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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

of 24 July 2003

in Case C-280/00 (Reference for a preliminary ruling from the Bundesverwaltungsgericht): Altmark Trans GmbH, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH [1]

(Regulation (EEC) No 1191/69 — Operation of urban, suburban and regional scheduled transport services — Public subsidies — Concept of State aid — Compensation for discharging public service obligations)

(2003/C 226/01)

(Language of the case: German)

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

In Case C-280/00: Reference to the Court under Article 234 EC by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Altmark Trans GmbH, Regierungspräsidium Magdeburg and Nahverkehrsgesellschaft Altmark GmbH, third party: Oberbundesanwalt beim Bundesverwaltungsgericht, on the interpretation of Article 92 of the EC Treaty (now, after amendment, Article 87 EC), Article 77 of the EC Treaty (now Article 73 EC), and Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ, English Special Edition 1969 (I), p. 276), as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991 (OJ 1991 L 169, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; P. Léger, Advocate General; D. Louterman-Hubeau, Head of Division, and subsequently H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 24 July 2003, in which it has ruled:

1. *Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991, and more particularly the second subparagraph of Article 1(1) thereof, must be interpreted as allowing a Member State not to apply the regulation to the operation of urban, suburban or regional scheduled transport services which necessarily depend on public subsidies, and to limit its application to cases where the provision of an adequate transport service is not otherwise possible, provided however that the principle of legal certainty is duly observed.*

2. *The condition for the application of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) that the aid must be such as to affect trade between Member States does not depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned.*

   However, public subsidies intended to enable the operation of urban, suburban or regional scheduled transport services are not caught by that provision where such subsidies are to be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations. For the purpose of applying that criterion, it is for the national court to ascertain that the following conditions are satisfied:

   — *first, the recipient undertaking is actually required to discharge public service obligations and those obligations have been clearly defined;*

   — *second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner;*

— *third, the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;*

— *fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.*

3. *Article 77 of the EC Treaty (now Article 73 EC) cannot be applied to public subsidies which compensate for the additional costs incurred in discharging public service obligations without taking into account Regulation No 1191/69, as amended by Regulation No 1893/91.*

(1) OJ C 273 of 23.9.2000.

JUDGMENT OF THE COURT

of 24 July 2003

in Case C-39/03 P: Commission of the European Communities v Artegodan GmbH and Others (1)

(Appeal — Directives 65/65/EEC and 75/319/EEC — Medicinal products for human use — Anorectics: amfepramone, clobenzorex, fenproporex, norpseudoephedrine, phentermine — Withdrawal of a marketing authorisation — Competence of the Commission — Conditions for withdrawal)

(2003/C 226/02)

(Languages of the case: German, English and French)

In Case C-39/03 P, Commission of the European Communities, (Agents: R. B. Wainwright and H. Støvlbæk, assisted by B. Wägenbaur): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 26 November 2002 in Joined Cases T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T-141/00 Artegodan and Others v Commission [2002] ECR II-4945, seeking to have that judgment set aside, the other parties to the proceedings being: Artegodan GmbH, established in Lüchow (Germany), (represented by U. Doepner), Bruno Farmaceutici SpA, established in Rome (Italy), Essential Nutrition Ltd, established in Brough (United Kingdom), Hoechst Marion Roussel Ltd, established in Denham (United Kingdom), Hoechst Marion Roussel SA, established in Brussels (Belgium), Marion Merrell SA, established in Puteaux (France), Marion Merrell SA, established in Barcelona (Spain), Sanova Pharma GmbH, established in Vienna (Austria), Temmler Pharma GmbH & Co.KG, established in Marburg (Germany), Schuck GmbH, established in Schwaig (Germany), Laboratoires Roussell L^{da}, established in Mem Martins (Portugal), Laboratoires Roussell Diamant SARL, established in Puteaux, Roussel Iberica SA, established in Barcelona, (represented by B. Sträter and M. Ambrosius), Gerot Pharmazeutika GmbH, established in Vienna, (represented by K. Grigkar), Cambridge Healthcare Supplies Ltd, established in Rackhearth (United Kingdom), (represented by M. D. Vaughan, QC, K. Bacon, barrister, and S. Davis, solicitor), and Laboratoires pharmaceutiques Trenker SA, established in Brussels, (represented by L. Defalque and X. Leurquin), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen, C.W. A. Timmermans (Presidents of Chambers), C. Gulmann, D.A. O. Edward, A. La Pergola, P. Jann (Rapporteur), V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; S. Alber, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 24 July 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders the Commission of the European Communities to pay the costs of these proceedings and those relating to the application for interim relief.*

(1) OJ C 70 of 22.3.2003.

ORDER OF THE COURT

(First Chamber)

of 24 July 2003

in Case C-166/02 (Reference for a preliminary ruling from the Tribunal Judicial da Comarca de Alcácer do Sal): Daniel Fernando Messejana Viegas v Companhia de Seguros Zurich SA, Mitsubishi Motors de Portugal SA (1)

(Article 104(3) of the Rules of Procedure — Answer which may be clearly deduced from existing case-law — Second Directive 84/5/EEC — Compulsory insurance against civil liability in respect of motor vehicles — Types of civil liability — Minimum amounts of cover)

(2003/C 226/03)

(Language of the case: Portuguese)

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

In Case C-166/02: Reference to the Court under Article 234 EC by the Tribunal Judicial da Comarca de Alcácer do Sal (Portugal)

for a preliminary ruling in the proceedings pending before that court between Daniel Fernando Messejana Viegas and Companhia de Seguros Zurich SA, Mitsubishi Motors de Portugal SA, participant: CGU International Insurance plc — Agência Geral em Portugal, Instituto de Solidariedade e Segurança Social (ISSS), on the interpretation of the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17), the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and A. Rosas, Judges; S. Alber, Advocate General; R. Grass, Registrar, has made an order on 24 July 2003, the operative part of which is as follows:

Article 1(2) of the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles precludes national laws which provide for a number of types of civil liability applicable to road-traffic accidents laying down, in respect of one of them, maximum amounts of compensation that are lower than the minimum amounts of cover laid down by that article.

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(1) OJ C 156 of 29.6.2002.

Action brought on 14 May 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-204/03)

(2003/C 226/04)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 14 May 2003 by the Commission of the European Communities, represented by Enrico Traversa, Legal Adviser, and Lidia Lozano Palacios, of its Legal Service, acting as Agents.

