' also cover other data at the disposal of the organisations such as an additional entry relating to a profession, another name, another municipality or mobile telephone numbers?
2. Is 'meet (...) reasonable requests (...) on terms which are fair, cost oriented and non-discriminatory' in the provision referred in Question 1 to be interpreted as meaning that:
 - a) numbers together with the name, address, town/city and postcode of the person to whom the number has been issued must be made available for a remuneration of only the marginal costs involved in actually making them available, and
 - b) data other than those referred to in paragraph (a) must be made available for a remuneration intended to cover the costs of what the provider of these data shows he has incurred in obtaining or providing these data?

⁽¹⁾ OJ L 101 [1998], p. 24.

Appeal brought on 14 March 2003 by Augusto Fichtner, a former official of the Commission of the European Communities, against the judgment of 16 January 2003 of the Fourth Chamber of the Court of First Instance in Case T-75/00 Augusto Fichtner v Commission

(Case C-116/03 P)

(2003/C 124/11)

An appeal against the judgment of 16 January 2003 of the Fourth Chamber of the Court of First Instance in Case T-75/00 Augusto Fichtner v Commission was brought before the Court of Justice of the European Communities on 14 March 2003 by Augusto Fichtner, represented by Michele Tamburini and Franco Colussi, lawyers.

The appellant claims that the Court should:

- set aside the contested judgment;
- uphold the claims submitted at first instance and, accordingly:
 - annul the contested decision of the appointing authority of 30 September 1999, which is at issue;
 - order the Commission to pay him the outstanding remuneration and allowances as revalued and with interest to run from the date on which the decision took effect until actual payment is made;
 - order the Commission to make good the material and non-material damage suffered by the appellant, such compensation being assessed at EUR 50 000 or any other amount which the Court might deem appropriate and equitable or as may be subsequently decided;
- order the Commission to pay the costs.

Pleas in law and main arguments

The judgment of the Court of First Instance is contrary to Community law, in particular to:

- 1) Article 86(1) of the Staff Regulations, inasmuch as:
 - a) the appellant did not fail to fulfil his obligations under the third paragraph of Article 12 of the Staff Regulations, having proved that he did request permission to pursue an outside activity;

- b) even if it should be deemed that the appellant did, however, fail to fulfil said obligation, such breach could not be held to have been committed 'intentionally or through negligence';
2. the principle of proportionality (by the administration) by:
 - a) misuse of its powers: the Commission, by adopting the contested decision, pursued an objective other than that for which the relevant power had been conferred on it (safeguarding the internal rules of the civil service) and, in any event, in order to achieve purposes other than those declared;
 - b) manifest error of assessment of the facts: the Commission failed to take into account:
 - 1) the good faith of the appellant;
 - 2) that he could not have been refused the permission in question since the outside activity did not impair the official's independence nor was detrimental to the work of the Communities.

Reference for a preliminary ruling by the Consiglio di Stato in sede giurisdizionale, Sezione Sesta by order of that Court of 17 December 2002 in the case of Società Italiana Dragaggi s.p.a. against Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma del Friuli Venezia Giulia

(Case C-117/03)

(2003/C 124/12)

Reference has been made to the Court of Justice of the European Communities by order of the Consiglio di Stato in sede giurisdizionale, Sezione Sesta (Judicial Committee of the Council of State, Sixth Chamber) of 17 December 2002, received at the Court Registry on 18 March 2003, for a preliminary ruling in the case of Società Italiana Dragaggi s.p.a. against Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma del Friuli Venezia Giulia on the following question:

Is Article 4(5) of Directive No 92/43/EEC ⁽¹⁾ of 21 May 1992 to be interpreted as meaning that the measures under Article 6 and, in particular, under Article 6(3) of that directive are mandatory for the Member States only after final approval at Community level of the list of sites under Article 21 or, alternatively, in addition to determination of the ordinary commencement date of conservation measures, must a distinction be drawn between declaratory listing and determinative

listing (including in the first category the listing of priority sites) with the result that, in order to ensure the effectiveness of the directive, where a Member State identifies a site of Community importance sustaining priority natural habitat types or species, there must be considered to be an obligation to carry out an assessment of plans and projects with a significant effect on the site even before the Commission draws up the draft list of sites or adopts the final version of that list pursuant to Article 21 of the directive and, in fact, with effect from the drawing up of the national list?

⁽¹⁾ OJ L 206 of 22.7.1992, p. 7.

Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 11 March 2003 in the case of (1) Artrada (Freezone) NV, (2) Videmecum BV and (3) Jac. Meisner Internationaal Expeditiebedrijf BV against Rijksdienst voor de Keuring van Vee en Vlees

(Case C-124/03)

(2003/C 124/13)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) of 11 March 2003, received at the Court Registry on 20 March 2003, for a preliminary ruling in the case of (1) Artrada (Freezone) NV, (2) Videmecum BV and (3) Jac. Meisner Internationaal Expeditiebedrijf BV against Rijksdienst voor de Keuring van Vee en Vlees (Netherlands Livestock and Meat Inspectorate) on the following questions:

- 1(a) Must the term 'milk for the manufacture of milk-based products' in Article 2(2) of Directive 92/46/EEC ⁽¹⁾ be interpreted as meaning that it (also) includes milk constituents of a product which also contains other non-milk constituents and where the milk constituent cannot be separated from the non-milk constituents?
- 1(b) If the answer to question 1(a) is affirmative: must Article 22 of Directive 92/46/EEC be interpreted as meaning that in the case of imports from non-Member States that directive is applicable only to the milk constituent of a product and thus not to the product of which it is a constituent?
- 2(a) Does the concept of 'milk-based products' in Article 2(4) of Directive 92/46/EEC concern only finished products or also semifinished products which must undergo further processing before they can be offered for sale to the consumer?

- 2(b) In the event that Article 2(4) of Directive 92/46/EEC also refers to semifinished products, according to which criteria must it be determined whether milk or a milk product forms an essential part of a product, either in terms of quantity or for characterization of those products, as referred to in Article 2(4) of Directive 92/46/EEC?

⁽¹⁾ OJ L 268 [1992], p. 1.

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

(Case C-126/03)

(2003/C 124/14)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 20 March 2003 by the Commission of the European Communities, represented by Klaus Wiedner, of the Commission's Legal Service, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

- Declare that, by reason of the fact that the contract for waste transport concluded by the City of Munich was awarded without compliance with the notification requirements laid down in Article 8, in conjunction with Articles 15(2) and 16(1), of Directive 92/50 ⁽¹⁾, the Federal Republic of Germany has failed to fulfil its obligations under that directive; and
- Order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

If — as is the case with the Municipality of the City of Munich — the conditions for the existence of a body governed by public law are met, there is no need under the directive to draw a distinction, in the case of every requested provision of services, as to whether such services are provided in the general interest and are commercial in nature. It is for that reason irrelevant that, in the present case, the City of Munich, in connection with the provision of a service for a third party, burns waste in its own incineration plant and does not effect the transport to that plant itself but relies on a private undertaking to do so. If a public body tenders successfully for a contract but is obliged to subcontract out certain services in order to ensure provision of the overall service, that public body must apply the procedures set out in Directive 92/50.

The obligation to end breaches of the Community law on the award of contracts even by terminating contracts that have already been concluded can also not be placed in question by Article 2(6) of Directive 89/665 ⁽²⁾, which deals with ex post facto review of potential breaches of the Community law on tendering. A Treaty infringement can be treated as terminated only once the Member State concerned recognises the illegal nature of its action and the breach has been completely brought to an end.

⁽¹⁾ OJ 1992 L 209, p. 1.

⁽²⁾ OJ 1989 L 395, p. 33.

