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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 May 2003

in Case C-349/97: Kingdom of Spain v Commission of the European Communities [1]

(EAGGF — Clearance of accounts — 1993)

(2003/C 146/01)

(Language of the case: Spanish)

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

In Case C-349/97: Kingdom of Spain (Agent: S. Ortiz Vaamonde) v Commission of the European Communites (Agent: X. Lewis, with M. Carro) — application for the annulment, in so far as it concerns the Kingdom of Spain, of Commission Decision 97/608/EC of 30 July 1997 amending Decision 97/333/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1997 L 245, p. 20) — the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 8 May 2003, in which it:

1. *annuls Commission Decision 97/608/EC of 30 July 1997 amending Decision 97/333/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as concerns, first, the flat-rate correction of 100 % of aid declared concerning the company N. R. Sevillano and, second, the flat-rate correction of 10 % of the total eligible expenses for the establishment of the oil register;*

2. *dismisses the remainder of the applcation;*

3. *orders the Kingdom of Spain to pay the costs.*

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[1] OJ C 370 of 6.12.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 May 2003

In Joined Cases C-328/99 and C-399/00: Italian Republic and SIM 2 Multimedia SpA v Commission of the European Communities [1]

(Action for annulment — Decision 2000/536/EC — State aid granted to Seleco SpA)

(2003/C 146/02)

(Language of the case: Italian)

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

In Joined Cases C-328/99 and C-399/00, Italian Republic (Agent: U. Leanza, assisted by O. Fiumara) and SIM 2 Multimedia SpA (represented by A. Vianello) v Commission of the European Communities (Agent: G. Rozet, assisted by A. Abate and E. Cappelli): Application, in Case C-328/99, for annulment of Commission Decision 2000/536/EC of 2 June 1999 concerning State aid granted to Seleco SpA (OJ 2000 L 227, p. 24) and, in Case C-399/00, for annulment of Article 2(1) of that decision, in so far as it requires the Italian Republic to take the necessary measures to recover the aid granted to Seleco SpA from Seleco Mulimedia Srl with regard to the part not recoverable from the latter, the Court (Sixth

Chamber), composed of: R. Schintgen, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann (Rapporteur), V. Skouris, F. Macken and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it:

1. *Annuls Article 2(1) of Commission Decision 2000/536/EC of 2 June 1999 concerning State aid granted by Italy to Seleco SpA in so far as it provides that the Italian Republic is to take all the necessary measures to recover the aid referred to in Article 1 from Seleco Multimedia Srl with regard to the part not recoverable from Seleco SpA;*

2. *Dismisses the remainder of the application;*

3. *Orders, in Case C-328/99, the Italian Republic and the Commission of the European Communities to bear their own costs;*

4. *Orders, in Case C-399/00, the Commission of the European Communities to pay the costs.*

([1]) OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 April 2003

in Case C-392/99: Commission of the European Communities v Portuguese Republic ([1])

(Failure of a Member State to fulfil its obligations — Directive 75/439/EEC — Disposal of waste oils — Incomplete transposition)

(2003/C 146/03)

(Language of the case: Portuguese)

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

In Case C-392/99, Commission of the European Communities (Agents: L. Ström and M.A. Caeiros) v Portuguese Republic (Agents: L. Fernandes and M. Telles Romão): Application for a declaration that:

— by failing to adopt provisions by which the competent authority, before granting a permit to undertakings which regenerate waste oils or use them as fuel, may satisfy itself that health is appropriately protected where waste oils are used as fuel and that the best available technology not entailing excessive cost is used where waste oils are regenerated or used as fuel;

— by failing to lay down that residues from the combustion of waste oils are to be disposed of in accordance with Article 9 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43), and, from 27 June 1995, in accordance with Article 9 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), which, pursuant to Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), as amended by Council Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28), replaced Article 9 of Directive 78/319;

— by not providing for periodical inspection of undertakings which regenerate waste oils or use them as fuel, or for examination of trends in the state of technical development and/or of the environment with a view to revising, where necessary, permits granted to those undertakings;

— by failing to convey to the Commission information concerning technical expertise and the experience gained and results obtained through the application of measures taken pursuant to Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 87/101/EEC of 22 December 1986 (OJ 1987 L 42, p. 43),

the Portuguese Republic has failed to fulfil its obligations under Articles 6(2), 8(2)(a), 13 and 17 of Directive 75/439, as amended by Directive 87/101, and the first paragraph of Article 5 and the third paragraph of Article 189 of the EC Treaty (now the first paragraph of Article 10 EC and the third paragraph of Article 249 EC), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris (Rapporteur), F. Macken and N. Colneric, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 10 April 2003, in which it:

1. *Declares that:*

— *by failing to adopt, within the prescribed period, provisions requiring the competent authority, before granting a permit to undertakings which regenerate waste oils or use them as fuel, to satisfy itself that health is appropriately protected where waste oils are used as fuel and that the best available technology not entailing excessive cost is used where waste oils are regenerated or used as fuel;*

— *by failing to lay down, within the prescribed period, that residues from the combustion of waste oils are to be disposed of in accordance with the obligations flowing from Article 9 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste and, from 27 June 1995, in accordance with the obligations arising under Article 9 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, which were already owed by the Member States under Article 9 of Directive 78/319;*

— *by not providing, within the prescribed period, for periodical inspection of undertakings which regenerate waste oils or use them as fuel, or for examination of trends in the state of technical development and/or of the environment with a view to revising, where necessary, permits granted to those undertakings;*

— *by failing to convey to the Commission information concerning technical expertise and the experience gained and results obtained through the application of measures taken pursuant to Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 87/101/EEC of 22 December 1986,*

the Portuguese Republic has failed to fulfil its obligations under Articles 6(2), 8(2)(a), 13 and 17 of Directive 75/439, as amended by Directive 87/101;

2. *Dismisses the remainder of the application;*

3. *Orders the Portuguese Republic to pay the costs.*

(1) OJ C 34 of 05.02.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 April 2003

in Case C-142/00 P: Commission of the European Communities v Nederlandse Antillen (1)

(Appeal — Arrangements for association of the overseas countries and territories — Imports of rice originating in the overseas countries and territories — Safeguard measures — Regulations (EC) No 2352/97 and No 2494/97 — Action for annulment — Inadmissibility of the action)

(2003/C 146/04)

(Language of the case: Dutch)

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

In Case C-142/00 P, Commission of the European Communities (Agent: T. van Rijn), supported by French Republic (Agents: G. de Bergues and L. Bernheim) and by Council of the European Union (Agents: J. Huber and G. Houttuin): Appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 10 February 2000 in Joined Cases T-32/98 and T-41/98 Nederlandse Antillen v Commission [2000] ECR II-201, seeking to have that judgment set aside the other parties to the proceedings being: Nederlandse Antillen (represented by M. M. Slotboom and P. V. F. Bos) and Kingdom of Spain (Agent: N. Díaz Abad), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, C. Gulmann, V. Skouris and F. Macken (Rapporteur), Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 10 April 2003, in which it:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 10 February 2000 in Joined Cases T-32/98 and T-41/98 Nederlandse Antillen v Commission;*

2. *Dismisses as inadmissible the Nederlandse Antillen's applications for annulment;*

3. *Orders the Nederlandse Antillen to pay the costs both at first instance and on appeal;*

4. *Orders the Kingdom of Spain, the French Republic and the Council of the European Union to bear their own costs.*

(1) OJ C 233 of 12.8.2000.

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 146/05)

(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. Puissochet (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 8 May 2003

in Case C-269/00 (Reference for a preliminary ruling from the Bundesfinanzhof): Wolfgang Seeling v Finanzamt Starnberg, [1]

(Sixth VAT Directive — Articles 6(2)(a) and 13B(b) — Private use by the taxable person of a dwelling in a building forming, in its entirety, part of the assets of the business — Such use not equivalent to the leasing or letting of immovable property)

(2003/C 146/06)

(Language of the case: German)

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

In Case C-269/00: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Wolfgang Seeling and Finanzamt Starnberg, on the interpretation of Articles 6(2)(a), 13B(b) and 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C. W. A. Timmermans, D. A. O. Edward, P. Jann and S. von Bahr (Rapporteur), Judges; F. G. Jacobs, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

Articles 6(2)(a) and 13B(b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as precluding national legislation which treats as an exempt supply of services, on the basis that it constitutes a leasing or letting of immovable property within the meaning of Article 13B(b), the private use by a taxable person of part of a building which is treated as forming, in its entirety, part of the assets of his business.

(1) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 May 2003

in Case C-438/00 (Reference for a preliminary ruling from the Oberlandesgericht Hamm): Deutscher Handballbund eV v Maros Kolpak [1]

(External relations — Association Agreement between the Communities and Slovakia — Article 38(1) — Free movement of workers — Principle of non-discrimination — Handball — Limitation on the number of professional players having the nationality of non-member countries who may play on a team in the league of a sports federation)

(2003/C 146/07)

(Language of the case: German)

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

In Case C-438/00: Reference to the Court under Article 234 EC by the Oberlandesgericht Hamm (Germany) for a preliminary ruling in the proceedings pending before that court between Deutscher Handballbund eV and Maros Kolpak, on the interpretation of Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, approved on behalf of the Communities by Decision 94/909/ECSC, EEC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 359, p. 1), the Court (Fifth Chamber), composed of: D. A. O. Edward, acting for the President of the Chamber, A. La Pergola (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

The first indent of Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, signed in Luxembourg on 4 October 1993 and approved on behalf of the Communities by Decision 94/909/ECSC, EEC, Euratom of the Council and the Commission of 19 December 1994, must be construed as precluding the application to a professional sportsman of Slovak nationality, who is lawfully employed by a club established in a Member State, of a rule drawn up by a sports federation in that State under which clubs are authorised to field, during league or cup matches, only a limited number of players from non-member countries that are not parties to the Agreement on the European Economic Area.