The applicant claims that the Court should:

1. Declare that, by maintaining in force provisions which provide for a deductible proportion for taxable persons who carry out only taxable transactions, and which lay down a special rule which limits the right to deduct VAT on the purchase of goods or services just because they were subsidised, the Kingdom of Spain has failed to fulfil its obligations under Community law and, in particular, Articles 17 and 19 (2) and (5) of Sixth Council Directive 77/388/EEC (1) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment

2. Order the defendant to pay the costs.

Pleas in law and main arguments

The Commission charges the Kingdom of Spain with having failed to fulfil its obligations under a number of provisions of the Sixth Directive on two grounds:

1. Application of a deducible proportion to taxable persons who carry out only transactions in respect of which value added tax is deductible (Article 102(1) of the Spanish Law on VAT).

According to the Commission, the Spanish provision broadens unlawfully the scope of the deductible proportion in that it applies not only to taxable persons who carry out transactions in respect of which value added tax is deductible and transactions in respect of which value added tax is not deductible (mixed taxable persons), but also to those who carry out only taxable transactions (fully taxable persons), just because they have received subsidies which are not part of the basis of assessment of their taxable transactions. According to Article 17(5) of the Sixth Directive, the deductible proportion mechanism applies only where taxable persons carry out both transactions which are taxable but exempt and taxable transactions.

Furthermore, the inclusion of subsidies in the deductible proportion as regards mixed taxable persons is an option which the Member States have and constitutes an exception to the general principle of deduction of the amounts borne by way of VAT in respect of taxable unexempted transactions. Therefore, that option may not be exercised in order to treat unfavourably situations other than those provided for by the directive, contrary to what has been provided by the Community legislature. The possible consequences for the neutrality of the tax arising from the use by the Member States of the option provided for under Article 19 of the directive cannot justify the extension by the Spanish authorities of the restriction on deduction to fully taxable persons, since the necessary legal basis for it is lacking and it is a measure contrary to the directive.

The Spanish provision at issue results in double taxation, since the taxable person who receives a subsidy uses it as part of the consideration for the purchase of goods or services. Such purchases are taxed in accordance with the Sixth Directive, so that the amount of the subsidy is already subject to the relevant VAT. If that amount is then included in the denominator for the deductible proportion, resulting in the restriction of the right to deduct of

the taxable person who receives it, the subsidy concerned will be liable to VAT twice. Although Article 19 provides expressly that the Member States may include in the deductible proportions for mixed taxable persons those subsidies which are not part of the basis of assessment, that exception to the 'normal' method of calculation is a tool available to the national legislature to prevent a body which is 'by its nature' subsidised obtaining repayment of VAT for carrying out a merely nominal activity in order to qualify as a taxable person. However, that provision is to be interpreted restrictively. On the other hand, it is clear that, by including subsidies in the deductible proportion, the right to deduct of mixed taxable persons is reduced, while that is not possible with regard to fully taxable persons. Article 19 is an optional provision and the Member States may determine the procedures for implementing it provided they observe, as a whole, the basic principles and provisions of the Sixth Directive, which contains other provisions which make it possible to prevent deductions considered to be abusive.

2. Laying down of a special rule which limits the right to deduct VAT owed for the purchase of goods or services financed in whole or in part by subsidies (second paragraph of Article 104(2) of the Spanish Law on VAT).

That special rule, according to which subsidies to finance the purchase of certain goods or services do not give rise to the application of the deductible proportion and are not included in the denominator but instead limit the right to deduct the VAT paid on the portion of the price of the goods or services financed by the subsidy, is incompatible with the Sixth Directive. Indeed, the Spanish provision establishes a limit on the right to deduct in respect of fully taxable persons which is not provided for under the directive. As for mixed taxable persons, the only limitation possible under the directive is the inclusion of the subsidies in the denominator of the deductible proportion. The VAT which a taxable person has paid for a certain service or certain goods is always deductible in accordance with the rules on the right to deduct provided for by the directive and, to that end, the source of the financing for the goods or services are of no relevance whatever. The Member States may take into account only those subsidies which are not linked to the price of the transaction, and may choose whether or not to include them in the deductible proportion only if the taxable person carries out, at the same time, taxed and exempt transactions. Application of the provision is optional and the Member States may determine the procedures for implementing it provided they observe the basic principles and provisions of the Sixth Directive as a whole.

The Spanish provision infringes the fundamental right to deduct VAT, acknowledged as such in the case-law of the Court of Justice, inasmuch as it is a special rule which has no basis in the directive, applies to all taxable persons in receipt of a subsidy, including fully taxable persons, and, even it if its applied to mixed taxable persons, it may in certain circumstances be less advantageous than using the option provided for by Article 19 of the directive.

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(1) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling by the Tribunale Amministrativo Regionale per la Lombardia — Sezione staccata di Brescia — by order of that Court of 8 October 2002, 17 December 2002 and 14 February 2003 in the case of Consorzio Aziende Metano — CO.NA.ME. against il Comune di Cingia de' Botti; with the participation of Padania Acque S.p.A.

(Case C-231/03)

(2003/C 226/05)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrativo Regionale per la Lombardia — Sezione staccata di Brescia (Lombardy Regional Administrative Court — Separate Chamber for Brescia) of 8 October 2002, 17 December 2002 and 14 February 2003, received at the Court Registry on 28 May 2003, for a preliminary ruling in the case of Consorzio Aziende Metano — CO.NA.ME. against il Comune di Cingia de' Botti; with the participation of Padania Acque S.p.A. on the following question:

Do Articles 43, 49 and 81 EC, in so far as they prohibit, respectively, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State and on the freedom to provide services within the Community in respect of nationals of Member States and the commercial practices of undertakings which have as their effect the prevention, restriction or distortion of competition within the European Union, preclude provision for the direct award, without the announcement of a tender, of the management of a public contract for the distribution of gas to a company in which a local authority participates, whenever that participation in the share capital is such as to preclude any direct control over the management itself and must it therefore be declared that, as is the case in these proceedings where the shareholding amounts to 0,97 % of the share capital, the essential preconditions for 'in-house' management are not met?