Reference for a preliminary ruling by the Consiglio di Stato by order of that Court of 14 January 2003 in the appeal brought by AEM SpA (C-128/03) and by AEM Torino SpA (C-129/03) against l'Autorità per l'energia elettrica e per il gas; Third party: ENEL Produzione SpA

(Case C-128/03 and C-129/03)

(2003/C 124/15)

Reference has been made to the Court of Justice of the European Communities by order of the Consiglio di Stato (Council of State) of 14 January 2003, received at the Court Registry on 24 March 2003, for a preliminary ruling in the appeal brought by AEM SpA (C-128/03) and by AEM Torino SpA (C-129/03) against l'Autorità per l'energia elettrica e per il gas; Third party: ENEL Produzione SpA on the following questions:

- (a) Can an administrative measure which, on the terms and for the purposes stated in the reasoning, imposes on certain undertakings using the electricity transmission network an increased charge for access and use in order to finance general revenue charges of the electricity system be regarded as a State aid for the purposes of Article 87 et seq. EC
- (b) Must the principles established in Directive 96/92 ⁽¹⁾ concerning the liberalisation of the internal electricity market and in particular Article 7 and 8 thereof concerning operation of the electricity transmission network be interpreted as precluding the possibility for the Member State to adopt measures imposing for a transitional period on certain undertakings for access to and use of the transmission network an increased charge in order to offset the overvaluation of hydroelectric and geothermal

electricity occasioned, as stated in the reasoning, by the altered legislative framework and to finance general revenue charges of the electricity system.

⁽¹⁾ Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ L 27 of 30.1.1997, p. 20).

Action brought on 24 March 2003 by the Commission of the European Communities against the Italian Republic

(Case C-130/03)

(2003/C 124/16)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 24 March 2003 by the Commission of the European Communities, represented by Niels Bertil Rasmussen and Luigi Cimaglia, acting as Agents.

The applicant claims that the Court should:

- Declare that, by failing to designate Community trade mark courts and tribunals of first and second instance, or in any event by failing to forward to the Commission, within the prescribed period, a list of such courts and tribunals indicating their names and territorial jurisdiction, the Italian Republic has failed to fulfil its obligations under Article 91 of Council Regulation (EC) No 40/94 ⁽¹⁾ of 20 December 1993 on the Community trade mark;
- Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Under the second paragraph of Article 249 of the Treaty establishing the European Community, regulations are binding in their entirety and directly applicable in all Member States.

In the present case, Article 91 of Regulation (EC) No 40/94 imposes an obligation on Member States to designate, in accordance with their own national legal systems, national courts and tribunals of first and second instance with jurisdiction in matters of infringement and validity of Community trade marks, and to forward to the Commission a list of designated Community trade mark courts and tribunals indicating their names and territorial jurisdiction. The final date for compliance with these obligations was 15 March 1997.

The Commission cannot but find that the Italian Republic has not yet forwarded to it the above information and has not thus far designated any Community trade mark court or tribunal, thereby also failing to meet its obligations under Article 91(1) of that regulation.

(1) OJ L 11 of 14.1.1994, p. 1.

Appeal brought on 25 March 2003 by R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc. and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands

(Case C-131/03 P)

(2003/C 124/17)

An appeal against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-377/00 ⁽¹⁾, T-379/00 ⁽²⁾, T-380/00 ⁽²⁾, T-260/01 ⁽³⁾ and T-272/01 ⁽⁴⁾ between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands, was brought before the Court of Justice of the European Communities on 25 March 2003 by R.J. Reynolds Tobacco Holdings, Inc., established in Winston-Salem, North Carolina (United States), RJR Acquisition Corp., established in Wilmington, Delaware (United States), R.J. Reynolds Tobacco Company, established in Winston-Salem, North Carolina (United States), R.J. Reynolds Tobacco International Inc., established in Winston-Salem, North Carolina (United States) and Japan Tobacco, Inc., established in Tokyo (Japan), represented by O.W. Brouwer, lawyer, and P. Lomas, solicitor.

The Appellants claim that the Court should:

- set aside the judgment of the Court of First Instance of 15 January 2003, whereby it:
 - i) dismissed the applications as inadmissible;
 - ii) ordered the applicants to bear their own costs and, jointly and severally, the costs incurred by the Commission; and
 - iii) ordered the interveners to bear their own costs.
- declare their applications for annulment admissible on the basis that the contested decisions were manifestly illegal and to give final judgment in the matter; alternatively;
- declare their applications for annulment admissible and refer the case back to the Court of First Instance for judgment on the merits; alternatively;
- refer the case back to the Court of First Instance for consideration of the issue of admissibility joined to the merits and for judgment accordingly;
- order the Commission to pay the costs pursuant to Article 69, second paragraph of the Rules of Procedure of the Court of Justice.

Pleas in law and main arguments

The Appellants submit that the Court of First Instance erred in law in so far as it held that, as a matter of principle, a decision to commence proceedings cannot be considered to be a decision which is open to challenge. Apart from the judgment of the Court of Justice of the European Communities in case 60/81, *IMB v. Commission*, which establishes admissibility where there are 'exceptional circumstances', the case-law clearly demonstrates that admissibility of new classes or types of application is determined on a case by case basis.

The Court of First Instance misinterpreted the case-law when it found that no legal effects ensued from the loss of the possibility of obtaining a preliminary ruling from the Court of Justice of the European Communities as to the Commission's competence to commence proceedings in a third state in an attempt to recover allegedly unpaid customs duties and VAT. In concluding that commencing proceedings in a third country, rather than in the Community, did not have legal effects, the Court of First Instance also misinterpreted the case-law that provides that where a definitive choice has been made for one procedure over another, the decision embodying that choice has legal effects for the purpose of Article 230.

The Court of First Instance also failed to recognise that by the contested decisions the Commission took a definitive position as to its competence as a matter of EC law, which constitutes legal effects within the meaning of the established case-law.

The Appellants also submit that the Court of First Instance was incorrect to proceed on the basis that the District Court could remedy the lack of a preliminary reference mechanism in the United States by applying Community law itself, that by declaring the application inadmissible, the Court of First Instance violated their right to effective judicial protection and that it misapplied and misinterpreted Community case-law on the contestability of manifestly illegal measures.

Finally, it is submitted that, in concluding that any disputes as to the Commission's competence to commence proceedings in the United States could be determined by the US District Court, the Court of First Instance adopted a solution that was contrary to Article 292 and the system of the Treaties.

(¹) OJ C 79, 10.3.2001, p. 23.

(²) OJ C 79, 10.03.2001, p. 24.

(³) OJ C 3, 05.01.2002, p. 39.

(⁴) OJ C 3, 05.01.2002, p. 45.

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

(Case C-135/03)

(2003/C 124/18)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 26 March 2003 by the Commission of the European Communities, represented by Gérard Berscheid, Legal Adviser, and Sara Pardo Quintillán, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should :

— Declare that:

- by maintaining in its domestic legal system and in current usage the term 'bio', on its own or in combination with other terms, for products which have not been obtained in accordance with organic production methods, thereby infringing Article 2 in conjunction with Article 5 of Council Regulation (EEC) No 2092/91 (¹) of 24 June 1991 on organic production of agricultural products and indications

referring thereto on agricultural products and foodstuffs, as amended by Regulations (EC) No 1935/95 (²) and (EC) No 1804/1999 (³); by failing to adopt the necessary measures to prevent misleading use of that word, thereby infringing Article 2 in conjunction with Article 10a of the abovementioned amended regulation; and by failing to adopt measures to prevent purchasers from being misled as to the method of manufacture or production of foodstuffs, thereby infringing Article 2 of the abovementioned amended regulation in conjunction with Article 2(1)(a)(i) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (⁴); and

- by maintaining in the Comunidad Foral de Navarra, contrary to the same provisions, use of the term 'bio', on its own or in combination with other terms, for dairy products in respect of which that term has been customarily and continuously used when they have not been obtained in accordance with organic production methods,

the Kingdom of Spain has failed to fulfil its obligations under the abovementioned regulation and directive, in particular the provisions thereof as indicated above;

- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Article 2 of Regulation No (EEC) 2092/91 prohibits the use of derivatives of the term designating organic agricultural methods in any of the official languages of the European Community for products which have not been obtained by means of organic production methods. Accordingly, use of the term 'bio', cited expressly in Article 2 as an example of a derived term indicating organic agriculture, is prohibited.

National legislation which allows the use of the term 'bio' in the labelling, advertising material or commercial documents for a product which has not been manufactured in accordance with Regulation (EEC) No 2092/91, such as Real Decreto (Royal Decree) 1852/1993 following the amendments inserted by Real Decreto 506/2001, infringes Regulation (EEC) No 2092/91.