(1) OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 May 2003

in Case C-15/01 (Reference for a preliminary ruling from the Regeringsrätten): Paranova Läkemedel AB and Others v Läkemedelsverket [1]

(Interpretation of Article 28 EC and Article 30 EC — Medicinal products — Withdrawal of parallel import licence in consequence of waiver of the marketing authorisation for the medicinal product of reference by the holder of that authorisation)

(2003/C 146/08)

(Language of the case: Swedish)

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

In Case C-15/01: Reference to the Court under Article 234 EC by the Regeringsrätten (Sweden) for a preliminary ruling in the proceedings pending before that court between Paranova Läkemedel AB, Farmagon A/S, Medartuum AB, Net Pharma KG AB, Orifarm AB, Trans Euro Medical AB, Cross Pharma AB, MedImport Scandinavia AB and Läkemedelsverket on the interpretation of Article 28 EC and Article 30 EC, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J. N. Cunha Rodrigues, Judges; F. G. Jacobs, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

Article 28 EC and Article 30 EC preclude national legislation under which the withdrawal, at the request of its holder, of the marketing authorisation of reference of itself entails the withdrawal of the parallel import licence granted for the medicinal product in question. However, those provisions do not preclude restrictions on parallel imports of the medicinal product in question if there is in fact a risk to the health of humans as a result of the continued existence of that medicinal product on the market of the importing Member State.

(1) OJ C 79 of 10.3.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 10 April 2003

In Joined Cases C-20/01 and C-28/01: Commission of the European Communities v Federal Republic of Germany [1]

(Failure by a Member State to fulfil its obligations — Admissibility — Legal interest in bringing proceedings — Directive 92/50/EEC — Procedures for the award of public service contracts — Negotiated procedure without prior publication of a contract notice — Conditions)

(2003/C 146/09)

(Language of the case: German)

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

In Joined Cases C-20/01 and C-28/01, Commission of the European Communities (Agent: J. Schieferer) v Federal Republic of Germany (Agent: W.-D. Plessing, assisted by H.-J. Prieß) supported by United Kingdom of Great Britain and Northern Ireland (Agent: R. Magrill, assisted by R. Williams, barrister): Applications for declarations that:

— by failing to invite tenders for the award of the contract for the collection of waste water in the Municipality of Bockhorn (Germany) and to publish notice of the results of the procedure for the award of the contract in the Supplement to the Official Journal of the European Communities, the Federal Republic of Germany, at the time of the award of that public service contract, failed to fulfil its obligations under Article 8 in conjunction with Article 15(2) and Article 16(1) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1);

— at the time of the award of a public service contract, the Federal Republic of Germany failed to fulfil its obligations under Article 8 and Article 11(3)(b) of Directive 92/50 by virtue of the fact that the City of Braunschweig (Germany) awarded a contract for waste disposal by negotiated procedure without prior publication of a contract notice, although the criteria laid down by Article 11(3) for an award of a contract by privately negotiated procedure without a Community-wide invitation to tender had not been met,

the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D. A. O. Edward, A. La Pergola, P. Jann (Rapporteur) and A. Rosas, Judges; L. A. Geelhoed, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 10 April 2003, in which it:

1. *Declares that since the Municipality of Bockhorn (Germany) failed to invite tenders for the award of the contract for the collection of its waste water and failed to publish notice of the results of the procedure for the award of the contract in the Supplement to the Official Journal of the European Communities, the Federal Republic of Germany, at the time of the award of that public service contract, failed to fulfil its obligations under Article 8 in conjunction with Article 15(2) and Article 16(1) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts;*

2. *Declares that since the City of Braunschweig (Germany) awarded a contract for waste disposal by negotiated procedure without prior publication of a contract notice, although the criteria laid down in Article 11(3) of Directive 92/50 for an award by privately negotiated procedure without a Community-wide invitation to tender had not been met, the Federal Republic of Germany, at the time of the award of that public service contract, failed to fulfil its obligations under Article 8 and Article 11(3)(b) of that directive;*

3. *Orders the Federal Republic of Germany to pay the costs;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

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[1] OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

of 6 May 2003

in Case C-104/01 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Libertel Groep BV v Benelux-Merkenbureau, [1]

(Trade marks — Approximation of laws — Directive 89/104/EEC — Signs capable of constituting a trade mark— Distinctive character — Colour per se — Orange)

(2003/C 146/10)

(Language of the case: Dutch)

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

In Case C-104/01: Reference to the Court under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between Libertel Groep BV and Benelux-Merkenbureau, on the interpretation of Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40,

p. 1), the Court, composed of: J.-P. Puissochet, President of the Sixth Chamber, acting for the President, M. Wathelet and C. W. A. Timmermans, Presidents of Chambers, C. Gulmann, D. A. O. Edward, P. Jann, F. Macken, S. von Bahr and J. N. Cunha Rodrigues (Rapporteur), Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 6 May 2003, in which it has ruled:

1. *A colour per se, not spatially delimited, may, in respect of certain goods and services, have a distinctive character within the meaning of Article 3(1)(b) and Article 3(3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, provided that, inter alia, it may be represented graphically in a way that is clear, precise, self-contained, easily accessible, intelligible, durable and objective. The latter condition cannot be satisfied merely by reproducing on paper the colour in question, but may be satisfied by designating that colour using an internationally recognised identification code.*

2. *In assessing the potential distinctiveness of a given colour as a trade mark, regard must be had to the general interest in not unduly restricting the availability of colours for the other traders who offer for sale goods or services of the same type as those in respect of which registration is sought.*

3. *A colour per se may be found to possess distinctive character within the meaning of Article 3(1)(b) and Article 3(3) of Directive 89/104, provided that, as regards the perception of the relevant public, the mark is capable of identifying the product or service for which registration is sought as originating from a particular undertaking and distinguishing that product or service from those of other undertakings.*

4. *The fact that registration as a trade mark of a colour per se is sought for a large number of goods or services, or for a specific product or service or for a specific group of goods or services, is relevant, together with all the other circumstances of the particular case, to assessing both the distinctive character of the colour in respect of which registration is sought, and whether its registration would run counter to the general interest in not unduly limiting the availability of colours for the other operators who offer for sale goods or services of the same type as those in respect of which registration is sought.*

5. *In assessing whether a trade mark has distinctive character within the meaning of Article 3(1)(b) and Article 3(3) of Directive 89/104, the competent authority for registering trade marks must carry out an examination by reference to the actual situation, taking account of all the circumstances of the case and in particular any use which has been made of the mark.*

(1) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 May 2003

in Case C-111/01 (Reference for a preliminary ruling from the Oberster Gerichtshof): Gantner Electronic GmbH v Basch Exploitatie Maatschappij BV (1)

(Brussels Convention — Article 21 — Lis pendens — Set-off)

(2003/C 146/11)

(Language of the case: German)

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

In Case C-111/01: Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Gantner Electronic GmbH and Basch Exploitatie Maatschappij BV, on the interpretation of Article 21 of the abovementioned Convention of 27 September 1968 (OJ 1972 L 299, p. 32), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended text — p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, A. La Pergola, P. Jann and S. von Bahr, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

Article 21 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be construed as meaning that, in order to determine whether two claims brought between the same parties before the courts of different Contracting States have the same

subject-matter, account should be taken only of the claims of the respective applicants, to the exclusion of the defence submissions raised by a defendant.

(1) OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 May 2003

in Case C-113/01 (Reference for a preliminary ruling from the Högsta förvaltningsdomstolen): Paranova Oy (1)

(Interpretation of Article 28 EC and Article 30 EC — Medicinal products — Withdrawal of parallel import licence in consequence of waiver of the marketing authorisation for the medicinal product of reference)

(2003/C 146/12)

(Language of the case: Swedish)

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

In Case C-113/01: Reference to the Court under Article 234 EC by Högsta förvaltningsdomstolen (Finland) for a preliminary ruling in the proceedings pending before that court brought by Paranova Oy on the interpretation of Article 28 EC and Article 30 EC, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

Article 28 EC and Article 30 EC preclude national legislation under which the withdrawal, at the request of its holder, of a marketing authorisation of reference of itself entails the withdrawal of the parallel import licence granted for the medicinal product in question. However, those provisions do not preclude restrictions on parallel imports of the medicinal product in question where there is in fact a risk to the health of humans as a result of the continued existence of that medicinal product on the market of the importing Member State.

(1) OJ C 150 of 19.5.2001.