Action brought on 16 June 2003 by the Commission of the European Communities against Ireland

(Case C-257/03)

(2003/C 226/06)

An action against Ireland was brought before the Court of Justice of the European Communities on 16 June 2003 by the Commission of the European Communities, represented by Mr Xavier Lewis, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) Declare that by failing to transmit to the Commission data concerning CO_2 emissions from new passenger cars in accordance with Article 4(4) of Decision No 1753/2000/EC of the European Parliament and of the Council of 22 June 2000 establishing a scheme to monitor the average specific emissions of CO_2 from new passenger cars [1], Ireland has failed to fulfil fully its obligations under Article 4(4) of that Decision.

2) Order Ireland to pay the costs.

Pleas in law and main arguments

Article 4(4) of the Decision clearly provides that the first transmission of information shall take place no later than 1 July 2001. Ireland has failed to comply with that deadline.

[1] OJ L 202, 10.8.2000, p. 1.

Reference for a preliminary ruling by the Oberster Gerichtshof der Republik Österreich by order of that Court of 27 May 2003 in the case of Silvia Hosse against Land Salzburg

(Case C-286/03)

(2003/C 226/07)

Reference has been made to the Court of Justice of the European Communities by order of the Oberster Gerichtshof (Supreme Court) der Republik Österreich of 27 May 2003, received at the Court Registry on 3 July 2003, for a preliminary ruling in the case of Silvia Hosse against *Land* Salzburg on the following questions:

1. On a proper construction of Article 4(2b) of Regulation (EEC) No 1408/71 of the Council 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], as amended by Regulation (EEC) No 1247/92 [2] in conjunction with Annex II, Section III, is care allowance under the Salzburger Pflegegeldgesetz (Law on Care Allowance of the Land Salzburg) awarded to a member of the family of a person employed in the Land Salzburg who lives with his family in the Federal Republic of Germany excluded from the scope of Regulation (EEC) No 1408/71, as a special non-contributory benefit?

2. If the answer to Question 1 is in the negative:

   May the family member of a person employed in the Land Salzburg who lives with his family in the Federal Republic of Germany claim that care allowance under the Salzburger Pflegegeldgesetz be paid in the form of a sickness benefit in cash in accordance with Article 19 and the corresponding provisions of the other sections of Chapter 1 of Title III of Regulation (EEC) No 1408/71, irrespective of the fact that he is principally resident in the Federal Republic of Germany, if he satisfies the other conditions for receipt of the benefit?

3. If the answer to Question 1 is in the affirmative:

   Can a benefit such as care allowance under the Salzburger Pflegegeldgesetz awarded in the form of a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68 [3] of the Council of 15 October 1968 on freedom of movement for workers within the Community be made subject to the condition that the recipient of the benefit must be principally resident in the Land Salzburg?

4. If the answer to Question 3 is in the affirmative:

   Is the fact that citizens of the Union who are employed as frontier workers in the Land Salzburg but are principally resident in another Member State are not entitled to claim a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68, such as care allowance under the Salzburger Pflegegeldgesetz, compatible with Community law, in particular with the principles of non-discrimination and citizenship of the Union under Articles 12 and 17 EC respectively?

   If it is not: Does citizenship of the Union make it possible also for dependent family members of such a frontier worker who are likewise principally resident in another Member State to obtain in their own right care allowance under the Salzburger Pflegegeldgesetz in the Land Salzburg?

[1] English special edition: Series I Chapter 1971(II), p. 416.
[2] OJ L 136, 1992, p. 1.
[3] English special edition: Series I Chapter 1968(II), p. 475.

Reference for a preliminary ruling by the Oberster Gerichtshof by order of that Court of 4 June 2003 in the case of Sozialhilfeverband Rohrbach against Arbeiterkammer Oberösterreich and Österreichischer Gewerkschaftsbund, Gewerkschaft öffentlicher Dienst

(Case C-297/03)

(2003/C 226/08)

Reference has been made to the Court of Justice of the European Communities by order of the Oberster Gerichtshof (Supreme Court) of 4 June 2003, received at the Court Registry on 10 July 2003, for a preliminary ruling in the case of Sozialhilfeverband Rohrbach against Arbeiterkammer Oberösterreich and Österreichischer Gewerkschaftsbund, Gewerkschaft öffentlicher Dienst on the following questions:

1. Is a limited liability company governed by private law, whose sole shareholder is a social assistance association governed by public law (local authority association) and which has been entrusted with tasks of a private sector authority (social assistance by way of the operation of a workplace for disabled persons), nevertheless still to be regarded as a 'State entity', with the effect that Article 3 (1), in conjunction with Article 1(1)(c), of Council Directive 77/187/EEC [1], as amended by Council Directive 98/50/EC [2] (now Council Directive 2001/23/EC), which was not correctly transposed into national law, is directly applicable against it if, under a contract of transfer, which is subject only to the agreement of the association's board, the social assistance association's shareholding is to be transferred to a purely private limited liability company?

   If the answer to the first question is in the affirmative:

2. As a 'State entity' within the meaning of the case-law of the Court of Justice of the European Communities, can a social assistance association (local authority association) which transfers its operations itself rely on the direct application of Article 3(1), in conjunction with Article 1(1)(c), of the Directive referred to in Question 1 against its employees, who are contesting the transfer of their employment contracts to a transferee (within the meaning of Question 1) and who insist that their employment relationship with the transferor continues to exist, where the provision of the Directive referred to in Question 1 has not been correctly transposed, with the effect that the employment contracts are deemed to have been transferred to the transferee? In that connection, is it material that the transferor 'State entity' has no legislative competence to transpose a directive into national law, that competence lying with a superior legislative body (the Land)?

[1] OJ L 61 [1977], p. 26.
[2] OJ L 201 [1998], p. 88.

Reference for a preliminary ruling by the Hessisches Finanzgericht by order of that Court of 25 April 2003 in the case of Honeywell Aerospace GmbH against Hauptzollamt Gießen — Fulda Office

(Case C-300/03)

(2003/C 226/09)

Reference has been made to the Court of Justice of the European Communities by order of the Hessisches Finanzgericht (Hessian Finance Court) of 25 April 2003, received at the Court Registry on 11 July 2003, for a preliminary ruling in the case of Honeywell Aerospace GmbH against Hauptzollamt Gießen — Fulda Office — on the following questions:

1. Is a customs debt deemed, under Article 215(2) or the first indent of Article 215(3) of Council Regulation (EEC) No 2913/92 [1], as applicable until 9 May 1999, to have been incurred at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred (Article 215(2)) or at the place where the goods were placed under the customs procedure [which is not discharged] (first indent of Article 215(3)) even if a consignment placed under the external Community transit procedure is not presented at the office of destination and the place where the offence or irregularity occurred cannot be established, but the customs authorities have failed, contrary to the last part of Article 378(1) and the first sentence of Article 379(2) of Commission Regulation (EEC) No 2454/93 [2], as applicable until 30 June 2001, to indicate in the notification under Article 379(1) of that regulation the time-limit by which proof must be furnished to the office of departure of the regularity of the transit operation or the place where the offence or irregularity was actually committed?