Such national legislation also infringes Article 2(1)(a)(i) of Directive 2000/13/EC, according to which the labelling and methods used must not be such as could mislead the purchaser, particularly as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production.

(¹) OJ 1991 L 198, p. 1.

(²) Council Regulation (EC) No 1935/95 of 22 June 1995 amending Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs OJ 1995 L 186, p. 1.

(³) Council Regulation (EC) No 1804/1999 of 19 July 1999 supplementing Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs to include livestock production OJ 1999 L 222, p. 1.

(⁴) OJ 2000 L 109, p. 29.

Action brought on 27 March 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-139/03)

(2003/C 124/19)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 27 March 2003 by the Commission of the European Communities, represented by Josef Christian Schieferer and Hans Støvlbæk, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the necessary laws, regulations and administrative provisions to implement Commission Directive 2000/38/EC (¹) of 5 June 2000 amending Chapter Va (Pharmacovigilance) of Council Directive 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products and/or to notify the Commission of those provisions, the Federal Republic of Germany has failed to fulfil its obligations under the directive;
2. order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The time-limit for implementing the directive expired on 5 December 2001.

(¹) OJ L 139 of 10.6.2000, p. 28.

Action brought on 28 March 2003 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-141/03)

(2003/C 124/20)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 28 March 2003 by the Commission of the European Communities, represented by P. Hellström and J.M. Flett, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

- Declare that by failing to adopt the laws and other provisions necessary to implement Commission Directive 2000/52/EC (¹) of 26 July 2000 amending Directive 80/723/EEC (²) on the transparency of financial relations between Member States and public undertakings or, in any event, by failing to inform the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under the directive, and
- Order the Kingdom of Sweden to pay the costs.

Pleas in law and principal arguments

The period prescribed for implementing the directive ended on 31 July 2001.

(¹) OJ L 193, 29.7.2000, p. 75.

(²) OJ L 195, 29.7.1980, p. 35.

Action brought on 31 March 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-142/03)

(2003/C 124/21)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 31 March 2003 by the Commission of the European Communities, represented by Fernando Castillo de la Torre and Niels Bertil Rasmussen, members of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that the Kingdom of Spain has infringed Article 91 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark⁽¹⁾ by having failed to communicate to the Commission the list of Community trade mark courts;
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Member States are under an obligation to designate, within three years following entry into force of the regulation, 'Community trade mark courts' and to communicate to the Commission their names and their territorial jurisdiction. That information should have been communicated by 15 March 1997 at the latest.

⁽¹⁾ OJ L 11 of 14.1.1994, p. 1.

Action brought on 31 March 2003 by Commission of the European Communities against the Portuguese Republic

(Case C-144/03)

(2003/C 124/22)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 31 March 2003 by the Commission of the European Communities, represented by M. França and J. Flett, 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 Commission Directive 2000/52/EC⁽¹⁾ of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, the Portuguese Republic has failed to fulfil its obligations under Article 2 of Directive 2000/52/EC;
- declare in any event that, by failing to communicate forthwith those provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 2 of Directive 2000/52/EC;
- order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 31 July 2001.

⁽¹⁾ OJ L 193 of 29 July 2000, p. 75.

Appeal brought on 31 March 2003 by Philip Morris International, Inc., against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands

(Case C-146/03 P)

(2003/C 124/23)

An appeal against the judgment delivered on 15 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases

T-377/00 ⁽¹⁾, T-379/00 ⁽²⁾, T-380/00 ⁽²⁾, T-260/01 ⁽³⁾ and T-272/01 ⁽⁴⁾ between Philip Morris International, Inc., R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and Japan Tobacco, Inc., and Commission of the European Communities, supported by European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Federal Republic of Germany, Hellenic Republic, Kingdom of the Netherlands, was brought before the Court of Justice of the European Communities on 31 March 2003 by Philip Morris International, Inc., established in Rye Brook, New York (United States), represented by E. Morgan de Rivery and F. Marchini Camia, lawyers.

The Appellant claims that the Court should:

- annul the judgment of the Court of First Instance of 15 January 2003 in joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01; and
- give final judgment on the issue of admissibility, pursuant to Article 61 of the Protocol on the Statutes of the Court of Justice, by declaring the Appellant's actions for annulment admissible and refer the case back to the Court of First Instance for examination of the substance of the case; or
- failing that, refer the case back to the Court of First Instance for judgment on the admissibility issue and subsequently and/or simultaneously on the substance of the case; and
- order the Commission to pay the Appellant's costs before the Court of First Instance and the Court of Justice.

- failing to consider that the contested acts produced legal effects through the mere fact that they deprived the Appellant of certain legal protections and advantages within the Community legal order;
- considering that case C-345/00 P, FNAB, can be applied to the instant case;
- failing to consider that the contested acts are open to judicial review since they are manifestly illegal; and finally
- as a first alternative, if the Court of First Instance's reasoning is correct (*quod non*) that only the decision of the US District Court of the Eastern district of New York produces legal effects, then the Court of First Instance erred in law by considering, notwithstanding the circumstances of the case, that the contested acts cannot be reviewed under Article 230 EC;
- as a second alternative, if the Court of First Instance's reasoning is correct (*quod non*) that it is not possible to separately review a decision to initiate a law suit, it should have joined the question of admissibility to the substance.

- 2) The Court of First Instance contradicted itself on an essential point of law.
- 3) The Court of First Instance violated Article 292 EC.
- 4) The Court of First Instance violated the right to effective judicial protection.

⁽¹⁾ OJ C 79, 10.3.2001, p. 23.

⁽²⁾ OJ C 79, 10.3.2001, p. 24.

⁽³⁾ OJ C 3, 5.1.2002, p. 39.

⁽⁴⁾ OJ C 3, 5.1.2002, p. 45.

Pleas in law and main arguments

The Appellant contends that, in the contested judgment, the Court of First Instance made the following errors of law:

- 1) The Court of First Instance violated the concept of a challengeable act under Article 230 EC by:
 - considering that bringing proceedings on the basis of the contested acts is comparable to bringing proceedings under Article 226 EC;
 - considering that the admitted lack of competence to adopt the contested acts and the subsequent creation and exercise of such competence do not alter the legal position of the parties to the case;

Action brought on 3 April 2003 by the Commission of the European Communities against Ireland

(Case C-154/03)

(2003/C 124/24)

An action against Ireland was brought before the Court of Justice of the European Communities on 3 April 2003 by the Commission of the European Communities, represented by Karen Banks, 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 Council Directive 1999/36/EC of 29 April 1999 on transportable pressure equipment⁽¹⁾ and Commission Directive 2001/2/EC of 4 January 2001 adapting the latter directive to technical progress⁽²⁾, or in any event by failing to notify those provisions to it, Ireland has failed to fulfil its obligations under the Directives;
- 2) order Ireland to pay the costs of this action.

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 1 December 2000 and 1 July 2001 respectively without Ireland having enacted the provisions necessary to comply with the directives referred to in the conclusions of the Commission.

⁽¹⁾ OJ L 138, 1.6.1999, p. 20.

⁽²⁾ OJ L 005, 10.1.2001, p. 4.