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 146/13)

(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

(Sixth Chamber)

of 8 May 2003

in Case C-122/01 P: T. Port GmbH & Co. KG v Commission of the European Communities (1)

(Appeal — Bananas — Common organisation of the markets — Regulation (EC) No 478/95 — Export licence scheme — Action for damages — Proof of damage and causal link)

(2003/C 146/14)

(Language of the case: German)

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

In Case C-122/01 P, T. Port GmbH & Co. KG, established in Hambourg (Germany), represented by G. Meier, Rechtwanwalt: Appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 1 February 2001 in Case T-1/99 T. Port v Commission [2001] ECR II-465, seeking to have that judgment set aside in part, the other party to the proceedings being: Commission of the European Communities (Agents: K.-D. Borchardt and M. Niejahr), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen (Rapporteur), V. Skouris, F. Macken and N. Colneric, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it:

1. *Dismisses the appeal.*

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

(1) OJ C 161 of 2.6.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 May 2003

in Case C-171/01 (Reference for a preliminary ruling from the Verfassungsgerichtshof): Wählergruppe 'Gemeinsam Zajedno/Birlikte Alternative und Grüne Gewerkschafter-Innen/UG' (1)

(EEC-Turkey Association — Freedom of movement for workers — Article 10(1) of Decision No 1/80 of the Association Council — Prohibition of discrimination as regards conditions of work — Direct effect — Scope — Legislation of a Member State excluding Turkish workers from eligibility for election to a chamber of workers)

(2003/C 146/15)

(Language of the case: German)

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

In Case C-171/01: Reference to the Court under Article 234 EC by the Verfassungsgerichtshof (Austria) for a preliminary ruling in the proceedings brought before that court by Wählergruppe 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG', also represented: Bundesminister für Wirtschaft und Arbeit, Kammer für Arbeiter und Angestellte für Vorarlberg, Wählergruppe 'Vorarlberger Arbeiter- und Angestelltenbund (ÖAAB) — AK-Präsident Josef Fink', Wählergruppe 'FSG — Walter Gelbmann — mit euch ins nächste Jahrtausend/Liste 2', Wählergruppe 'Freiheitliche und parteifreie Arbeitnehmer Vorarlberg — FPÖ', Wählergruppe 'Gewerkschaftlicher Linksblock', and Wählergruppe 'NBZ — Neue Bewegung für die Zukunft', on the interpretation of Article 10(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen (Rapporteur), V. Skouris, F. Macken and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

Article 10(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey, must be interpreted as:

— *having direct effect in the Member States, and*

— *precluding the application of national legislation which excludes Turkish workers duly registered as belonging to the labour force of the host Member State from eligibility for election to the general assembly of a body representing and defending the interests of workers, such as the chambers of workers in Austria.*

(1) OJ C 173 of 16.6.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 April 2003

in Case C-217/01 P: Michel Hendrickx v Centre européen pour le développement de la formation professionnelle (Cedefop) (1)

(Appeal — Officials — Resettlement Allowance — Action which has become devoid of purpose — No need to adjudicate)

(2003/C 146/16)

(Language of the case: French)

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

In Case C-217/01 P, Michel Hendrickx (represented by J.-N. Louis and V. Peere): Appeal against the order of the Court of First Instance of the European Communities (Fifth Chamber) of 12 March 2001 in Case T-298/00 Hendrickx v Cedefop (not published in the ECR), seeking to have that order set aside, the other party to the proceedings being: Centre européen pour le développement de la formation professionnelle (Cedefop) (represented by B. Wägenbaur), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, F. Macken, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 10 April 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Mr Hendrickx to pay the costs.*

(1) OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 8 May 2003

in Case C-268/01 (Reference for a preliminary ruling from the Verwaltungsgericht Weimar): Agrargenossenschaft Alkersleben eG, v Freistaat Thüringen, (1)

(Milk and milk products — Council Regulation (EEC) No 3950/92 — Scheme applicable to the territory of the former German Democratic Republic — Reference quantities — Concepts of 'producer' and 'holding' — Lessee of a holding situated within that territory)

(2003/C 146/17)

(Language of the case: German)

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

In Case C-268/01: Reference to the Court under Article 234 EC by the Verwaltungsgericht Weimar (Germany) for a preliminary ruling in the proceedings pending before that court between Agrargenossenschaft Alkersleben eG, and Freistaat Thüringen, on the interpretation of Articles 3(2), 4(4), 5 and 9(c) and (d) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1), as amended by Commission Regulation (EC) No 751/1999 of 9 April 1999 (OJ 1999 L 96, p. 11), the Court (Second Chamber), composed of: R. Schintgen, President of the Chamber, V. Skouris (Rapporteur) and N. Colneric, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 8 May 2003, in which it has ruled:

1. *Article 9(c) and (d) of Council Regulation No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, as amended by Commission Regulation (EC) No 751/1999 of 9 April 1999 and read with Articles 3(2), 4(4) and 5 of the former regulation, must be interpreted as meaning that all the milk production of a farmer established in the territory of the former German Democratic Republic obtained on an independent basis in leased facilities situated in that territory but in different länder must be imputed to the reference quantity provisionally allocated to him.*

2. *Article 9(c) and (d) of Regulation No 3950/92, as amended by Regulation No 751/99, and read with Articles 3(2), 4(4) and 5 of the former regulation, must be interpreted as precluding the competent national authorities from prohibiting a producer established in the former German Democratic Republic from transferring his milk production to facilities in a commune which, although forming part of that territory on the date of*

reunification of Germany, is henceforth incorporated in one of the pre-existing länder of the Federal Republic of Germany under a treaty concluded after that date.

(1) OJ C 275 of 29.9.2001.

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 146/18)

(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 Hertzen 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.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 May 2003

in Case C-384/01: Commission of the European Communities v French Republic (1)

(Failure of a State to fulfil obligations — Sixth VAT Directive — Article 12(3)(a) and (b) — Supplies of gas and electricity delivered by the public networks — Standing charge for supply networks — Reduced rate)

(2003/C 146/19)

(Language of the case: French)

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

In Case C-384/01, Commission of the European Communities (Agents: E. Traversa and C. Giolito) v French Republic (Agents: G. de Bergues and P. Boussaroque): Application for a declaration that, by applying a reduced rate of value added tax to the fixed part of the prices for gas and electricity supplied by the public networks, the French Republic has failed to fulfil its obligations under Article 12(3)(a) and (b) of Sixth Council Directive 77/388/EC 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), as amended by Council Directive 96/95/EC of 20 December 1996 amending, with regard to the level of the standard rate of value added tax, Directive 77/388/EEC (OJ 1996 L 338, p. 89), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, P. Jann and A. Rosas, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 8 May 2003, in which it:

1. *Dismisses the application;*

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

(1) OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 May 2003

in Case C-14/02 (Reference for a preliminary ruling from the Conseil d'État): ATRAL SA v Belgian State, [1]

(Free movement of goods — Alarm systems and networks — Interpretation of Articles 28 EC and 30 EC — Interpretation of Directives 73/23/EEC, 89/336/EEC and 1999/5/EEC — Compatibility of national legislation making marketing subject to a prior approval procedure)

(2003/C 146/20)

(Language of the case: French)

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

In Case C-14/02: Reference to the Court under Article 234 EC by the Conseil d'État (Belgium) for a preliminary ruling in the proceedings pending before that court between ATRAL SA and Belgian State, on the interpretation of Articles 28 and 30 EC, of Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (OJ 1973 L 77, p. 29), as amended by Council Directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits) (OJ 1993 L 220, p. 1), of Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (OJ 1989 L 139, p. 19), as amended by Directive 93/68, and of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

1. *Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits, as amended by Council Directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits), Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility, as amended by Directive 93/68, and Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity are applicable to alarm systems and networks, in particular to those which use radio transmission. In the fields covered by those directives, national provisions governing the same field must necessarily conform to the abovementioned directives.*

2. *Article 3 of Directive 73/23, as amended, Article 5 of Directive 89/336, as amended, and Articles 6 and 8 of Directive 1999/5 preclude national provisions, such as those at issue in the main proceedings, which make subject to a prior approval procedure the placing on the market of alarm systems and networks which satisfy the requirements of those directives and which bear the appropriate 'CE' marking.*

3. *Articles 28 EC and 30 EC must be interpreted as meaning that even in the absence of harmonising Community measures, products lawfully produced and marketed in a Member State must be able to be marketed in another Member State without being subject to additional controls. In order to be justified, national legislation imposing such controls must be covered by one of the exceptions provided for in Article 30 EC or one of the overriding requirements recognised by the case-law of the Court and, in either case, must be appropriate for securing the attainment of that objective and not go beyond what is necessary in order to attain it.*

4. *It is for the Member State which claims to have a reason justifying a restriction on the free movement of goods to demonstrate specifically the existence of a reason relating to the public interest, the necessity for the restriction in question and that the restriction is proportionate in relation to the objective pursued.*

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[1] OJ C 68 of 16.3.2002.

ORDER OF THE COURT

(First Chamber)

of 6 March 2003

in Case C-449/01 Reference for a preliminary ruling by the Court of Appeal (England and Wales) (Civil Division): Abbey Life Assurance Co. Ltd v Kok theam Yeap [1]

(Article 104(3) of the Rules of Procedure — Directive 86/653/EEC — Coordination of the laws of the Member States relating to self-employed commercial agents — Applicability to agents in the insurance and financial services fields)

(2003/C 146/21)

(Language of the case: English)

In Case C-449/01: Reference to the Court under Article 234 EC by the Court of Appeal (England and Wales) (Civil Division) (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Abbey Life Assurance Co. Ltd and Kok Theam Yeap, on the interpretation of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17), the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and A. Rosas, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has made an order on 6 March 2003, the operative part of which is as follows:

Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that self-employed agents appointed for the purpose of soliciting applications for policies for life assurance, annuities or savings do not fall within its scope.

[1] OJ C 84 of 6.4.2002.

Appeal brought on 4 February 2003 by Rica Foods (Free Zone) NV against the judgment delivered on 14 November 2002 by the Court of First Instance (Third Chamber) in Joined Cases T-332/00 and T-350/00 Rica Foods (Free Zone) NV, supported by the Kingdom of the Netherlands and Free Trade Foods NV, v Commission of the European Communities, supported by the Kingdom of Spain

(Case C-40/03 P)

(2003/C 146/22)

An appeal has been brought before the Court of Justice of the European Communities on 4 February 2003 by Rica Foods (Free Zone) NV, represented by G. van der Wal, advocaat before the Hoge Raad der Nederlanden, against the judgment delivered on 14 November 2002 by the Court of First Instance (Third Chamber) in Joined Cases T-332/00 and T-350/00 Rica Foods (Free Zone) NV, supported by the Kingdom of the Netherlands and Free Trade Foods NV, v Commission of the European Communities, supported by the Kingdom of Spain.