2. If Question 1 is to be answered in the affirmative:

   Does the recovery of duty by the competent customs authority under the third sentence of Article 379(2) of Regulation (EEC) No 2454/93, as applicable until 30 June 2001, require the customs authorities to have indicated in the notification under Article 379(1) of that regulation the time-limit by which proof must be furnished to the office of departure of the regularity of the transit operation or the place where the offence or irregularity was actually committed?

[1] OJ L 302 [1992], p. 1.
[2] OJ L 253 [1993], p. 1.

Action brought on 2 July 2003 by the Italian Republic against the Commission of the European Communities

(Case C-301/03)

(2003/C 226/10)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 2 July 2003 by the Italian Republic, represented by I. M. Braguglia, acting as Agent, and G. Aiello, avvocato dello Stato.

The applicant claims that the Court should:

— annul the act of the Commission reference CDRR-03-0013-00-it (document 4), referred to in the notes of the Commission described below as an act 'communicated officially to the Member States on the occasion of the meeting of the Advisory Committee for the Development and Conversion of Regions of 23 April 2003' (note of 2 June 2003, No 107135) and the note of 14 May 2003 no 106387 (document 6), received on 15 May 2003, whereby the Directorate for Regional Operations in France, Greece and Italy within the Directorate-General for Regional Policy of the European Commission gave notice of its decision on the final date for the eligibility of expenditure relating to modifications to the programming complements for POR Sardegna 2000-2006; the note of 28 May 2003 No 107051 (document 7), received on 2 June 2003, whereby the Directorate for Regional Operations in France, Greece and Italy within the Directorate-General for Regional Policy of the European Commission gave notice of its decision on the final date for the eligibility of expenditure relating to modifications to the programming complements for POR Sicilia 2000-2006; the note of 2 June 2003 No 107135 (document 8), received in 2003 [1], whereby the Directorate for Regional Operations in France, Greece and Italy within the Directorate-General for Regional Policy of the European Commission gave notice of its decision on the final date for the eligibility of expenditure relating to modifications to the programming complements for DOCUP Lazio 2000-2006, together with all connected acts and decisions;

— order the Commission to pay the costs.

Pleas in law and main arguments

A. Infringement of Articles 15 and 34 of Regulation (EC) No 1260/1999 [2]

By the acts in issue the Commission actively intervened in the process of modifying programming complements, or in other words, the actual management of programming. That is not within its remit, as defined by the regulation cited and the Commission had no powers and transgressed into a sphere of competence not its own.

B. Infringement of Article 30 of Regulation (EC) No 1260/1999

According to the applicant, the final date for eligibility of expenditure relating to programming complements is fixed, with no possibility of derogation, by the general regulation. The specific provisions of that regulation imply normal retroactivity from the moment of contribution from the Funds (the date on which the Commission receives an application for assistance) unless there are changes affecting the facts set out in the decision to grant a contribution from the Funds.

The Commission, on the other hand, has determined that, where modifications are made to a programming complement, the starting date for the eligibility of expenditure is established by the Surveillance Committee and may not precede the decision of the Committee approving the amendment in question. The modified programming complement must specify the starting date for the eligibility of new expenditure occasioned by the modification.

If the Commission's view were to be applied, Article 30(2) of the regulation would loose all preceptive force because any programming complement that implements the assistance approved by decision of the Commission would postpone the date for the eligibility of expenditure and the starting date for the eligibility of expenditure fixed by the regulation would never be used.

C. The applicant claims that the acts complained of are unlawful because they lack any proper legal base and constitute an abuse of power involving the perversion of proceedings, lack of jurisdiction, and infringement of the regulation by the Commission.

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[1] Received probably on 30 June 2003.
[2] OJ L 161 of 26.6.1999, p. 1.

Action brought on 16 July 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-305/03)

(2003/C 226/11)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 16 July 2003 by the Commission of the European Communities, represented by Richard Lyal, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by applying a reduced rate of value added tax to the commission paid to auctioneers on the sale by

auction of works of art, antiques and collectors" items imported under temporary importation arrangements, the United Kingdom has failed to comply with its obligations under Articles 2(1), 5(4)(c), 12(3) and 16(1) of the Sixth Council Directive of 17 May 1977 [1] on the harmonisation of the laws of the Member States relating to turnover taxes;

2) order the United Kingdom to pay the costs.

Pleas in law and main arguments

The Commission takes the view, that by not taxing the auctioneer's profit margin on imported works of art, collectors" items and antiques at the standard rate, the United Kingdom has failed to comply with its obligations under the above mentioned articles of the Sixth VAT Directive.

In the Commission's view, there are two taxable events for VAT purposes in cases of importation and sale by auction: an importation of goods within the meaning of Article 7(1) and a supply of goods within the meaning of Article 26(a).

Contrary to the view held by the United Kingdom, the VAT system does not imply double taxation, because it is not required that VAT at the import rate should first be charged on the total value of the goods after the sale, and then be charged again at the standard rate on the auctioneer's profit margin.

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

Reference for a preliminary ruling by the Juzgado de lo Social No 3 de Orense by order of that Court of 24 June 2003 in the case of Cristalina Salgado Alonso against Instituto Nacional de la Seguridad Social and Tesoreria General de la Seguridad Social

(Case C-306/03)

(2003/C 226/12)

Reference has been made to the Court of Justice of the European Communities by order of the Juzgado de lo Social No 3 de Orense (Social Court No 3, Orense) of 24 June 2003, received at the Court Registry on 17 July 2003, for a preliminary ruling in the case of Cristalina Salgado Alonso against Instituto Nacional de la Seguridad Social and Tesoreria General de la Seguridad Social on the following questions:

1. Do Article 12 and Articles 39 to 42 of the Treaty Establishing the European Community and Article 45 of Council Regulation (EEC) No 1408/71 of 14 June 1971 [1], preclude a national provision under which retirement contributions which the unemployment benefit agency pays on behalf of a worker during the period in which he receives certain unemployment benefits are not to be taken into account for the purposes of completing the various qualifying periods established in the national legislation and of conferring entitlement to the old-age pension, when, because of a long period of unemployment, supposedly protected, it is absolutely impossible for that worker to obtain credit for retirement contributions other than those which are invalidated by law, with the result that only workers who have exercised the right to freedom of movement are affected by that provision of national law and are unable to qualify for the national retirement pension, despite the fact that, under Article 45 of the aforementioned EEC Regulation, those qualifying periods would have to be regarded as completed?