Action brought on 8 April 2003 by the Kingdom of Spain against Eurojust

(Case C-160/03)

(2003/C 124/25)

An action against Eurojust was brought before the Court of Justice of the European Communities on 8 April 2003 by the Kingdom of Spain, represented by L. Fraguas Gadea, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul, in the following calls for applications:
 - call for applications for the position of Data-protection officer. Ref.: 03/EJ/07 (2003/C 34 A/01) OJ C 34 A of 13.2.2003;
 - call for applications for the position of Legal officer. Ref.: 03/EJ/11 (2003/C 34 A/05) OJ C 34 A of 13.2.2003;
 - call for applications for the position of Press officer. Ref.: 03/EJ/13 (2003/C 34 A/07) OJ C 34 A of 13.2.2003;

- call for applications for the position of Secretary to the General Administration. Ref.: 03/EJ/14 (2003/C 34 A/08) OJ C 34 A of 13.2.2003;
- call for applications for the position of Librarian/Archivist. Ref.: 03/EJ/12 (2003/C 34 A/06) OJ C 34 A of 13.2.2003;
- call for applications for the position of Accounting officer. Ref.: 03/EJ/08 (2003/C 34 A/02) OJ C 34 A of 13.2.2003;
- call for applications for the position of IT-informatics expert (webmaster) of the European judicial network. Ref.: 03/EJ/09 (2003/C 34 A/03) OJ C 34 A of 13.2.2003,

the paragraph referring to the documents to be submitted in English by applicants submitting their application in another language; and the paragraphs relating to the linguistic knowledge required of candidates, from each of the calls for applications set out below:

- in the call for applications for the position of Data-protection officer, as condition No 17: 'Excellent knowledge of English and French. Ability to work in other European Union languages would be an asset'.
- in the call for applications for the position of Law officer, as condition No 19: 'Excellent knowledge of English and French. Ability to work in other European Union languages would be an asset'.
- in the call for applications for the position of Press officer, as condition No 12: 'Ability to speak at least English and French. Knowledge of other official European Union languages would be an asset'.
- in the call for applications for the position of Secretary to the General Administration, as condition No 9: 'Thorough knowledge of English and French would be an asset, as well as a satisfactory knowledge of other Community languages'.
- in the call for applications for the position of IT-informatics expert (webmaster) of the European judicial network, as condition No 6: 'Good knowledge of English is essential; in particular, the ability to speak at least two additional official European Community languages, including French, would be an asset'.

2. order the defendant body to pay the costs.

Pleas in law and main arguments

- Breach of the Staff Regulations and of the Conditions of Employment of Other Servants of the European Communities

According to Article 30 of Council Decision 2002/187/JHA of 28 February 2002 establishing Eurojust to strengthen the fight against serious forms of crime⁽¹⁾, Eurojust staff are to be subject to the rules and regulations applicable to the officials and other servants of the European Communities.

Under Article 12 of the Conditions of Employment, candidates are only required to have a thorough knowledge of one language and a satisfactory knowledge of another.

- Breach of the linguistic rules of Eurojust

Article 31 of Council Decision 2002/187/JHA provides that the official linguistic arrangements of the Union are to apply to Eurojust proceedings. No provision of the decision expressly states that the working languages of Eurojust are to be English and French.

- Breach of the principle of non-discrimination

The requirement that part of the documents to be submitted should be drawn up in English and, most of all, the requirement of excellent knowledge of English and French amounts to clear discrimination grounds of nationality, prohibited by Article 12 EC.

⁽¹⁾ OJ 2002 L 63, p. 1.

Action brought on 9 April 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-164/03)

(2003/C 124/26)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 9 April 2003 by the Commission of the European Communities,

represented by Dr Ulrich Wölker, Commission Legal Adviser, and Florence Simonetti, a national civil servant available to the Commission Legal Service under an exchange scheme, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to adopt, or to communicate to the Commission, the laws, regulations and administrative provisions necessary in order to implement Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment⁽¹⁾ in the provinces of Burgenland and Salzburg, the Republic of Austria has failed to fulfil its obligations under that directive;
2. order the Republic of Austria to pay the costs.

Pleas in law and main arguments

In accordance with the third paragraph of Article 249 EC, which provides that a directive is binding as to the result to be achieved upon each Member State, the Member States are obliged to comply with the time-limit for implementation laid down in directives. The period for implementation laid down in Article 3(1) of Directive 97/11/EC expired on 14 March 1999 without the Republic of Austria having adopted the necessary provisions for the provinces of Burgenland and Salzburg.

⁽¹⁾ OJ L 73, 14.3.1997, p. 5.

Removal from the register of Case C-107/02⁽¹⁾

(2003/C 124/27)

By order of 4 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-107/02: Commission of the European Communities v Federal Republic of Germany.

⁽¹⁾ OJ C 191 of 10.08.2002.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 March 2003

in Cases T-228/99 and T-233/99: Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission of the European Communities ⁽¹⁾

(State aid — Commission's lack of competence — Infringement of the rights of the defence — Infringement of essential procedural requirements — Concept of aid — Infringement of Articles 87 EC and 295 EC — Market economy investor — Appropriate rate of remuneration — Infringement of the obligation to state reasons)

(2003/C 124/28)

(Language of the case: German)

In Cases T-228/99 and T-233/99: Westdeutsche Landesbank Girozentrale, established in Düsseldorf (Germany), represented by F. Montag, lawyer, with an address for service in Luxembourg, and Land Nordrhein-Westfalen, represented by M. Schütte, lawyer, with an address for service in Luxembourg, supported by Federal Republic of Germany (Agents: W.-D. Plessing, assisted by H.-F. Wissel), against Commission of the European Communities (Agents: K.-D. Borchardt and V. Kreuschitz) supported by Bundesverband deutscher Banken eV, established in Berlin (Germany), represented by H.-J. Niemeyer, lawyer — application for annulment of Commission Decision 2000/392/EC of 8 July 1999 on a measure implemented by the Federal Republic of Germany for Westdeutsche Landesbank — Girozentrale (WestLB) (OJ 2000 L 150, p. 1) — the Court of First Instance (Second Chamber, Extended Composition), composed of R.M. Moura Ramos, President, V. Tiili, J. Pirrung, P. Mengozzi and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 6 March 2003, in which it:

1. Annuls Commission Decision 2000/392/EC of 8 July 1999 on a measure implemented by the Federal Republic of Germany for Westdeutsche Landesbank — Girozentrale (WestLB);
2. Orders the Commission to pay the costs of the applicants and to bear its own costs;
3. Orders the Federal Republic of Germany and the Bundesverband deutscher Banken eV to bear their own costs.

⁽¹⁾ OJ C 6 of 8.1.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 March 2003

in Joined Cases T-61/00 and T-62/00: Associazione Produttori Olivicoli Laziali (APOL) and Associazione Italiana Produttori Olivicoli (AIPO) v Commission of the European Communities ⁽¹⁾

(Agriculture — EAGF — Regulation (EEC) No 355/77 — Regulation (EEC) No 4253/88 Community Financial Assistance — Aid for the processing and marketing of agricultural products — Procedure to annul aid — Failure to comply with the conditions of grant — Force majeure — Principle of proportionality)

(2003/C 124/29)

(Language of the case: Italian)

In Joined Cases T-61/00 and T-62/00: Associazione Produttori Olivicoli Laziali (APOL), established in Rome, Associazione Italiana Produttori Olivicoli (AIPO), established in Rome, represented by E. Cappelli, P. de Caterini, F. Lepri and R. Vaccarella, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Cattabriga and M. Moretto)

- application, in Case T-61/00, for annulment of Decision C (1999) 4561 of the Commission, of 14 December 1999, withdrawing the financial contribution granted from the European Agricultural Guidance and Guarantee Fund to the applicant by Decision C (84) 1100/293 of the Commission, of 20 December 1984,
- in Case T-62/00, for annulment of Decision C (1999) 4559 of the Commission, of 14 December 1999, withdrawing the financial contribution from the European Agricultural Guidance and Guarantee Fund granted to the applicant by Decision C (84) 500/213 of the Commission, of 29 June 1984

the Court of First Instance (Second Chamber), composed of R.M. Moura Ramos, President, and J. Pirrung and A.W.H. Meij, Judges; J. Palacio González, Principle Administrator, for the Registrar, has given a judgment on 6 March 2003, in which it:

1. Dismisses the applications;
2. In each case, orders the applicant concerned to bear all the costs.

⁽¹⁾ OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 March 2003

in Case T-213/00: CMA CGM and Others v Commission of the European Communities ⁽¹⁾

(Competition — Agreement between members of a liner conference and independent shipping companies — Charges and surcharges — Legal basis — Ryegulation (EEC) No 4056/86 — Regulation (EEC) No 1017/68 — Relevant market — Proof of infringement — Limitation period — Fine)

(2003/C 124/30)

(Language of the case: English)