The appellant claims that the Court should:

1. declare admissible the appeal lodged by the appellant against the judgment delivered on 14 November 2002 by the Court of First Instance of the European Communities in Joined Cases T-332/00 and T-350/00;

2. set aside the judgment delivered on 14 November 2002 by the Court of First Instance of the European Communities in Joined Cases T-332/00 and T-350/00 and, ruling afresh pursuant to the application at first instance lodged by the present appellant on 27 October 2000:

   — annul Regulation (EC) No 2081/2000; [1]

   — declare that the Community is liable for the damage suffered by the appellant by reason of the fact that imports of the products referred to in Regulation (EC) No 2081/2000 have, since 1 October 2000, been prevented or restricted as a result of that regulation, and order the parties to reach agreement on the extent of the damage suffered by the appellant, and, if no agreement is reached on that matter, order that the procedure be continued within a period to be determined by the Court of Justice for the purpose of determining the extent of the damage, or at any rate order the Community to pay compensation for the provisionally estimated damage and for that still to be assessed; in the further alternative,

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

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

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Case C-41/03 P, it being understood that the present case relates to Regulation (EC) No 2081/2000.

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(1) Commission Regulation (EC) No 2081/2000 of 29 September 2000 providing for the continued application of safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin (OJ 2000 L 246, p. 64).

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

(Case C-70/03)

(2003/C 146/23)

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.

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(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 146/24)

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 Schaijk and Directeur van de Rijksdienst voor de keuring van Vee en Vlees

(Case C-97/03)

(2003/C 146/25)

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 Schaijk 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 146/26)

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, 22.7.1992, p. 7.

Reference for a preliminary ruling by the Tribunale di Firenze by order of that Court of 3 February 2003 in the criminal proceedings against Maria Pupino

(Case C-105/03)

(2003/C 146/27)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Firenze (District Court, Florence) — Office of the Magistrate in charge of preliminary enquiries — of 3 February 2003, received at the Court Registry on 5 March 2003, for a preliminary ruling in the criminal proceedings against Maria Pupino on the following question:

Are Articles 2, 3 and 8 of Council Framework Decision 220 of 15 March 2001 on the standing of victims in criminal proceedings to be interpreted as precluding national legislation such as that in Articles 392(1a) and 398(5a) of the Italian Code of Criminal Procedure, which do not provide that, in respect of offences other than sexual offences or those with a sexual background, the testimony of witnesses who are minors under 16 may be heard at the stage of the preliminary enquiries, in a Special Inquiry ('incidente probatorio') and under special arrangements, for example for the recording of testimony using audiovisual and sound recording equipment.

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 146/28)

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.

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[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 146/29)

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 146/30)

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 146/31)

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 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 146/32)

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 [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 146/33)

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?

   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?

   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 146/34)

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.

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[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 146/35)

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.

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[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 146/36)

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 146/37)

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, 10.3.2001, p. 24.
([3]) OJ C 3, 5.1.2002, p. 39.
([4]) OJ C 3, 5.1.2002, p. 45.

Reference for a preliminary ruling by the Giudice di Pace of Genoa-Voltri by order of that Court of 10 March 2003 in the case of Viacom Outdoor S.r.l. against Société GIOTTO Immobilier S.a.r.l.

(Case C-134/03)

(2003/C 146/38)

Reference has been made to the Court of Justice of the European Communities by order of the Giudice di Pace (Magistrate) of Genoa-Voltri of 10 March 2003, received at the Court Registry on 25 March 2003, for a preliminary ruling in the case of Viacom Outdoor S.r.l. against Société GIOTTO Immobilier S.a.r.l. on the following questions:

1. Is the entrusting to a public undertaking (municipalities) of the management of a tax and duties such as those described above, on a market which constitutes a substantial part of the common market and on which the public undertaking holds a dominant position inconsistent with:

   a) the application of Article 86 EC in conjunction with Article 82 EC;

   b) the application of Article 86 EC in conjunction with Article 49 EC.

2. Is the payment to that public undertaking of the income from the tax and charges in question inconsistent with:

   a) the application of Article 86 EC in conjunction with Article 82 EC;

   b) the application of Articles 87 EC and 88 EC, as unlawful State aid (not notified) and incompatible with the common market.

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

(Case C-135/03)

(2003/C 146/39)

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 146/40)

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.

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[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 146/41)

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.

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[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 146/42)

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 Rasmusen, 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.

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[1] OJ L 11 of 14.1.1994, p. 1.

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

(Case C-144/03)

(2003/C 146/43)

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 29.7.2000, p. 75.

Reference for a preliminary ruling by the Juzgado de lo Social by order of that Court of 6 November 2002 in the social security proceedings brought by Ms Annette Keller against Instituto Nacional de la Salud (INSALUD) and Instituto Nacional de la Seguridad Social (INSS)

(Case C-145/03)

(2003/C 146/44)

Reference has been made to the Court of Justice of the European Communities by order of the Juzgado de lo Social (Social Court) of 6 November 2002, received at the Court Registry on 31 March 2003, for a preliminary ruling in the social security proceedings brought by Ms Annette Keller against Instituto Nacional de la Salud (National Health Institute) (INSALUD) and Instituto Nacional de la Seguridad Social (National Social Security Institute) (INSS) on the following questions:

1. Are Form E-111 and in particular Form E-112, the issue of which is provided for in Articles 22(1)(c) of Regulation No 1408/71 [1] and Article 22(1) and (3) of Regulation No 574/72 [2], binding on the competent institution which issues them (in this case the Spanish Social Security) as regards the diagnosis made by the institution of the place of residence (in this case the German Public Health Service), and specifically the conclusions reached therein that the worker required an immediate surgical operation as the only treatment capable of saving her life and that the operation could only be carried out by a hospital in a country not belonging to the European Union, namely the University Clinic in Zurich, Switzerland, so that the institution of the place of residence may send the worker to that hospital without the competent institution being authorised to require the worker to return so that it can carry out the medical examinations it considers appropriate and offer him [her] the care options appropriate for the pathology which he [she] presents?

2. Is the principle of equal treatment laid down in Article 3 of Regulation No 1408/71, which provides that workers are to '... enjoy the same benefits under the legislation of any Member State as the nationals of that State', in conjunction with Articles 19(1)(a) and 22(1)(i) of that regulation, which provide that a worker residing in the territory of another Member State is to be entitled to benefits in kind provided on behalf of the institution of the place of stay or residence in accordance with the provisions which it applies, as though he were insured with it, to be interpreted as meaning that the competent institution is required to assume the costs of the health care provided by a country outside the European Union when it is established that if the worker had been affiliated to or been insured by the institution of the place of residence he would have been entitled to that health benefit, when in addition the said health care — that is, health care in cases of life-threatening emergency provided by private centres, including those in countries not belonging to the European Union — is among the benefits provided for by the legislation of the competent State?

[1] Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149 of 05.07.1971, p. 2).

[2] Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 74 of 27.03.1972, p. 1).

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 146/45)

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.

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;

   — 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.

Reference for a preliminary ruling by the Oberlandesgericht München — Zivilsenate in Augsburg — by order of that Court of 27 March 2003 in the case of Nürnberger Allgemeine Versicherungs AG against Portbridge Transport International B.V.

(Case C-148/03)

(2003/C 146/46)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht München — Zivilsenate in Augsburg — (Munich Higher Regional Court, Civil Chambers in Augsburg) of 27 March 2003, received at the Court Registry on 31 March 2003, for a preliminary ruling in the case of Nürnberger Allgemeine Versicherungs AG against Portbridge Transport International B.V. on the following question:

Do the provisions on jurisdiction contained in other conventions take precedence over the general provisions on jurisdiction in the Brussels Convention even where a defendant domiciled in the territory of a State which is a party to the Brussels Convention and against whom an action has been brought before a court of another State which is a party to that Convention fails to submit pleas as to the merits of the case in the proceedings before that court?

Reference for a preliminary ruling by the Cour de Cassation of the Grand Duchy of Luxembourg by judgment of that Court of 6 March 2003 in the case of Caisse Nationale des Prestations Familiales against Ursula SCHWARZ, née WEIDE

(Case C-153/03)

(2003/C 146/47)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour de Cassation (Court of Cassation) of the Grand Duchy of Luxembourg of 6 March 2003, received at the Court Registry on 3 April 2003, for a preliminary ruling in the case of Caisse Nationale des Prestations Familiales against Ursula SCHWARZ, née WEIDE on the following questions:

1. Must Article 76 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (1) be interpreted as applying only where a migrant worker is entitled to family benefits under the legislation of the State of employment and under the legislation of the State in which the members of his family are resident?

2. If so, may the bodies of the State of employment suspend entitlement to family benefits where they consider that a refusal to grant family benefits in the State of residence is incompatible with Community law?

3. If not, does Article 76 of Regulation No 1408/71 permit the State of employment to apply the rule against aggregation of benefits where, under the law of the State of residence of the family members, the worker's spouse receives or is entitled to similar family benefits?

(1) as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ L 230, p. 6).

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

(Case C-154/03)

(2003/C 146/48)

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.

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[1] OJ L 138, 1.6.1999, p. 20.
[2] OJ L 5, 10.1.2001, p. 4.

Appeal brought on 4 April 2003 by the Commission of the European Communities against the judgment delivered on 28 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in case T-147/00 between Les Laboratoires Servier and the Commission of the European Communities

(Case C-156/03 P)

(2003/C 146/49)

An appeal against the judgment delivered on 28 January 2003 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in case T-147/00 [1] between Les Laboratoires Servier and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 4 April 2003 by the Commission of the European Communities, represented by R. Wainwright and H. Støvlbæk, acting as agents, with an address for service in Luxembourg.

The Appellant claims that the Court should:

— annul the judgment issued by the Court of First Instance of 28 January 2003 in case T-147/00, Servier;

— order the defendants to pay the costs.