2. Do Article 12 and Articles 39 to 42 of the Treaty Establishing the Community and Article 48(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 preclude national provisions under which retirement contributions which the unemployment benefit agency pays on behalf of a worker during the period in which he receives certain unemployment benefits are not to be taken into account for the purposes of determining whether the total duration of insurance periods or periods of residence covered by the legislation of that Member State amounts to one year, when, because of a long period of unemployment, supposedly protected, it is absolutely impossible for that worker to obtain credit for retirement contributions other than those which fall due and are paid during unemployment, so that only workers who have exercised the right to freedom of movement are affected by that provision of national law and are unable to qualify for the national retirement pension, despite the fact that, under Article 48 (1) of the aforementioned EEC Regulation, the national benefit agency could not be alleviated of the obligation to award national benefits?

[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 (English special edition: Series II Chapter 1971(II), p. 416).

Action brought on 18 July 2003 by the Italian Republic against Commission of the European Communities

(Case C-307/03)

(2003/C 226/13)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 July 2003 by the Italian Republic, represented by Ivo M. Braguglia, acting as Agent, assisted by Maurizio Fiorilli, Avvocato dello Stato.

The applicant claims that the Court should:

— Annul the financial correction imposed against Italy by Commission Decision No C(2003) 1539 final of 15 May 2003.

Pleas in law and main arguments

First, the applicant claims that the spot checks were of poor quality: it disagrees with the findings of the Commission's officials as regards the procedure and effectiveness of the checks carried out.

As regards failure to repay aid in respect of non-eligible areas, the applicant maintains that financial corrections may not be made where the Member State has kept to measures agreed with the Commission and improved checking procedures, as admitted by the Commission and as shown by the fact that it is sought to confer retroactive effectiveness to the scope of checking procedures which have been gradually improved.

Finally, the applicant maintains that the contested decision is vitiated by misapplication of Article 9(3) of Regulation No 3887/92 [1] (areas to be used for calculation of the aid).

[1] OJ L 391, 31.12.1992, p. 36.

Reference for a preliminary ruling by the Juzgado de lo Social No 33 by order of that Court of 8 July 2003 in the case of Ana Isabel López Gil against Instituto Nacional de Empleo (Inem)

(Case C-309/03)

(2003/C 226/14)

Reference has been made to the Court of Justice of the European Communities by order of the Juzgado de lo Social (Social Court) No 33 of 8 July 2003, received at the Court Registry on 23 July 2003, for a preliminary ruling in the case of Ana Isabel López Gil against Instituto Nacional de Empleo (Inem) on the following questions:

1. Where the period for calculation of the basis of contribution for unemployment benefit coincided with exercise of the right to reduced working hours and salary in order to care for a child, does the correct transposition of clause 2 (8) of the framework agreement contained in Directive 96/34 [1] into the domestic law of Member States, and specifically into Spanish law, require those States to adopt in social security legislation relating specifically to unemployment benefit measures to offset the effect of the lower contribution to the social security scheme as a result of the reduced salary received by a worker exercising that right, so as not to cause the worker's unemployment benefit to be reduced?

2. Should the preceding question be answered affirmatively,

   Can failure to comply with the duty under clause 2(8) of the framework agreement contained in Directive 96/34, once the time-limit established in Article 2 of the Directive for its transposition has expired, be remedied directly by the national court in the proceedings in which these preliminary questions are raised, in the decision adopted to determine those proceedings?

[1] Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ L 145 of 19.6.1996, p. 4).

Action brought on 23 July 2003 by the Commission of the European Communities against the Italian Republic

(Case C-313/03)

(2003/C 226/15)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 23 July 2003 by the Commission of the European Communities, represented by M.-J. Jonczy, acting as Agent.

The applicant claims that the Court should:

— find that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/63/EC [1] of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners" Association (ECSA) and the Federation of Transport Workers" Unions in the European Union (FST) — Annex: European Agreement on the organisation of working time of seafarers, or in any event, by failing to communicate any such provisions to the Commission, the Italian Republic has failed to satisfy its obligations under Article 3(1) of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit for implementing the directive expired on 30 June 2002.

(1) OJ L 167 of 2.7.1999, p. 33.

Reference for a preliminary ruling by the Tribunal Administratif de Paris by judgment of that Court of 3 July 2003 in the case of Serge Briheche against Minister for the Interior, Internal Security and Local Freedoms

(Case C-319/03)

(2003/C 226/16)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal Administratif de Paris (Administrative Court, Paris) of 3 July 2003, received at the Court Registry on 24 July 2003, for a preliminary ruling in the case of Serge Briheche against Minister for the Interior, Internal Security and Local Freedoms on the following question:

Does Directive 76/207/EEC of 9 February 1976 (1) preclude France from maintaining in force the provisions of Article 8 of Law No 75-3 of 3 January 1975, as amended by Law No 79-569 of 7 July 1979 and Law No 2001-397 of 9 May 2001, concerning widows who have not remarried?

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, 14.2.1976, p. 40).

Action brought on 24 July 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-320/03)

(2003/C 226/17)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 24 July 2003 by the Commission of the European Communities, represented by Claudia Schmidt of the Commission's Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Rule that the imposition of a ban on the use of a section of the A 12 Inntal motorway between kilometre 20,359 in the Kundl local authority area and kilometre 66,780 in the Ampass local authority area by heavy goods vehicles with a total weight exceeding 7,5 tonnes which carry certain goods is incompatible with the Republic of Austria's obligations under Articles 1 and 3 of Council Regulation (EEC) No 881/92 (1), Articles 1 and 6 of Council Regulation (EEC) No 3118/93 (2) and Articles 28 EC to 30 EC;

2. Order the Republic of Austria to pay the costs of the proceedings.

Pleas in law and main arguments

On 27 May 2003, the First Minister of the Land of Tyrol imposed, on the basis of the Austrian Immissionsschutzgesetz — Luft (Immission Control Act — air), a ban on the use by heavy goods vehicles carrying certain goods of a 46 km stretch of the A 12 Inntal motorway. This absolute ban applies to the vehicles covered with immediate effect from 1 August 2003 for an indefinite period.