In Case T-213/00: CMA CGM, established in Marseilles (France), Cho Yang Shipping Co. Ltd, established in Seoul (South Korea), Evergreen Marine Corp. Ltd, established in Taipei (Taiwan), Hanjin Shipping Co. Ltd, established in Taipei, Hapag-Lloyd Container Linie GmbH, established in Seoul, Kawasaki Kisen Kaisha Ltd, established in Tokyo (Japan), Malaysia International Shipping Corporation Berhad, established in Kuala Lumpur (Malaysia), Mitsui OSK Lines Ltd, established in Tokyo, Neptune Orient Lines Ltd, established in Singapore (Singapore), Nippon Yusen Kaisha, established in Tokyo, Orient Overseas Container Line Ltd, established in Wanchai (Hong Kong), P & O Nedlloyd Container Line Ltd, established in London, Senator Lines GmbH, successor in title to DSR-Senator Lines GmbH, established in Bremen (Germany), Yangming Marine Transport Corp., established in Taipei, represented initially by J. Pheasant, C. Barlen, M. Levitt, D. Waelbroeck and U. Zinsmeister, and subsequently by J. Pheasant, M. Levitt, D. Waelbroeck and U. Zinsmeister, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: initially P. Oliver and E. Gippini Fournier, and, subsequently, M. Oliver): Application for the annulment of Commission Decision 2000/627/EC of 16 May 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (IV/34.018 — Far East Trade Tariff Charges and Surcharges Agreement (FETTCSA) (OJ 2000 L 268, p. 1), the Court of First Instance (Third Chamber), composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 19 March 2003, in which it:

1. Annuls Article 4 of Commission Decision 2000/627/EC of 16 May 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (IV/34.018 — Far East Trade Tariff Charges and Surcharges Agreement (FETTCSA);
2. Dismisses the remainder of the action;

3. Orders the Commission to bear its own costs and to pay half of the applicants' costs;
4. Orders the applicants to bear half of their own costs.

⁽¹⁾ OJ C 316 of 4.11.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 March 2003

in Case T-174/01: Jean M. Goulbourn v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ⁽¹⁾

(Community trade mark — Opposition procedure — Application for Community word mark Silk Cocoon — Earlier word mark COCOON — Proof of genuine use of earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 — Right to be heard)

(2003/C 124/31)

(Language of the case: German)

In Case T-174/01: Jean M. Goulbourn, residing at Dasmarinas Village, Makati, Metro Manila (Philippines), represented by S. Jackermeier, lawyer, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: G. Schneider), the other party before the Court being Redcats SA, established in Roubaix (France), represented by A. Bertrand and T. Reisch, lawyers: Action brought against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 April 2001 in Case R 641/2000-3 relating to an opposition procedure between Redcats SA and Jean M. Goulbourn, 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 12 March 2003, in which it:

1. Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 April 2001 (Case R 641/2000-3);
2. Orders the Office to pay the costs.

⁽¹⁾ OJ C 317 of 10.11.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 March 2003

in Joined Cases T-188/01, T-189/01 and T-190/01: Vassilios Tsarnavas v Commission of the European Communities ⁽¹⁾

(Officials — Admissibility — Promotion — Consideration of comparative merits of officials from different services)

(2003/C 124/32)

(Language of the case: French)

In Joined Cases T-188/01, T-189/01 and T-190/01: Vassilios Tsarnavas, an official of the Commission of the European Communities, residing in Brussels, represented by N. Lhoëst, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: D. Martin) — application for the annulment of the decisions of the Commission not to promote the applicant in the 1998, 1999 and 2000 promotions procedures — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, R.M. Moura Ramos and H. Legal, Judges; Blanca Pastor, Deputy Registrar, gave a judgment on 19 March 2003, in which it:

1. Annuls the decisions of the Commission not to promote the applicant in the 1998, 1999 and 2000 promotions procedures;
2. Dismisses as inadmissible the application in Case T-190/01;
3. Orders the Commission to pay the costs in Cases T-188/01 and T-189/01;
4. Orders the parties to bear their own costs in Case T-190/01.

⁽¹⁾ OJ C 317 of 10.11.2001 and C 303 of 27.10.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 March 2003

in Case T-273/01: Innova Privat-Akademie GmbH v Commission of the European Communities ⁽¹⁾

(Community trade mark — Invalidity proceedings — ‘BSS’ — Article 51 of Regulation (EC) No 40/94 — Absolute ground for refusal — Article 7(1)(d) of Regulation No 40/94 — Distinctive character acquired through use — Articles 7(3) and 51(2) of Regulation No 40/94)

(2003/C 124/33)

(Language of the case: German)

In Case T-273/01: Alcon Inc, formerly Alcon Universal Ltd, established in Hünenberg (Switzerland), represented by H. Porter, Solicitor and C. Morcom QC, with an address for service in Luxembourg, v Commission of the European Communities (Agents: M. de Pauw and B. Martenczuk: Action brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 13 July 2001 (Case R 273/2000-1), the Court of First Instance (Third Chamber), composed of: R.M. Moura Ramos, President, J. Pirrung and A.W.H. Meij, Judges, Registrar: J. Plingers, Administrator, has given a judgment on 19 March 2003, in which it:

1. Dismisses the application;
2. Orders the applicant to pay the costs.

⁽¹⁾ OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 March 2003

in Case T-293/01: Donatella Ineichein v Commission of the European Communities ⁽¹⁾

(Temporary staff — Daily subsistence allowance — Place of recruitment — Evidence)

(2003/C 124/34)

(Language of the case: French)

In Case T-293/01: Donatella Ineichein, member of the temporary staff of the Commission of the European Communities, residing in Brussels, represented by M.-A. Lucas, lawyer, against

Commission of the European Communities (Agent: J. Currall) — application for, first, annulment of the decision of the Commission of 29 July 2001 fixing the applicant's place of recruitment at Brussels and refusing to grant her the daily subsistence allowance and, secondly, for an order requiring the Commission to pay the applicant the amounts corresponding to her entitlement stemming from her place of recruitment being fixed at Rome — the Court of First Instance (Single-judge Chamber); Blanca Pastor, Deputy Registrar, gave a judgment on 5 March 2003, in which it:

1. *dismisses the application;*
2. *orders the parties to bear their own costs.*

(¹) OJ C 44 of 16.2.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 March 2003

in Case T-166/02: José Pedro Pessoa e Costa v Commission of the European Communities (¹)

(Officials — Decision to institute disciplinary proceedings — Decision rejecting a request for transfer to the European Monitoring Centre for Drugs and Drug Addiction)

(2003/C 124/35)

(Language of the case: French)

In Case T-166/02: José Pedro Pessoa e Costa, official of the Commission of the European Communities, residing in Lisbon, represented by J.N. Louis, E. Marchal and A. Coolen, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall, F. Clotuche-Duvieusart and D. Waelbroeck) — application for annulment, first, of the decision of the Commission of 3 July 2001 to institute disciplinary proceedings against the applicant and, second, of its decision of 23 July 2001 rejecting the request of the Director of the European Monitoring Centre for Drugs and Drug Addiction that the applicant be transferred to that body — the Court of First Instance (Third Chamber), composed of K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 13 March 2003 in which it:

1. *Annuls the decision of the Commission of 23 July 2001 rejecting the request of the Director of the European Monitoring Centre for Drugs and Drug Addiction that the applicant be transferred to that body.*

2. *Dismisses the remainder of the application as inadmissible.*
3. *Orders the Commission to bear, in addition to its own costs, half of the costs incurred by the applicant.*
4. *Orders the applicant to bear half of his costs.*

(¹) OJ C 180, 27.7.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 20 March 2003

in Case T-76/94: Rendert Jansma v Council of the European Union and Commission of the European Communities (¹)

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer having entered into a non-marketing undertaking — Sale of the SLOM holding — Limitation period — No need to adjudicate)

(2003/C 124/36)

(Language of the case: Dutch)

In Case T-76/94: Rendert Jansma, residing in Engelbert (Netherlands), represented by E.H. Pijnacker Hordijk and H.J. Bronkhorst, lawyers, with an address for service in Luxembourg, against Council of the European Union (Agent: A.-M. Colaert) and Commission of the European Communities (Agents: T. van Rijn and H.-J. Rabe) — application for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by the applicant as a result of his having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11) — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, R.M. Moura Ramos and H. Legal, Judges; H. Jung, Registrar, made an order on 20 March 2003, the operative part of which is as follows:

1. *There is no longer any need to adjudicate.*
2. *The defendant is to bear its own costs.*

(¹) OJ 1994 C 90.