Pleas in law and main arguments

a) Fundamental misinterpretation of the division of powers

First, the appellant submits that it is clear from the assessment in the contested judgment that the Court of First Instance has fundamentally misinterpreted the division of powers between the Community and the Member States in relation to harmonisation as regards medicinal products for human use in general and to Chapter III of Directive 75/319 [2] in particular.

The Court of First Instance takes the view, referring to the judgment in T-74/00, Artegodan and others, that Chapter III of Directive 75/319 provides both for 'exclusive competence of the Member States' and for 'exclusive competence of the Commission' and that it is therefore necessary to determine whether there has been a '[transfer of] competence from the Member States concerned to the Community'.

In taking this stance, the Court of First Instance fails to understand that the various provisions making up Chapter III of Directive 75/319, including Articles 12 and 15a, which are particularly at issue here, are all based on a system of powers shared between the Member States and the Community. Chapter III thus gives Member States the right to initiate certain procedures for granting, varying or withdrawing marketing authorisations, and lays on the Community, represented by the Commission, a duty to achieve harmonisation by way of decisions which the Member States are then required to implement.

b) Legal assessment based on a Commission decision which was not the subject of the dispute

Still by way of a preliminary submission, the appellant would point out that the Commission decision (C(2000)573) of 9 March 2000 (the '2000 decision') which was the subject of the appeal at first instance, is based on Article 15a(1) of Directive 75/319. However, it must be noted that, rather than directly and specifically interpreting this legal basis, the Court of First Instance confines itself to examining Commission decision C(96)3608 final/1 of 9 December 1996 (the '1996 decision') and other provisions of Directive 75/319 in order to interpret Article 15a by pure deduction.

The Court of First Instance's assessment in the contested judgment relates exclusively to the Commission decision of 1996, although this decision is manifestly not the instrument contested at first instance.

It is clear that Article 12 of Directive 75/319, on which the 1996 decision is based, and which is examined by the Court of First Instance, is not the legal basis for the 2000 decision.

Moreover, Article 12 is essentially assessed by way of a comparison with Article 10(2) of Directive 75/319, although the latter does not form the legal basis for the 2000 decision either, or of the 1996 decision, examined by the Court of First Instance.

Thus, the Court of First Instance's conclusion that the Commission was not competent to adopt the 2000 decision is based on an assessment relating to a decision which was not contested at first instance and is founded essentially on provisions, namely Articles 10 and 12 of Directive 75/319, which do not form the legal basis for the 2000 decision. In the appellant's view, this assessment constitutes in itself a failure to define the status of Article 15a(1) of Directive 75/319 and thus a failure to take account of it.

In the appellant's view, the two errors described above are fundamental and linked to the extent that they vitiate the entire legal assessment leading the Court of First Instance to deduce that the Commission was not competent to adopt the 2000 decision.

Lastly, and solely in the alternative, the appellant maintains that the Court of First Instance's reasoning to the effect that Article 15a of Directive 75/319 does not cover marketing authorisations harmonised by way of the purely consultative procedure within the meaning of Articles 12 and 13 of the directive also constitutes a misinterpretation of that article.

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(1) OJ C 247, 26.8.2000, p. 29.

(2) Second Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by Law, Regulation or Administrative Action relating to proprietary medicinal products (OJ L 147, 9.6.1975, p. 13).

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

(Case C-160/03)

(2003/C 146/50)

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 146/51)

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.

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that Court of 11 April 2003 in the appeal in cassation by the State Secretary for Finances against Mr J.H.M. Feron

(Case C-170/03)

(2003/C 146/52)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Netherlands Supreme Court) of 11 April 2003, received at the Court Registry on 14 April 2003, for a preliminary ruling in the appeal in cassation by the State Secretary for Finances against Mr J.H.M. Feron on the following questions:

1. Must a car which is made available to a natural person by his employer and is used by him for both business and private purposes be regarded as personal property within the meaning of Article 1(2)(c) of Council Regulation (EEC) No 918/83 [1] of 28 March 1983 setting up a Community system of reliefs from customs duty?

2. Must Article 3(a) of that regulation requiring property to have been in the possession of the person concerned at least six months before the date on which he gave up his normal place of residence in the country of origin be interpreted as meaning that the person concerned who has had property made available to him, albeit free of charge, in the context of his employment by the owner of the property in question, is to be deemed to be in possession of the property for the purposes of the abovementioned provision?

3. Is it material to the reply to be given to Question 2 that during the whole period of six months the person concerned had the right to buy the car?

[1] OJ L 105 [1983], p. 1.

Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 2 April 2003 in the proceedings between 1. Maatschap Toeters, 2. M.C. Verberk, trading under the name of 'firma Verbek-Voeten' and Productschap Vee en Vlees

(Case C-171/03)

(2003/C 146/53)

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 2 April 2003, received at the Court Registry on 14 April 2003, for a preliminary ruling in the proceedings between 1. Maatschap Toeters, 2. M.C. Verberk, trading under the name of 'firma Verbek-Voeten' and Productschap Vee en Vlees on the following questions:

1. a. Is Article 3(2)(c) of Regulation (EEC, Euratom) No 1182/71 [1] to be interpreted as meaning that a period expressed in weeks such as that laid down by Article 50a of Regulation (EEC) No 3886/92 [2] ends with the expiry of whichever day in the last week is the same day of the week as the day following the day on which the slaughter took place?

   b. Is a Member State free, when applying Article 50a of Regulation (EEC) No 3886/92, to establish the time at which a premium application has been lodged pursuant to national rules of procedure which apply within the national legal system of that Member State to comparable, national periods for making applications?

   c. If not, must Article 50a of Regulation (EEC) No 3886/92 be interpreted as meaning that a premium application has been 'lodged' in due time if it can be shown to have been posted prior to the expiry of the three-week period and to have been received by the competent authority at such a time that it could have communicated the relevant data to the Commission on the same day as would have been the case had the premium application been received by the competent authority within that period?

2. Is Article 50a(1) of Regulation (EEC) No 3886/92 valid in so far as it prevents applicants from receiving the full amount of the premium in respect of each occasion on which the period for making applications is exceeded, irrespective of the way in which and extent to which this is done?

[1] OJ L 124 of 8.6.1971, p. 1.
[2] OJ L 391 of 31.12.1992, p. 20.

Action brought on 16 April 2003 against the French Republic by the Commission of the European Communities

(Case C-177/03)

(2003/C 146/54)

An action against the French Republic was brought before the Court of Justice of the European Communities on 16 April 2003 by the Commission of the European Communities, represented by Jürgen Grunwald and Bruno Stromsky, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by not taking the necessary measures to comply with Articles 2, 3, 5, 6, 7 and 8 of Council Directive 89/618/Euratom of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency ([1]), the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

— Incorrect transposition of Article 2 of the directive: the transposition measures taken concerned only some of the situations referred to in that article. The given definition of 'radiological emergency' was not transposed, and the transposition measures do not cover the transport and storage of nuclear fuels or radioactive wastes, the manufacture, use, storage, disposal and transport of radioisotopes for agricultural, industrial, medical and related scientific and research purposes, or the use of radioisotopes for power generation in space vehicles. In addition, the measures concern only risks connected with installations in French territory and not those connected with installations outside that territory.

— Incorrect transposition of Article 3 of the directive: the transposition measures taken contain no definition of the terms 'significant release of radioactive material' and 'abnormal levels of radioactivity which are likely to be detrimental to public health'.

— Incorrect transposition of Article 5 of the directive: as already indicated in relation to the transposition of Article 2 of the directive, the transposition measures as regards informing the population do not cover all the installations and all the activities envisaged by the directive.

— Incorrect transposition of Article 6 of the directive: the national provisions on informing the population in the event of a radiological emergency do not require that the population be informed without delay.

— Incorrect transposition of Article 7 of the directive: the measures referred to in the directive for informing persons likely to be involved in the organisation of assistance in the event of a radiological emergency, for example, are reproduced only in a circular, which does not comply with the requirements for legal certainty imposed by the Court's case-law.

— Incorrect transposition of Article 8 of the directive: the national provisions on informing the population or the information to be given in the event of a radiological emergency do not make binding provision for indicating which authorities are responsible for applying the measures envisaged by the directive.

([1]) OJ L 357, 7.12.1989, p. 31.

Action brought on 24 April 2003 by the Commission of the European Communities against the European Parliament and the Council of the European Union

(Case C-178/03)

(2003/C 146/55)

An action against the European Parliament and the Council of the European Union was brought before the Court of Justice of the European Communities on 24 April 2003 by the Commission of the European Communities, represented by G. zur Hausen, L. Ström and E. Righini, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

— annul Regulation (EC) No 304/2003 ([1]) of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals;

— declare that the effects of the Regulation shall remain in force until the Council has adopted a new regulation;

— order the European Parliament and the Council to pay the costs.

Pleas in law and main arguments

The PIC Regulation implements the Rotterdam Convention on the Prior Informed Consent procedure for certain Hazardous Chemicals and Pesticides in International Trade, hereinafter the 'PIC Convention'.

The PIC Convention establishes the principle that import and export of a chemical covered by it can only take place with the prior informed consent of the importing Party. The PIC Convention establishes a procedure as a means to formally obtain and disseminate the decisions of importing Parties and to ensure compliance with these decisions by the exporting Parties, called the 'PIC procedure'.

The Commission considers that the PIC Regulation falls within the scope of the Community's common commercial policy. The Regulation should therefore, as proposed by the Commission, have been adopted as a Council Regulation based on Article 133 EC and not as a European Parliament and Council Regulation based on Article 175(1) EC, which concerns measures adopted in the field of the Community's environmental policy. The Commission maintains that the choice by the European Parliament and the Council of the legal basis for the adoption of the PIC Regulation is erroneous and the act in question is therefore illegal and should be annulled.