The Commission takes the view that, in imposing this ban, the Republic of Austria has acted in breach of the abovementioned obligations of primary and secondary law.

The transit ban or the 'pressure to use railways' creates additional delays and costs for the heavy goods vehicles and undertakings concerned. The ban thus constitutes a manifest obstacle to the free movement of goods. The approach chosen by the Republic of Austria in applying the ban only to transit traffic, approximately 80 % of which is effected by foreign hauliers, thus entails preferential treatment of the national/local movement of goods or, in other words, indirect discrimination of the transport of goods by foreign carriers. That discrimination cannot be justified on the ground of environmental protection. For that reason alone, it must be found that the Republic of Austria has infringed Article 28 EC.

The Commission argues alternatively that, even if the measure is not discriminatory, the argument based on protection of the environment cannot be accepted because the Austrian measure does not meet the requirements of the principle of proportionality. There are less stringent measures, that is to say, measures which appear equally suitable to achieve the aim sought but which present less of an obstacle to the free movement of goods. Since it cannot be justified on the grounds of environmental protection, the measure ultimately infringes Article 28 EC.

It is clear from Regulation (EEC) No 881/92 and Regulation (EEC) No 3118/93 that, in principle, conditions for the free circulation of goods transport other than those laid down in those regulations are impermissible. There is no exception limiting the scope of that principle. There has thus been a

breach of Articles 1 and 3 of Regulation No 881/92 and of Articles 1 and 6 of Regulation No 3118/93.

(1) OJ 1992 L 95, p. 1.
(2) OJ 1993 L 279, p. 1.

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

(Case C-324/03)

(2003/C 226/18)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 July 2003 by the Italian Republic, represented by Ivo Maria Braguglia, acting as Agent, and Avvocato dello Stato Antonio Cingolo.

The applicant claims that the Court should:

— annul the memorandum from Commissioner Barnier of 14 May 2003 No 26777, received on 20 May 2003, in so far as it refuses to accept as eligible for assistance advances granted in relation to State aid by the Member States after 19 February 2003, and all measures on which it is based or with which it is connected;

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

Pleas in law and main arguments

The applicant claims that the contested act is manifestly contrary to Article 32 of Commission Regulation (EC) No 1260/1999 (1) and Rule No 1, Points 1 and 2 of the annex to Commission Regulation (EEC) No 1685/2000 (2). According to the applicant, none of the provisions of the abovementioned regulations assigns significance, for the purposes of eligibility of amounts granted to the final recipient of the funding by way of State aid, to the activities actually assisted by the funding itself. On the contrary, the system set out in the regulations in question gives significance exclusively to payments actually made by the Member State as final recipient, on the sole condition that they state exactly the expenditure actually borne by the final recipient itself.

The applicant also claims that the contested act is unlawful inasmuch as its statement of reasons is defective and contradictory.

(1) OJ 1999 L 161, p. 1.
(2) OJ 2000 L 193, p. 39.

Action brought on 25 July 2003 by the Commission of the European Communities against the Hellenic Republic

(Case C-326/03)

(2003/C 226/19)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 25 July 2003 by the Commission of the European Communities, represented by M.-J. Jonczy, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 99/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Shipowners" Association (ECSA) and the Federation of Transport Workers" Unions in the European Union (FST) (1), and in any event by failing to inform the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 30 June 2002.

(1) OJ L 167, 2.7.1999, p. 33.

Reference for a preliminary ruling by the Tribunal Supremo, Sala de lo Contencioso-Administrativo, division: three by order of that Court of 21 July 2003 in the case of Colegio de Ingenieros de Caminos, Canales y Puertos against Administración del Estado, other Party: G.M. Imo

(Case C-330/03)

(2003/C 226/20)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Supremo, Sala de lo Contencioso-Administrativo, division: three (Supreme Court, Chamber for Contentious-Administrative Proceedings) of 21 July 2003, received at the Court Registry on 29 July 2003, for a preliminary ruling in the case of Colegio de Ingenieros de Caminos, Canales y Puertos against Administración del Estado, other Party: G. M. Imo on the following questions:

A. Can Article 3(a), in conjunction with Article 4(1), of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years" duration [1] be construed in such a way as to permit restricted recognition by a host Member State of the professional qualifications of an applicant who possesses the diploma of Ingegnere civile idraulico [civil engineer specialising in hydraulics] (awarded in Italy) and who wishes to pursue that profession in another Member State whose legislation regulates the profession of Ingeniero de Caminos, Canales y Puertos [civil engineer]? The question is based on the assumption that the latter profession comprises, in the host Member State, activities which do not correspond in all cases to those covered by the applicant's diploma and that the evidence of education and training adduced by the applicant does not cover certain of the core matters which are generally required for the award of the qualification of Ingeniero de Caminos, Canales y Puertos (civil engineer) in the host Member State.

B. Should the reply to the first question be in the affirmative, is it compatible with Articles 39 and 43 EC to restrict the right of applicants who seek to pursue their professions, in a self-employed or employed capacity, in a Member State other than the one in which they were awarded their professional qualification, in such a way that the host Member State is entitled to exclude, under its national legislation, restricted recognition of professional qualifications where such a decision, which in principle implements Article 4 (1)(b) of Directive 89/48/EEC, entails the imposition of certain additional, disproportionate requirements as regards pursuit of the profession?

   For these purposes, 'restricted recognition' is understood to mean that which authorises an applicant to work as an engineer only in the equivalent sector (hydraulics) of the more general profession of Ingeniero de Caminos, Canales y Puertos (civil engineer) regulated in the host Member State, without requiring him to fulfil the additional requirements laid down in Article 4 (1)(b) of Directive 89/48/EEC.

[1] OJ L 19, 24.1.1989, p. 16.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Chancery Division, by order of that court dated 21 July 2003, in the case of easyCar (UK) Ltd against Office of Fair Trading

(Case C-336/03)

(2003/C 226/21)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Chancery Division, dated 21 July 2003, which was received at the Court Registry on 30 July 2003, for a preliminary ruling in the case of easyCar (UK) Ltd and Office of Fair Trading on the following question:

Does the term 'contracts for the provision of [...] transport [...] services', in Article 3(2) of Directive 97/7/EC [1] on the protection of consumers in respect of distance contracts, include contracts for the provision of car hire services?