ORDER OF THE COURT OF FIRST INSTANCE**of 6 March 2003****in Case T-226/00 DEP and T-227/00 DEP: Nan Ya Plastics Corporation and Far Eastern Textiles Ltd v Council of the European Union ⁽¹⁾****(Taxation of costs)**

(2003/C 124/37)

(Language of the case: English)

In Cases T-226/00 DEP and T-227/00 DEP: Nan Ya Plastics Corporation, established in Taipei, Taiwan (China), and Far Eastern Textiles Ltd, established in Taipei, represented by P. De Baere, lawyer, with an address for service in Luxembourg, v Council of the European Union (Agents: S. Marquardt and G. Berrisch): Application for taxation of the costs to be paid by the defendant to the applicants following the orders made by the Court of First Instance on 19 September 2001 in Case T-226/00 Nan Ya Plastics v Council and Case T-227/00 Far Eastern Textiles v Council, not published in the European Court Reports, the Court of First Instance (Fifth Chamber, Extended Composition), composed of: R. García-Valdecasas, President, P. Lindh, R.M. Moura Ramos, J.D. Cooke and H. Legal, Judges, Registrar: H. Jung, has made an order on 6 March 2003, the operative part of which is as follows:

The amount of costs to be paid by the Council to the applicants in Cases T-226/00 and T-227/00 is fixed at EUR 43 000.

⁽¹⁾ OJ C 316 of 04.11.2000.

Action brought on 16 January 2003 by Schmitz-Gotha Fahrzeugwerke GmbH against the Commission of the European Communities**(Case T-17/03)**

(2003/C 124/38)

(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 16 January 2003 by Schmitz-Gotha Fahrzeugwerke GmbH, Gotha (Germany), represented by M. Matzat, lawyer.

The applicant claims that the Court should:

- annul Commission Decision of 30 October 2002 (C 31/2001 (ex NN 156/1999 and N 288/1998));
- order the Commission to pay the costs.

Pleas in law and main arguments

In the contested decision the Commission found that the applicant had received public funds from the Federal Republic of Germany in the amount of DEM 6 636 000, which were regarded as State aid. The Commission ordered the Federal Republic of Germany to recover from the applicant aid in the amount of EUR 1 120 000 together with interest. The Commission takes the view that the aid was not kept to a minimum and, in support of that view, refers to the acquisition by the applicant of a holding in a supply business.

The applicant claims that the Commission has abused its discretion by ordering the recovery of aid.

The applicant submits that the Commission's assumption that the acquisition of the shareholding was merely beneficial to the success of the restructuring, but not necessary, is incorrect. The acquisition of that shareholding was an integral part of the restructuring plan of the investors; only in that way, could they acquire in the short term know-how of the applicant's business to ensure the success of the restructuring within a reasonable period.

Furthermore, the applicant claims that the Commission wrongly assumes that the profits from the acquisition of the shareholding were not taken into account in the investors' business plan. The profits were taken into account in the investors' plan as part of the expected growth in the applicant's profits.

Finally, the applicant submits that even if the need to acquire the shareholding is denied, the order requiring repayment of the part sum of DEM 700 000 was an abuse of discretion, because liquid capital of the undertaking of that amount was directly available in return for the purchase price.

Action brought by Alsen AG against the Commission of the European Communities on 31 January 2003

(Case T-28/03)

(2003/C 124/39)

(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 31 January 2003 by Alsen AG, Hamburg (Germany), represented by K. Moosecker and F. Weimer, lawyers.

The applicant claims that the Court should:

- order the Commission to pay to the applicant the sum of EUR 139 002,21 together with interest at an overall rate of 5,75 % for the period from 15 April 2000 until payment has been made in full;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks an order that the Commission pay the costs of a guarantee. According to the applicant, those costs arose because the Commission imposed a fine on the applicant, by decision ⁽¹⁾, for an alleged infringement of Article 81 EC. By judgment of 15 March 2000 ⁽²⁾ that decision was annulled by the Court of First Instance in so far as it concerned the applicant. During the procedure before the Court the applicant had to lodge securities in the form of two bank guarantees for the fine during the period April/May 1995 to May 2000, for which the issuing banks' charged commission of the abovementioned amount.

The applicant claims that under Article 233 EC it has a right to require the Commission to repay the costs of the guarantees. The Commission is obliged to adopt the measures that follow from the judgment of 15 March 2000 and those measures include the payment of the guarantee costs of the successful party. The Court of First Instance itself stated in the judgment that the refund of the cost of guarantees is one of the measures which the Commission must take under Article 233 EC.

Furthermore, the applicant claims that the Commission's obligation to refund the guarantee costs also follows from Article 288(2) EC in conjunction with Article 235 EC. In no

event should guarantee costs be imposed upon the applicant that were necessary for it to pay in pursuing its rights.

⁽¹⁾ Decision 94/815/EC of 30 November 1994 in Cases IV/33.126 and 33.122 (Cement).

⁽²⁾ Judgment of 15 March 2000 in Joined Cases T-25/95 and Others [2000] ECR II-491.

Action brought on 13 February 2003 by Knauf Westdeutsche Gipswerke KG against the Commission of the European Communities

(Case T-52/03)

(2003/C 124/40)

(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 13 February 2003 by Knauf Westdeutsche Gipswerke KG, Iphofen (Germany), represented by M. Klusmann and F. Wiemer, lawyers.

The applicant claims that the Court should:

- annul Commission Decision C(2002)4570 final of 27 November 2002 in so far as it concerns the applicant;
- in the alternative, reduce appropriately the fine imposed on the applicant in the contested decision;
- order the defendant to pay the costs.

Pleas in law and main arguments

In the contested decision the Commission found that the applicant and three other undertakings had infringed Article 81(1) by participating in a body of agreements and concerted practices in the plasterboard sector. A fine of EUR 85,8 million was imposed on the applicant.

The applicant contests that decision and claims that it infringes the applicant's rights of defence and the principle of the right to due process of law. It submits, inter alia, that in essence the decision is based on evidence against it which has never been made available to the applicant despite its requests to that

effect. Moreover, the right to due process of law is infringed by the case-handler's inadequate knowledge of languages or the premature change of case-handler.

The applicant also submits that it is not guilty of any infringement of Article 81(1) EC. It complains that the Commission based its decision on an incoherent presentation of the events. In the alternative, it submits that in any event it cannot be charged with participation in a single infringement over a lengthy period. This leads to a reduction in gravity and to the limitation of actions in respect of individual acts that took place more than five years before the beginning of proceedings.

Moreover, the applicant submits that the decision infringes Article 15(2) of Regulation No 17/62 with regard to the upper limit of the fine. The applicant is not the ultimate parent company of 'Unternehmensgruppe Knauf' and it cannot be held liable for the conduct of other companies, because the Knauf undertaking is not connected via a single legal person as ultimate parent company of the group. The applicant also complains that the Commission failed to carry out the necessary investigations in that respect.

Furthermore, the applicant complains that the Commission infringed Article 253 EC and Article 15(2) of Regulation No 17/62 as a result of the assessment of the fine, which exceeded the limits of its discretion. Moreover, the Commission infringed the principle of equal treatment, because it did not reduce the applicant's fine even though the applicant had cooperated with the Commission to the same extent as BPB plc., whose fine was reduced by 30 %.

Finally, the applicant complains of the excessive length of the procedure and claims that it is an infringement of Article 6(1) of the European Convention for the Protection of Human Rights.