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

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

(Case C-183/03)

(2003/C 146/56)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 28 April 2003 by the Federal Republic of Germany, represented by Wolf-Dieter Plessing, Ministerialrat, Moritz Lumma, Regierungsdirektor, and Annette Tiemann, Regierungsrätin z. A., Federal Ministry of Finance, Graurheindorfer Straße 108, D-53117 Bonn.

The applicant claims that the Court should:

— annul Commission Decision 2003/102/EC of 14 February 2003 — C(2003) 500 final — excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as an amount of EUR 26 446 500,00 is excluded from Community financing and imputed to the Federal Republic of Germany and

— order the defendant to pay the costs.

Pleas in law and main arguments

The action is directed against the contested decision in so far as it excludes from Community financing expenditure of EUR 26 446 505,00 incurred by the Federal Republic of Germany in respect of the arable crops sector in Brandenburg for crop years 1999 and 2000 and imputes it to the Federal Republic of Germany. That amount represents a flat-rate correction of 5 % of the expenditure notified for the *Land* of Brandenburg for crop years 1999 and 2000 in the arable crops sector.

In the opinion of the Federal Republic of Germany, the decision was adopted in breach of procedural rules and general principles of Community law. The Commission's inspection findings and conclusions, which formed the basis of the decision, were incorrect in a number of material factual respects and, moreover, were based on a misinterpretation of law. A flat-rate imputation of 5 % is therefore completely illegal. That follows from the following seven pleas in law:

— Procedural errors. The complaints subsequently made by the Commission:

  — 'no reliable or current data on the parcels in the Allgemeines Liegenschaftsbuch (General Register of Real Property) (ALB)' (Under Paragraph 12 of the Gesetz über die Landesvermessung und das Liegenschaftskataster in Brandenburg (Law on Topographic Survey and the Land Register in Brandenburg — VermLiegG), the ALB constitutes, together with the real property map and real property data, the cadastre of the *Land* of Brandenburg. It is held on computer),

  — 'double applications not detectable',

  — 'there is hardly any or no connection between the parcels entered in the land register and those in agricultural use' and

  — 'it was not always possible to check and measure the specified agricultural parcels on the basis of, for example, maps or aerial photographs, since the holdings do not enclose with their applications any maps or sketches of the specified agricultural parcels',

  were not communicated to the German authorities in due time. Breach of the procedure for the clearance of the accounts (Article 7(4) of Regulation (EC) No 1258/1999 ([1]) and Article 8(1) of Regulation (EC) No 1663/95 ([2]) and breaches of the principles of the right to a fair hearing and proper administration are therefore alleged.

— Reliability of the land identification system. In its second plea in law, the Federal Government defends itself against the doubts expressed by the Commission concerning the reliability of the identification system.

— Reliability of the on-the-spot checks, in particular adequate measurement of agricultural land. In its third plea in law, Germany rebuts the Commission's complaint that Brandenburg did not adequately measure land in the course of on-the-spot checks, which constitutes a breach of Article 6(5) of Regulation (EEC) No 3887/92 [3]. That complaint is based, it submits, on factually and legally incorrect premisses.

— Adequate expansion of the sample coverage of on-the-spot checks. In its fourth plea in law, Germany deals with the complaint that Brandenburg did not adequately expand the required sample coverage of the on-the-spot checks within the holdings visited.

— The representative yields for non-food crops on set-aside land were assessed at a sufficiently high level. In its fifth plea in law, Germany demonstrates that the Commission's complaint — that the representative yields of renewable raw materials were assessed at too low a level — is unjustified.

— Lack of precision concerning the financial years to which expenditure is imputed. In its sixth plea in law, the level of expenditure imputed by the decision is contested. The Commission's decision is in part imprecise and is invalid in so far as its operative part and the statements in the Annex concerning an amount of EUR 12 927 107 are inconsiystent. In the 1999 and 2000 financial years, the *Land* of Brandenburg incurred expenditure for crop years 1999 and 2000 of EUR 270 387 968. Applying the flat rate of 5 % imposed by the Commission, which is being contested, that results in an imputed amount of EUR 13 519 398. However, an amount of EUR 262 446 505 was imputed. Consequently an amount of EUR 12 927 107 was wrongly imputed.

— Incorrect risk assessment. Finally, in its seventh plea in law, it is argued that the declared flat-rate imputation of risk of 5 % is defective simply because no systematic administrative or checking errors were the subject of complaint in Brandenburg in the relevant period. Moreover, the calculation of the alleged loss to the EAGGF was made using inappropriate methods and arrived at in breach of Article 10 EC.

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(1) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

(2) Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6).

(3) Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36).

Reference for a preliminary ruling by the Tribunale di Tolmezzo by order of that Court of 16 April 2003 in the case of Azienda Agricola Schnabl Rosa against A.G.E.A. and COSPALAT F.V.G.

(Case C-185/03)

(2003/C 146/57)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Tolmezzo (Tolmezzo District Court) of 16 April 2003, received at the Court Registry on 5 May 2003, for a preliminary ruling in the case of Azienda Agricola Schnabl Rosa against A.G.E.A. and COSPALAT F.V.G. on the following question:

Must Article 1 of Regulation (EEC) No 856/84 [1] of 31 March 1984 and Articles 1 to 4 of Regulation No 3950/92 [2] of 28 December 1992 be interpreted as meaning that the additional levy on milk and milk products is in the nature of an administrative penalty with the result that producers are liable to pay it only where quantities allocated have been exceeded by them intentionally or as a result of negligence?

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(1) OJ L 90 of 1.4.1984, p. 10.
(2) OJ L 405 of 31.12.1992, p. 1.

Removal from the register of Case C-302/01 [1]

(2003/C 146/58)

By order of 6 February 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-302/01: Commission of the European Communities v Hellenic Republic.

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(1) OJ C 259 of 15.9.2001.

Removal from the register of Case C-86/02 [1]

(2003/C 146/59)

By order of 7 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-86/02: Commission of the European Communities v Federal Republic of Germany.

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(1) OJ C 131 of 1.6.2002.

Removal from the register of Case C-107/02 [1]

(2003/C 146/60)

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 10.8.2002.

Removal from the register of Case C-149/02 [1]

(2003/C 146/61)

By order of 6 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-149/02: Commission of the European Communities v Kingdom of the Netherlands.

(1) OJ C 156 of 29.6.2002.

Removal from the register of Case C-155/02 [1]

(2003/C 146/62)

By order of 10 April 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-155/02: Commission of the European Communities v Republic of Austria.

(1) OJ C 169 of 13.7.2002.

Removal from the register of Case C-192/02 [1]

(2003/C 146/63)

By order of 7 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-192/02: Commission of the European Communities v Republic of Austria.

(1) OJ C 169 of 13.7.2002.

Removal from the register of Case C-343/02 [1]

(2003/C 146/64)

By order of 2 April 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-343/02: Commission of the European Communities v French Republic.

(1) OJ C 261 of 26.10.2002.

Removal from the register of Case C-363/02 [1]

(2003/C 146/65)

By order of 3 April 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-363/02: Commission of the European Communities v Portuguese Republic.

(1) OJ C 305 of 7.12.2002.

Removal from the register of Case C-412/02 [1]

(2003/C 146/66)

By order of 11 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-412/02 (Reference for a preliminary ruling by the Hof van Cassatie): Belgian Refining Corporation and Others v Ministerie van Financiën.

[1] OJ C 55 of 8.3.2003.

Removal from the register of Case C-413/02 [1]

(2003/C 146/67)

By order of 13 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-413/02 (Reference for a preliminary ruling by the Hof van Cassatie): F. Sips v Ministerie van Financiën.

[1] OJ C 55 of 8.3.2003.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 March 2003

in Case T-340/00: Comunità Montana della Valnerina v Commission of the European Communities [1]

(EAGGF — Withdrawal of financial assistance — Article 24 of Regulation (EEC) No 4253/88 — Principles of proportionality and legal certainty — Statement of reasons — Right to be heard)

(2003/C 146/68)

(Language of the case: Italian)

In Case T-340/00: Comunità Montana della Valnerina, represented by E. Cappelli and P. De Caterini, lawyers, with an address for service in Luxembourg, supported by Italian Republic (Agents: U. Leanza and G. Aiello), against Commission of the European Communities (Agents: C. Cattabriga and M. Moretto) — application for the annulment of Commission Decision C(2000) 2388 of 14 August 2000 withdrawing the financial assistance granted to the Comunità Montana della Valnerina by Commission Decision C(93) 3182 of 10 November 1993 concerning grant of a contribution from the EAGGF, Guidance Section, pursuant to Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF, Guidance Section (OJ 1988 L 374, p. 25), in connection with Project No 93.IT.06.016 entitled 'Pilot demonstration project for forestry, agricultural and food programmes in marginal hill areas (France, Italy)' — the Court of First Instance (Third Chamber), composed of K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 13 March 2003, in which it:

1. *Annuls Commission Decision C(2000) 2388 of 14 August 2000 withdrawing the financial assistance of the European Agricultural Guidance and Guarantee Fund granted to the Comunità Montana della Valnerina by Commission Decision C(93) 3182 of 10 November 1993 concerning grant of a contribution from the EAGGF, Guidance Section, pursuant to Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF, Guidance Section (OJ 1988 L 374, p. 25), in connection with Project No 93.IT.06.016 entitled 'Pilot demonstration project for forestry, agriculture and food production in marginal hill areas (France, Italy)', in so far as the Commission did not limit its demand for repayment of the contribution to the sums corresponding to the part of the project which, under the award decision, were to be carried out by the applicant itself.*

2. *Dismisses the remainder of the application.*

3. *Each of the parties shall bear its own costs.*

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[1] OJ C 4 of 6.1.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 March 2003

in Case T-125/01: José Martí Peix, SA v Commission of the European Communities [1]