[1] Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts — Statement by the Council and the Parliament re Article 6(1) — Statement by the Commission re Article 3(1), first indent (OJ L 144, 4.6.1997, p. 19).

Action brought on 1 August 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-339/03)

(2003/C 226/22)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 1 August 2003 by the Commission of the European Communities, represented by J.-C. Schieferer and M. Van Beek, members of the legal service of the Commission of the European Communities, with an address for service in Luxembourg.

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

1. find that, by failing to adopt all the laws, regulations and administrative provisions (in particular the laws, regulations and administrative provisions for the full implementation of the Directive in the Bundesländer, with the exception of Bremen, Hamburg, Hessen, and Baden-Württemberg Niedersachsen) necessary to comply with Council Directive 1999/22/EC [1] of 29 March 1999 relating to the keeping of wild animals in zoos or, in any event, by failing to communicate the same to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under Article 9 of that 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 9 April 2002 without all the Bundesländer having adopted the necessary provisions.

[1] OJ L 94, 9.4.1999, p. 24.

Action brought on 1 August 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-340/03)

(2003/C 226/23)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 1 August 2003 by the Commission of the European Communities, represented by J.-C. Schieferer and G. Valero Jordana, members of the legal service of the Commission of the European Communities, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. find that, by failing fully and correctly to implement the following provisions of Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture [1], the Republic of Austria has failed to fulfil its obligations under the Treaty:

   a) the definition contained in Article 2(a) of the Directive, in the Bundesland Steiermark (exceptions for small sewage treatment plants),

   b) Article 6(b) concerning the information to be regularly provided to users under Annex II A, in Kärnten,

   c) Article 9 in conjunction with Annexes II A, II B and II C in Vorarlberg and in conjunction with Annex II C in Kärnten and in Steiermark, and

   d) the requirement to keep a record in accordance with Article 10 in Kärnten (paragraph 1(a) as regards the exemption of small installations, for which the Directive does not provide), in Steiermark (paragraph 1(b) and (c) as regards the composition and properties of the sludge and the type of treatment) and Vorarlberg (paragraph 1(a), (b) and (c) as regards quantities of sludge, the composition and properties of the sludge and the type of treatment),

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

Pleas in law and main arguments

The Austrian Republic was to implement Directive 86/278/EEC by the date of its accession to the European Union on 1 January 1995.

Although that time-limit has passed, certain provisions of that directive have not been fully and correctly implemented in the Bundesländer of Kärnten, Steiermark and Vorarlberg.

[1] OJ 1986 L 181, p. 6.

Action brought on 1 August 2003 by the Commission of the European Communities against the Hellenic Republic

(Case C-341/03)

(2003/C 226/24)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 1 August 2003 by the Commission of the European Communities, represented by H. Michard, of its Legal Service.

The Commission claims that the Court should:

a) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community [1], and in any event by failing to inform the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under that directive;

b) order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. Under the third paragraph of Article 249 (3) EC, directives are binding, on the Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods.

2. In this case, Article 10(1) of Council Directive 98/49/EC of 29 June 1998 provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 36 months following the date of its entry into force. The directive was brought into force on the day of its publication in the Official Journal of the European Communities (25 July 1998) and should therefore have been transposed into national law by 27 January 2001. Under Article 10(2) of the directive Member States were to inform the Commission of the measures of transposition adopted by 25 January 2002.

[1] OJ L 209, 25.7.1998, p. 46.

Action brought on 4 August 2003 by the Kingdom of Spain against the Council of the European Union

(Case C-342/03)

(2003/C 226/25)

An action against the Council of the European Union was brought before the Court of Justice of the European

Communities on 4 August 2003 by the Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Council Regulation No 975/2003 [1] of 5 June 2003 opening and providing for the administration of a tariff quota for imports of canned tuna covered by CN codes 16041411, 16041418 and 16042070;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Kingdom of Spain submits that Regulation No 975/2003 infringes Community law for the following reasons:

— Breach of the principle of Community preference, given that measures such as those adopted by the contested regulation are appropriate only where Community production is inadequate, which has not been established. The Spanish tuna canning industry is particularly prejudiced by this regulation;

— Distortion of competition in the market: owing to the fact that a product has been put onto the market on more advantageous conditions than those laid down in the general tariff arrangements may give rise to imbalances in the market concerned, with negative economic consequences;

— Procedural irregularities in that the contested regulation is not based on any technical study showing why it is needed. Nor is Community production of canned tuna inadequate and such as to provide grounds justifying the regulation;

— Infringement of Article 12 of the EC-ACP Partnership Agreement, since the ACP States were not informed of the adoption of a measure affecting them;

— Infringement of the preferential agreements with the ACP and GSP-Drugs (Generalised System of Preferences — Drugs) States, since the tariff quota to be allocated pursuant to the measures adopted in the contested regulation will render ineffective the preferential regimes referred to by allowing canned tuna from industrially developed countries to compete in the Community market with that from ACP and GSP-Drugs States;

— Breach of the principle of legitimate expectations, since investments made by Community traders in the ACP and GSP-Drugs States will be affected, account being taken of the conditions for market access for products originating in those countries;

— Infringement of Article 253 EC (failure to state reasons), on the ground that the contested regulation is not based on a technical study showing why it is necessary;

— Misuse of powers, in that the tariff quota has been allocated arbitrarily between the countries benefitting from it.

[1] OJ L 141, 7.6.2003, p. 1.