**Action brought on 26 February 2003 by Koffiebrand-
erij en Theehandel 'Drie Mollen sinds 1818' B.V. against the
Office for Harmonisation in the Internal Market (Trade
Marks and Designs) (OHIM)**

(Case T-66/03)

(2003/C 124/41)

(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 26 February 2003 by Koffiebrand-erij en Theehandel 'Drie Mollen sinds 1818' B.V., 's-Hertogenbosch, the Netherlands, represented by Mr P. Steinhauser, Lawyer, with an address for service in Luxembourg. Manuel Nabeiro Silveria, Lda. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of 17 December 2002 of the Second Board of Appeal in case R 270/2001-2
- order the office to bear only its own costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	Manuel Nabeiro Silveria, Lda.
Community trade mark sought:	Figurative mark 'GALAXIA', for 'coffee' in class 30 (registration n 812073)
Proprietor of mark or sign cited in the opposition proceedings:	KOFFIEBRANDERIJ EN THEE-HANDEL 'DRIE MOLLEN SINDS 1818'
Mark or sign cited in opposition:	National marks 'GALA' for certain goods in class 30
Decision of the Opposition Division:	Opposition rejected.
Decision of the Board of Appeal:	Opponent's appeal dismissed.
Pleas in law:	— misapplication of Article 42 paragraph 1 and Article 8 paragraph 1 b) of Regulation 40/94 ⁽¹⁾ . The applicant challenges the Board of Appeal's conclusion that there is no likelihood of confusion between the two marks.

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

Action brought on 27 February 2003 by Henkel KGaA against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-67/03)

(2003/C 124/42)

(Language of the case: English)

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 27 February 2003 by Henkel KGaA, Düsseldorf, Germany, represented by Dr C. Osterrieth, lawyer, with an address for service in Luxembourg. Koen Brutsaert was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the OHIM of 17 December 2002 in the appeal proceedings No R 940/2001-1;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	Koen Brutsaert
Community trade mark sought:	Figurative mark 'Professional Hygiene CID lines' for certain goods in Classes 1, 3 and 5 (application No 506618)
Proprietor of mark or sign cited in the opposition proceedings:	Henkel KGaA
Mark or sign cited in opposition:	National marks 'CIDE' (for certain goods in classes 1 and 5) and 'CID' (in respect of certain goods in Classes 1 and 3).
Decision of the Opposition Division:	Opposition upheld for part of the contested goods, namely 'bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparation' (Class 3). The application for registration may proceed for the remaining goods of the application.

Decision of the Board of Appeal:

Mr. Brutsaert's appeal allowed in part. Application to register may proceed also in respect of the goods 'cleaning, polishing, scouring and abrasive preparation' in Class 3. Mr. Brutsaert's appeal dismissed for the remainder; Opponent's appeal dismissed.

Pleas in law:

- misapplication of Article 43(2) and (3) of Regulation 40/94 ⁽¹⁾. The applicant challenges the Board of Appeal's findings in relation to the issue of using and thus maintaining entitlement to the national mark 'CIDE'.
- misapplication of Article 8(1)(b) of Regulation 40/94. The applicant challenges the Board of Appeal's findings regarding the issue of similarity of goods.

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

Action brought on 26 February 2003 by Bernard Zaoui, Lucien Zaoui and Déborah Stain, née Zaoui against the Commission of the European Communities

(Case T-73/03)

(2003/C 124/43)

(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 26 February 2003 by Bernard Zaoui, residing in Combs-la-Ville (France), Lucien Zaoui, residing in Netanya (Israel), and Déborah Stain, née Zaoui, residing in Ramat Gan (Israel), represented by Jean Alex Buchinger, lawyer.

The applicants claim that the Court should:

- find the defendant liable for the harm suffered by the applicants as a result of the attack on 27 March 2002 on the Park Hotel in Netanya (Israel);
- order the defendant, in respect of the harm suffered by the applicants, to pay the following amounts:
 - to Lucien Zaoui, EUR 1 million in compensation for non-material damage;
 - to Bernard Zaoui, EUR 1,5 million, in compensation for non-material damage;
 - to Déborah Stain, née Zaoui:
 - EUR 1 million in respect of bodily injury;
 - EUR 2 millions in respect of non-material damage;
 - an amount to be settled in the course of proceedings for material damage.
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicants are relatives of Mrs Zaoui, who died on 27 March 2002 when a Palestinian terrorist carried out an attack on a hotel in Israel. The applicants claim that the education in the Palestinian territories in the West Bank and in the Gaza strip is the certain and direct cause of the attack which cost Mrs Zaoui her life, since that education incites individuals to hatred and terrorism. They claim that the defendant participated financially in that form of education, the content of which it was presumably aware of and on which it could have an influence. According to the applicants, the defendant also infringed the provisions applicable to the financial support programmes (Articles 6 and 177(2) of the EC Treaty), the principles of sound financial management, the agreements entered into between the Communities and the United Nations Relief and Works Agency for Palestinian refugees (UNRWA), Article 3 of Regulation No 1488/96/EC and Amendment No 177 to the 2002 EC General Budget. In that context, they claim that the liability of the Communities has been incurred by virtue of the second paragraph of Article 288 of the EC Treaty.

Action brought on 3 March 2003 by Intech EDM B.V. against the Commission of the European Communities

(Case T-74/03)

(2003/C 124/44)

(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 3 March 2003 by Intech EDM B.V., Lomm (Netherlands), represented by M. Karl, Rechtsanwalt.

The applicant claims that the Court should:

- annul the Commission's decision of 17 December 2002 (Case COMP/E-2/37.667 — Special Graphite);
- in the alternative, reduce the fine imposed by Article 3(h) of the decision;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant distributes isostatically pressed special graphite, but does not itself produce it. Its activity in the European special graphite market is based on a cooperation agreement between itself and Ibiden Co. Ltd., a Japanese producer of isostatic special graphite. The Commission accused the applicant, a former subsidiary of the latter and various producers of isostatic special graphite (including Ibiden) of taking part in a continuing agreement and/or concerted practice on the market for special graphite in the European Community and the European Economic Area. According to the Commission's finding, the applicant participated from February 1994 to May 1997 at European and regional level.

The applicant argues that the Commission has wrongly classified it as an offender. In reality, at least for the period up to 26 September 1995, the applicant could only be classified as a helper of Ibiden. According to Article 15(2) of Regulation No 17, a helper cannot be punished with a fine. The applicant further maintains that the Commission ignored several mitigating circumstances, particularly the subsidiary role of the applicant, and the fact that it voluntarily ended its participation long before the other participants and long before the Commission first intervened.

The applicant further argues that the fine is flagrantly disproportionate to its economic strength and is therefore a breach of the principle of proportionality and the Commission's guidelines on fines. The Commission also breached the principle of equal treatment by not fining any of the other marketing companies involved in the cartel and, furthermore, by imposing fines on the participating manufacturers which, measured in relation to turnover, were far lower than that determined in relation to the applicant. Since the Commission gave no reason for that worse treatment, there was also an infringement of the duty to state reasons under Article 253 EC.

Action brought on 3 March 2003 by Lucchini S.p.A. against the Commission of the European Communities

(Case T-80/03)

(2003/C 124/45)

(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 3 March 2003 by Lucchini S.p.A., represented by Alberto Santa Maria and Claudio Biscaretti di Ruffia, lawyers.

The applicant claims that the Court should:

- annul the decision of 17 December 2002 C(2002)5087 final in Case COMP/37.956 — concrete reinforcing bars, imposing on Lucchini SpA, jointly and severally with S.P. SpA, previously known as Siderpotenza SpA, a fine of EUR 16,14 million;
- in the alternative, reduce the fine imposed on the applicant by the Commission;
- in any event, order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought against the decision contested in Case T-27/03 S.P. v Commission.

The pleas in law and main arguments are identical with those in the abovementioned case. The applicant claims that there is no such single undertaking as Siderpotenza-Lucchini and, therefore, that the applicant is substantially unconnected to the infringement which is the subject of the decision. In point of fact, the Commission has not taken into account of the fact that Lucchini SpA has never produced concrete reinforcing bars.

Action brought on 5 March 2003 by the Government of the Cayman Islands against the Commission of the European Communities

(Case T-85/03)

(2003/C 124/46)

(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 5 March 2003 by the Government of the Cayman Islands, Grand Cayman, Cayman Islands, represented by Ms Eleanor Sharpston, QC.

The applicant claims that the Court should:

- annul the Commission's decision not to respond to the urgent request of the Cayman Islands Government to establish a Partnership Working Party under the Overseas Association Decision,
- order the Commission to pay the Cayman Islands Government's costs.

Pleas in law and main arguments

The Decision challenged in the current case is the Commission's Decision not to respond to the urgent request of the applicant for the establishment of a Partnership Working Party ('PWP'), in accordance with Article 7 of Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories (OCTs) within the European Community (¹). The request was made in order to consider OCT representations in relation to the proposal for a Council Directive on taxation of savings income in the form of interest payments and/or the automatic exchange of information.