(Fisheries — Community financial aid — Reduction of aid — Limitation — Reasonable period — Principle of proportionality)

(2003/C 146/69)

(Language of the case: Spanish)

In Case T-125/01: José Martí Peix, SA, established in Huelva (Spain), represented by J.-R. García-Gallardo Gil-Fournier and D. Domínguez Pérez, lawyers, against Commission of the European Communities (Agents: initially L. Visaggio and J. Guerra Fernández, and subsequently S. Pardo Quintillán and J. Guerra Fernández) — application for annulment of the Commission decision of 19 March 2001 reducing the aid granted to José Martí Peix SA by Commission Decision C(91) 2874 final/11 of 16 December 1991, as amended by Commission Decision C(93) 1131 final/4 of 12 May 1993, for a project to create a joint enterprise in the fisheries sector — the Court of First Instance (Third Chamber), composed of K. Lenaerts, President, and J. Azizi and M. Jaeger, Judges; B. Pastor, Deputy Registrar, has given a judgment on 13 March 2003, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 9 April 2003

in Case T-217/01: Forum des migrants de l'Union européenne v Commission of the European Communities [1]

(Community financial support — Operating costs — Decision to terminate financial support — Principle of sound financial management — Interpretation of the conditions of support — Right to a fair hearing — Protection of legitimate expectations)

(2003/C 146/70)

(Language of the case: French)

In Case T-217/01, Forum des migrants de l'Union européenne, having its registered office in Brussels (Belgium), represented initially by E. Degrez and subsequently by N. Crama, lawyers, v Commission of the European Communities (Agents: A.-M. Rouchaud-Joët and L. Parpala): Application for annulment of the Commission's decision of 11 July 2001 to terminate the financial support granted to the applicant under Article A0-3040 of the Community budget, the Court of First Instance (Fourth Chamber), composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 9 April 2003, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to pay its own costs and those of the defendant.*

([1]) OJ C 317 of 10.11.2001.

Action brought on 24 March 2003 by Jose Maria Sison against the Council of the European Union

(Case T-110/03)

(2003/C 146/71)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 24 March 2003 by Jose Maria Sison, Utrecht, the Netherlands, represented by Mr J. Fermon, Mr A. Comte, Mr H. Schultz and Mr D. Gurses, lawyers.

The applicant claims that the Court should:

— annul, on the basis of art. 230 of EC Treaty, Council Decision of 21 January 2003 (41/c/01/02): Answer adopted by the Council on the 21st of January 2003 to the confirmatory application of M. Jan Fermon sent by fax on the 11 of December 2002 under Article 7 (2) of the Regulation (EC) No 1049/2001, notified to the applicant's counsel on January 23, 2003.

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

Pleas in law and main arguments

The applicant in the present case, who is also the applicant in Case T-47/03 Sison against Council and Commission ([1]), pursues the annulment of the defendants decision not to allow him access to all the documents which formed the basis of the Council Decision 2002/848/EC ([2]), by which the applicant himself and the New People's Army (NPA) are included in the list pertinent to Article 2(3) of Regulation 2580/2001 ([3]), as well as access to any information regarding which Member States provided documents mentioned in the contested Decision. The applicant also asked to be informed about the rules and criteria applied by the Council regarding sensitive documents that shall be made public following Article 9, point 6, of Regulation 1049/2001 ([4]).

The Council's position was based on Article 4(a), first and third points, of the Regulation 1049/2001. According to the defendant, the disclosure of information with regard to combatting terrorism, which is in the possession of the Member States authorities, could give the persons, entities or groups who are the subject of this information, the opportunity to threaten the efforts of these authorities and thus undermine the protection of public interest as regards public security. With reference to the Member States that provided sensitive documents, the Council stated that the 'originator authority' is opposed to the disclosure of the requested information. About the rules concerning sensitive documents, the Council referred to the Council decision 2001/264/CE adopting the Council's security regulations.

In support of its application, the applicant submits:

— Failure of motivation and violation of the principle of sound administration.

— Violation of the principles enshrined in Article 6 ECHR and especially of the right to be informed promptly, in a language which the applicant understands and in detail, of the nature and cause of the accusation, as well as of the principle of proportionality.

With regard to this last point, the applicant states that the right to be informed of the cause of the accusation against him cannot be neutralised by the protection of public interest as regards public security and international relations. Considering all the damages suffered by the applicant, the balance of interest is in his favour.

(1) Not published in the OJ yet.
(2) Council Decision of 28 October 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/460/EC (OJ L 295 of 30.10.2001, p. 12).
(3) Council Regulation of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344 of 28.12.2001, p. 70).
(4) Regulation of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43).

Action brought on 4 April 2003 by New Look Limited against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-117/03)

(2003/C 146/72)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 4 April 2003 by New Look Limited, with its official address in Weymouth (Dorset), United Kingdom, represented by R. Ballester and G. Marín, lawyers, of the firm Marks & Clerk.

The applicant claims that the Court should:

— Annul the decision of 27 January 2003 of the Second Board of Appeal of OHIM in Case No R95/2002-1, and

— Order the applicant, as well as any intervener, to pay the costs arising from the proceedings and from Case No 95/2001-1 before the First Board of Appeal of OHIM.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant.
Community trade mark sought:	Figurative mark 'NLSPORT' — Application No 816 512 for goods within Classes 3, 14, 18 and 25.
Proprietor of mark or sign cited in the opposition proceedings:	Naulover S.A.
Mark or sign cited in opposition:	Community trade mark No 13417, consisting in an N superposed on an L, both in English characters.
Decision of the Opposition Division:	Refusal of the opposition.
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and acceptance of the opposition.
Pleas in law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/494 (likelihood of confusion).

Action brought on 4 April 2003 by New Look Limited against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-118/03)

(2003/C 146/73)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 4 April 2003 by New Look Limited, with its official address in Weymouth (Dorset), United Kingdom, represented by R. Ballester and G. Marín, lawyers, of the firm Marks & Clerk.

The applicant claims that the Court should:

— Annul the decision of 27 January 2003 of the Second Board of Appeal of OHIM in Case R 577/2002-1, and

— Order the applicant, as well as any intervener, to pay the costs arising from the proceedings and from Case 577/2001-1 before the First Board of Appeal of OHIM.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant.
Community trade mark sought:	Figurative mark 'NLJEANS' — Application No 816.454 for goods within Classes 3, 14, 18 and 25.
Proprietor of mark or sign cited in the opposition proceedings:	Naulover S.A.
Mark or sign cited in opposition:	Community figurative mark No 13417, consisting in an N superposed on an L, both in English characters.
Decision of the Opposition Division:	Refusal of the opposition.
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and acceptance of the opposition.
Pleas in law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/494 (likelihood of confusion).

Action brought on 4 April 2003 by New Look Limited against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-119/03)

(2003/C 146/74)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 4 April 2003 by New Look Limited, with its official address in Weymouth (Dorset), United Kingdom, represented by R. Ballester and G. Marín, lawyers, of the firm Marks & Clerk.

The applicant claims that the Court should:

— Annul the decision of 27 January 2003 of the Second Board of Appeal of OHIM in Case R 578/2002-1, and

— Order the applicant, as well as any intervener, to pay the costs arising from the proceedings and from Case 578/2001-1 before the First Board of Appeal of OHIM.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant.
Community trade mark sought:	Figurative mark 'NLACTIVE' — Application No 816.629 for goods within Classes 3, 14, 18 and 25.
Proprietor of mark or sign cited in the opposition proceedings:	Naulover S.A.
Mark or sign cited in opposition:	Community trade mark No 13417, consisting in an N superposed on an L, both in English characters.
Decision of the Opposition Division:	Refusal of the opposition.
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and acceptance of the opposition.
Pleas in law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/494 (likelihood of confusion).

Action brought on 11 April 2003 by Akzo Nobel Chemicals Ltd. and Akcros Chemicals Ltd. against the Commission of the European Communities

(Case T-125/03)

(2003/C 146/75)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 April 2003 by Akzo Nobel Chemicals Ltd., Hersham, United Kingdom, and Akcros Chemicals Ltd., Hersham, United Kingdom, represented by Mr C. Swaak, lawyer.

The applicant claims that the Court should:

— to review under Article 230 the legality of the Decision in as far as it has been interpreted by the Commission as legitimating and/or constituting the basis of the Commission's action (which is not severable from the Decision), of seizing and/or reviewing and/or reading documents covered by legal professional privilege;

— to annul under Article 231 the Decision in as far as it has been interpreted by the Commission as legitimating and/or constituting the basis of the Commission's action (which is not severable from the Decision), of seizing and/or reviewing and/or reading documents covered by legal professional privilege;

— to require that the Commission, to comply with the judgement annulling the Decision, return documents covered by legal professional privilege and not to use their contents in any way;

— to order the Commission to pay the applicant's costs in the present proceedings.

Pleas in law and main arguments

Pursuant to Commission Decision C(2003)559/4 of 10 February 2003, the Commission conducted an on the spot investigation on the premises of the applicants in Eccles, Manchester, United Kingdom. In the course of the investigation, the Commission reviewed, copied and seized several documents.

Some of these documents became the object of a disagreement between the applicants and the Commission. According to the applicants, the seizure of those documents violated the general principle of legal professional privilege.

In support of their application, the applicants submit that the Commission has committed an infringement of the Treaty, an infringement of general principles of Community Law and has violated Regulation 17/62 as interpreted by the European Courts.

More specifically, the applicants claim that the Commission has violated the principle of legal professional privilege by violating the procedures relating to the application of the principle as set out by the European Courts. Furthermore, the applicant submits that the Commission violated the principle of legal professional privilege by its unjustified and immediate denial of its application during the on the spot investigation and the seizure of some of the documents. Finally, the applicants submit that the Commission violated the applicants' fundamental rights, such as the right to privacy.

Action brought on 15 April 2003 by Paola Casini against the Commission of the European Communities

(Case T-132/03)

(2003/C 146/76)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 April 2003 by Paola Casini, residing in Brussels, represented by Georges Vandersanden, avocat.

The applicant claims that the Court should:

— order the list of officials promoted to Grade A 6 which was published on 18 August 2002 to be annulled in so far as the applicant's name is not included on that list;

— order compensation to be paid to the applicant in respect of the material and non-material damage which she has suffered, provisionally estimated at a total of EUR 20 000, in respect of which the material damage relates to the financial readjustment of the applicant's salary to correspond to Grade A 6 from the date of publication of the list of those promoted (increased by default interest fixed at 7 % per annum);

— order the defendant to pay all of the costs.

Pleas in law and main arguments

In support of her action, the applicant pleads failure to state reasons, breach of Article 45 of the Staff Regulations and infringement of the principle of non-discrimination, manifest errors of assessment, breach of the duty of care and infringement of the principle of sound administration, infringement of the principle of equality of opportunity and, finally, misuse of powers.

Action brought on 22 April 2003 by Robert Charles Schochaert against the Council of the European Union

(Case T-136/03)

(2003/C 146/77)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 22 April 2003 by Robert Charles Schochaert, residing in Brussels, represented by Jean A. Martin, avocat.

The applicant claims that the Court should:

— order the Council to pay to the applicant EUR 225 702,94 by way of compensation, and order it to pay the costs.

Pleas in law and main arguments

The applicant, a former Council official, seeks by way of the present action to recover compensation in respect of the damage which he claims to have suffered through the defendant's refusal to promote him to Grade B 1 during the course of promotions from 1978 to 2000.

The applicant contends that the defendant has refused, since 1978, to promote him on the ground that his duties did not involve the exercise of responsibilities justifying promotion *vis-à-vis* other candidates for such promotion, this being a ground which, in the applicant's view, is unlawful and amounts to a misuse of power for which the Council must incur liability.

The applicant further alleges that he has been the victim of exclusion and non-physical harassment by a number of his hierarchical superiors.

Action brought on 28 April 2003 by Nuova Agricast S.r.l. against the Commission of the European Communities

(Case T-139/03)

(2003/C 146/78)

(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 28 April 2003 by Nuova Agricast S.r.l., represented by Michele Arcangelo Calabrese, avvocato.

The applicant claims that the Court should:

— Annul the contested measures;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

By its action, the applicant company is challenging:

1. the Commission's letter *D/50721, COMP/G1 D(03)142/PI/cpb dated 3 February 2003 (concerning consultations with the authorities of the Member State which had drawn up the documents);

2. Commission document SG.B.2/MM D(2003) sent by fax on 14 March 2003;

3. the Commission's letter *D/51652, COMP/G1/PI/cpb D(03) dated 12 March 2003.

In support of its claims, the applicant submits as follows:

— by consulting the authorities of the Member State which had drawn up the documents requested, and in so doing even though it was already clear to it that the documents in issue were excluded from the right of access as being 'covered' by the exception 'inspections and investigations', the Commission breached the procedural guarantees conferred on individuals by Article 4(4) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145 of 31 May 2001, p. 43) and the similarly-worded Article 5(2) of the relevant updating provisions. The Commission thus infringed its own

'Code of Good Administrative Behaviour', specifically the section on 'Consistency' under the heading of 'General Principles of Good Administration'. The illegality of the consultation also gives rise, in the applicant's view, to the illegality of the partial refusal of access, which is specifically based on the reply by which the Italian authorities refused disclosure;

— the applicant further alleges discriminatory treatment *vis-à-vis* a separate request (made by another individual) for access to documents coming within the same category as those to which the applicant is seeking access;

— the applicant also submits that, in particular by treating as adequate the ostensible reasoning of the senior official who signed the documents, who refers to a measure of a national court applying national legislation which is generally recognised as being less transparent than the provisions of Regulation (EC) No 1049/2001, the Commission committed a manifest error of assessment and breached at the same time Article 4(5) of Regulation (EC) No 1049/2001, the principle of sound administration and the obligation to ensure that decisions taken by the institutions are adequately reasoned;

— finally, the applicant submits that there has been a breach of its rights of defence in so far as access to the documents in question is the only avenue open to it to assess the legality of the decision authorising a State aid scheme.

Action brought on 28 April 2003 by Fost Plus VZW against the Commission of the European Communities

(Case T-142/03)

(2003/C 146/79)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 April 2003 by Fost Plus VZW, having its registered office in Brussels, represented by Peter Wytinck, Jan Bouckaert and Hendrik Viane, advocaten.

The applicant claims that the Court should:

1. Annul Article 1 of the Decision;

2. Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision 2003/82/EC of 29 January 2003 [1]. The contested decision authorises Belgium to impose within its territory higher recycling and recovery targets than those laid down in Directive 94/62/EC [2].

The applicant is a non-profit-making association which is the only organisation recognised in Belgium for the purpose of collecting, recycling and valorising domestic packaging waste. It assumes responsibility for accepting domestic packaging waste from those who are affiliated to it. Members of the applicant represent the producers and importers of packaging, packaged products or packaging materials, distribution companies and trade federations.

The applicant first of all alleges that there has been a breach of Article 253 EC and of Article 6(6) of Directive 94/62/EC. The applicant claims that the Commission, when adopting the contested decision, based itself on inaccurate or incomplete facts. By so doing, it argues, the Commission committed errors of fact in its assessment of the criteria set out in Article 6(6) of Directive 94/62/EC.

The applicant also claims that there has been a breach of Article 253 EC. The Commission has, in its view, failed to set out sufficient reasons as to why Belgium has, within its territory, adequate recycling capacity for metal packaging, non-ferrous metals, and the mechanical recycling of plastics, paper and cardboard. The applicant further contends that the Commission fails in its decision to examine the effect which an increase in the minimum recycling targets may have for each type of packaging material.

The applicant concludes by submitting that there has been an infringement of the general duty of care and a breach of Directive 94/62/EC inasmuch as the Commission assumed certain matters, such as incineration with energy recovery and available capacity, to be factually valid without examining whether this was possible or in accordance with Directive 94/62/EC.

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[1] Decision 2003/82/EC: Commission Decision of 29 January 2003 confirming measures notified by Belgium pursuant to Article 6(6) of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste (Text with EEA relevance) (notified under document number C(2003) 361) (OJ 2003 L 31, p. 32).

[2] Directive 94/62/EC of the European Parliament and the Council of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

Action brought on 23 April 2003 by Festival Crociere SpA against the Commission of the European Communities

(Case T-145/03)

(2003/C 146/80)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 April 2003 by Festival Crociere SpA, represented by Professor G.M. Roberti, G. Bellitti and I. Perego, lawyers.

The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By this action the applicant company challenges the Commission's Decision of 10 February 2003 authorising, pursuant to Article 6(1)(b) of Regulation (EEC) No 4064/89, a concentration between Carnival Cruises and P&O Princess II.

In support of its claims the applicant submits:

— first, that the Commission has not correctly appraised the new corporate structure arising from the merger or its economic and financial implications. The Commission should have found that the structure of the dual-listed company was, of itself, capable of conferring very significant competitive advantages on Carnival, including advantages in terms of financial strength, likely to give it overwhelming power on the market such that other operators would no longer be able to compete. From this point of view the decision appears to be vitiated by a manifest error of assessment, as well as an inadequate statement of reasons in that the Commission failed to consider an essential fact which must be taken into account in order properly to evaluate the competition aspects of the concentration. Had that fact been properly examined, it would necessarily have led the Commission to prohibit the concentration or, at least, to initiate an in-depth enquiry under Article 6(1)(c) of Regulation No 4064/89;

— second, that the Commission has not correctly assessed certain specific economic factors mentioned in Paragraph 11 of the decision, concerning in particular: continued competition from other operators, prospects of growth in the market, barriers to entry and the real prospects of competing with Carnival/P&O's dominance in the market. The Commission not only failed to base its conclusions on a coherent objective justification, but also failed to appraise, as is essential in this case, the effects of the new financial structure of the dual-listed company with reference to the main competitive factors. Had the Commission properly analysed these, it would not have confined itself to referring, without further reflection, to the first decision, but would have reconsidered the assessments made at the time of the first decision, or at least commenced an in-depth enquiry.

Action brought on 6 May 2003 by Nuova Agricast S.r.l. against the Commission of the European Communities

(Case T-151/03)

(2003/C 146/81)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 May 2003 by Nuova Agricast S.r.l., represented by Michele Arcangelo Calabrese, avvocato.

The applicant claims that the Court should:

— Annul the contested measures;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those invoked in Case T-139/03 Nuova Agricast S.r.l. v Commission of the European Communities ([1]).

The applicant submits in particular that the refusal adversely affects the rights of defence which it might invoke both against the Italian Government (by challenging the document to which access was requested before the competent Italian court) and against the Commission itself from the point at which, not being aware of the contents of the measure to which access is sought, the applicant is unable to rely on any errors of appraisal which the Commission may have committed in forming the view that it had been properly adopted.

([1]) See p. 43 of this Official Journal.

Removal from the register of Case T-336/01 ([1])

(2003/C 146/82)

(Language of the case: English)

By order of 19 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-336/01: EuroCommerce A.I.S.B.L. v Commission of the European Communities.

([1]) OJ C 84 of 06.04.2002.

III

(Notices)

(2003/C 146/83)

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

OJ C 135, 7.6.2003

Past publications

OJ C 124, 24.5.2003

OJ C 112, 10.5.2003

OJ C 101, 26.4.2003

OJ C 83, 5.4.2003

OJ C 70, 22.3.2003

OJ C 55, 8.3.2003

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