In its request, the Cayman Islands Government indicated that it entertained significant reservations about the compatibility of certain core provisions of the draft Directive with the fundamental principles of non-discrimination, legitimate expectations and proportionality in EC Law and its consistency with the aims, purpose and wording of the Overseas Association Decision.

In support of its conclusions, the applicant submits:

- That by deciding not to respond to an urgent request for a PWP until after the proposed directive has been agreed by ECOFIN, the Commission has deliberately ensured that an effective and useful PWP cannot take place, rendering the procedure under Article 7 of the above mentioned Council Decision devoid of purpose, and has placed ECOFIN and the Council in a position where these bodies are likely to agree respectively and formally to adopt the proposed directive in violation of the applicant's right to be heard.
- That the Commission is duty bound to consider requests for PWPs submitted to it by OCTs under Article 7 of the Overseas Association Decision. In deciding, after three month's delay, not to respond to the request in question, and in failing to give adequate reasons for that decision, the Commission has both misused its decision-making powers under the Overseas Association Decision and failed to respect the requirements of Article 253 EC.

(¹) OJ 2001 L 314, p. 1.

Action brought on 13 March 2002 by María Luisa Atienza Morales against the Commission of the European Communities

(Case T-99/03)

(2003/C 124/47)

(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 13 March 2003 by María Luisa Atienza Morales, residing in Brussels, represented by Eric Boigelot, lawyer.

The applicant claims that the Court should:

- annul the decision of the authority authorised to conclude contracts of employment of 20 June 2002 refusing to grant the applicant the expatriation allowance;
- annul the decision explicitly rejecting her complaint of 13 December 2002;
- order the defendant to pay the expatriation allowance to the applicant as from 1 April 2002, deducting, in respect of the past, whatever has been granted to her by way of foreign residence allowance on the date of the judgment to be delivered, together with default interest at the rate of 8 % per annum, with effect from the mean date between 1 April 2002 and the actual date of payment;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a member of the temporary staff who has since become a probationary official at the Commission, submits that the authority authorised to conclude contracts of employment wrongly refused to grant her the expatriation allowance on the ground that the European Youth Forum, for which the applicant worked from April 1995 to January 2000, did not satisfy two of the five conditions laid down by the internal directive adopted in October 1994 laying down five criteria to be satisfied by organisations in order to be regarded as 'international organisations' for the purposes of Article 4 of Annex VII to the Staff Regulations.

In support of her action, the applicant argues that, by refusing to grant her the expatriation allowance, the authority authorised to conclude contracts of employment manifestly misapplied and misinterpreted Article 4(1)(a) of Annex VII to the Staff Regulations, basing its decision on reasons which were incorrect both in fact and in law and therefore placing the applicant in an administrative situation which was discriminatory in relation to that of other officials who were in the same position but who received that allowance.

In addition, she relies on infringement of Article 69 of the Staff Regulations and failure to have proper regard to general principles of law, such as those requiring the appointing authority to observe equal treatment as between officials and to base any decision which it takes only on legally valid reasons.

**Action brought on 20 March 2003 by Regione Marche
against Commission of the European Communities**

(Case T-107/03)

(2003/C 124/48)

(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 March 2003 by Regione Marche, represented by Aurelio Pappalardo and Massimo Merola, lawyers.

The applicant claims that the Court should:

- annul the decision of the Commission adopted by letter of 18 December 2002 and every other measure connected with it and consequent upon it;
- order the Commission to pay the costs incurred by Regione Marche for the purpose of the proceedings, including legal fees.

Pleas in law and main arguments

The present application seeks the annulment of the decision of 18 December 2002 by which the European Commission announced that it was definitively concluding the Integrated Mediterranean Programme (IMP) for the Marche Region⁽¹⁾, approved by way of Council Regulation (EEC) No 2088/85⁽²⁾ of 23 July 1985 concerning the integrated Mediterranean programmes on the basis of information provided by the applicant by memorandum of 6 September 2002.

According to the contested decision, investments in the beneficiary undertakings did not adhere to the prescribed timetable so far as concerns phase 3 of the programme in question.

The applicant argues that there is no legal basis for the contested measure inasmuch as the Commission bases its own decision on the failure of the Marche Region to observe obligations which were not imposed by the applicable legislation. Irrespective of the fact that the Commission accused the applicant of not using fully, by the end of the IPM, the contribution granted to Società Marche Capital, a body set up to promote the development of small and medium-sized

undertakings in the region, there is nothing in the relevant provisions to indicate the existence of an obligation incumbent on the Marche Regional authority requiring Marche Capital to expend all the resources granted to it before the IPM Marche expired.

The applicant also maintains that the contested decision infringes the principles of legal certainty and sound administration. By approving the agreement concluded between Società Marche Capital and the Marche Region, the Commission gave rise to a legitimate expectation on the part of the Marche Region that it could make use of the whole of the contribution granted to it, provided the methods of financing were in conformity with the agreement itself, which was in fact the case. According to the applicant, the Commission also infringed the principle of sound administration in that, first, it adopted the decision definitively bringing to an end the IPM Marche nearly 8 years after it had expired and, secondly, it was largely inactive throughout that period.

Finally, the applicant takes the view that the Commission infringed Article 253 EC.

⁽¹⁾ Bollettino Ufficiale (official journal) for the Regione Marche (supplement No 10 of 28 July 1988).

⁽²⁾ OJ 1985 L 197, p. 1.

**Action brought on 27 March 2003 by T against Com-
mission of the European Communities**

(Case T-111/03)

(2003/C 124/49)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 March 2003 by T, residing in Brussels, represented by Georges Vandersanden, lawyer.

The applicant claims that the Court should:

- annul the decision of the appointing authority of 14 August 2002 not to promote the applicant in the 2002 promotions procedure to Grade A 4,

- order the Commission of the European Communities to pay damages to make good the material and non-material damage suffered as a result of the decision of 14 August 2002 and of the conduct preceding and following that decision, such damages having been assessed at EUR 25 000;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is challenging the refusal of the appointing authority to promote him to Grade A 4 in 2002.

In support of his claims, the applicant alleges:

- breach of the duty to provide reasons;
- infringement of Article 45 of the Staff Regulations inasmuch as his staff report was better than that of another person in his department who was promoted;
- breach of the duty to have regard for the welfare of officials and of the principle of sound administration;
- the existence in the present case of a manifest error of assessment, abuse of process and/or misuse of powers, as well as breach of the principle of equal treatment and infringement of Article 26 of the Staff Regulations. In that regard, the applicant is of the view that, contrary to the principle of equal treatment, he was ranked behind an official whose staff report had not been as good as his over several years. The explanation provided by his immediate superior amounts to misuse of powers and/or abuse of process, as well as an infringement of Article 26 of the Staff Regulations.

Removal from the register of Case T-77/00 ⁽¹⁾

(2003/C 124/50)

(Language of the case: English)

By order of 7 March 2003 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-77/00: Esat Telecommunications v Commission of the European Communities.

⁽¹⁾ OJ C 149 of 27.05.2000.

Removal from the register of Case T-208/02 ⁽¹⁾

(2003/C 124/51)

(Language of the case: Dutch)

By order of 13 March 2003 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-208/02: Lene Beier v Europol.

⁽¹⁾ OJ C 202 of 24.08.2002.

Removal from the register of Case T-245/02 ⁽¹⁾

(2003/C 124/52)

(Language of the case: Dutch)

By order of 12 March 2003 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-245/02: Antonia de Jong v Europol.

⁽¹⁾ OJ C 261 of 26.10.2002.

III

(Notices)

(2003/C 124/53)

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

OJ C 112, 10.5.2003

Past publications

OJ C 101, 26.4.2003

OJ C 83, 5.4.2003

OJ C 70, 22.3.2003

OJ C 55, 8.3.2003

OJ C 44, 22.2.2003

OJ C 31, 8.2.2003

These texts are available on:

EUR-Lex: <http://europa.eu.int/eur-lex>CELEX: <http://europa.eu.int/celex>