Action brought on 4 August 2003 by the Commission of the European Communities against the Republic of Finland

(Case C-344/03)

(2003/C 226/26)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 4 August 2003 by the Commission of the European Communities, represented by G. Valero Jordana and P. Aalto, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that the Republic of Finland has failed to fulfil its obligations under Council Directive 79/409/EEC on the conservation of wild birds [1], as amended by the 1994 Act of Accession, inasmuch as the Republic of Finland has not applied the derogation laid down in Article 9(1) of the directive in accordance with the criteria laid down therein, since it has not indicated that the conditions for a derogation under that provision are fulfilled in the case of spring hunting of certain water birds in mainland Finland and the district of Åland, as regards in particular the application of the criteria 'no other satisfactory solution' and 'small numbers' with respect especially to the species eider (Somateria mollissima), golden-eye (Bucephala clangula), red-breasted merganser (Mergus serrator), goosander (Mergus merganser), velvet scoter (Melanitta fusca) and tufted duck (Aythya fuligula), and

2. Order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The Commission submits that the 'no other satisfactory solution' criterion in the directive is not satisfied if autumn hunting of the same species is possible, albeit in smaller numbers and possibly in more difficult conditions from the hunter's point of view or in different hunting locations. The Commission considers that the 'no other satisfactory solution' requirement is to be assessed in a concrete and specific manner, not abstractly and at a general level. Local circumstances must be taken into account in the assessment.

According to the ORNIS committee set up by Article 16 of the directive, 'small numbers' should mean an [additional] number of less than 1 % of the annual mortality (average), determined on the basis of an expert opinion, for those species whose hunting is prohibited, and a number corresponding to a level of about 1 % for those species whose hunting is permitted, in such a way, however, that compliance with Article 9 of the directive depends in any case on compliance with the other points of the article. The spring hunting permitted by Finland has exceeded by several times the number calculated on the basis of the committee's recommendation.

(1) Council Directive 79/409/EEC of 2 April 1979, OJ 1979 L 103, p. 1.

Action brought on 5 August 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-345/03)

(2003/C 226/27)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 5 August 2003 by the Commission of the European Communities, represented by M. Konstantinidis and F. Simonetti, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Directive 2000/53/EC (1) of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles or, in any event, by not communicating them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 21 April 2002.

(1) OJ 2000 L 269, p. 34.

Removal from the register of Case C-131/02 (1)

(2003/C 226/28)

By order of 12 June 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-131/02: Commission of the European Communities v Republic of Austria.

(1) OJ C 131 of 1.6.2002.

Removal from the register of Case C-393/02 (1)

(2003/C 226/29)

By order of 18 June 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-393/02: Commission of the European Communities v Portuguese Republic.

(1) OJ C 323 of 21.12.2002.

Removal from the register of Case C-407/02 (1)

(2003/C 226/30)

By order of 25 June 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-407/02: Commission of the European Communities v Hellenic Republic.

(1) OJ C 19 of 25.01.2003.

Removal from the register of Case C-10/03 (1)

(2003/C 226/31)

By order of 26 June 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-10/03: Commission of the European Communities v Republic of Finland.

(1) OJ C 44 of 22.02.2003.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 June 2003

in Case T-385/00 Jean-Paul Seiller v European Investment Bank (1)

(European Investment Bank — Staff — Admissibility — Clarity of the application — Confirmatory act — Action brought late — Previous conciliation procedure — Pension rights — Luxembourg law — Settlement — Fraudulent misrepresentation)

(2003/C 226/32)

(Language of the case: French)

In Case T-385/00 Jean-Paul Seiller, residing in Luxembourg, represented by D. Chouanier and L. Thielen, lawyers, with an address for service in Luxembourg, against European Investment Bank (Agents: E. Uhlmann, C. Gómez de la Cruz and P. Mousel) — application for payment of the sum of LUF 4779652, together with interest, due to him in respect of his pension rights — the Court of First Instance (Fifth Chamber), composed of R. García-Valdecasas, President, and P. Lindh and J.D. Cooke, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 17 June 2003 in which it:

1. *Dismisses the application;*

2. *Orders the applicant to bear his own costs and to pay those incurred by the EIB.*

(1) OJ C 61 of 24 February 2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 8 July 2003

in Case T-132/01: Euroalliages and Others v Commission of the European Communities (1)

(Dumping — Decision terminating expiry review — Community interest — Application for annulment)

(2003/C 226/33)

(Language of the case: French)

In Case T-132/01: Euroalliages, established in Brussels (Belgium), Péchiney électrométallurgie, established in Courbevoie (France), Vargön Alloys AB, established in Vargön (Sweden), Ferroatlántica, SL, established in Madrid (Spain), represented by D. Voillemot and O. Prost, lawyers, supported by the Kingdom of Spain (Agent: L. Fraguas Gadea), against Commission of the European Communities (Agents: V. Kreuschitz, S. Meany and A.P. Bentley), supported by TNC Kazchrome, established in Almaty (Kazakhstan) and by Alloy 2000 SA, established in Strassen (Luxembourg), represented by J. Flynn, J. Magnin and S. Mills — application for partial annulment of Commission Decision 2001/230/EC of 21 February 2001 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela (OJ 2001 L 84, p. 36) in so far it concerns imports originating in the People's Republic of China, Russia, Ukraine and Kazakhstan — the Court of First Instance (Second Chamber, Extended Composition), composed of N.J. Forwood, President, J. Pirrung, P. Mengozzi, A.W.H. Meij and M. Vilaras, Judges; Registrar: J. Palacio Gonzalez, Principal Administrator, has given a judgment on 8 July 2003, in which it:

1. *Dismissed the action;*

2. *Ordered the applicants to bear their own costs and, jointly and severally, those incurred by the Commission and by the interveners TNC Kazchrome and Alloy 2000, including the costs of the interlocutory proceedings;*

3. *Ordered the Kingdom of Spain, intervener, to bear its own costs.*

(1) OJ No C 227 of 11.8.01.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 July 2003

in Case T-81/02 Margot Wagemann-Reuter v Court of Auditors of the European Communities (1)

(Staff case — Leave on personal grounds — Vacant post — Upgrading of post — Reinstatement)

(2003/C 226/34)

(Language of the case: French)

In Case T-81/02 Margot Wagemann-Reuter, an official of the Court of Auditors of the European Communities, residing in Luxembourg, represented by M.-A. Lucas, lawyer, with an address for service in Luxembourg, against the Court of Auditors of the European Communities (Agents: originally, J.-M. Stenier, P. Giusta and B. Schäfer, later J.-M. Stenier, M. Bavendam and I. Riagáin) — application for, first,

annulment of the implied decision of the Court of Auditors rejecting the applicant's request for reinstatement following leave on personal grounds of 22 January 2001, and the Court of Auditors" decision of 12 December 2001 rejecting the complaint lodged by the applicant on 14 August 2001 and, second, compensation for material and non-material loss allegedly suffered by the applicant, — the Court of First Instance (R. García-Valdecasas, single Judge); J. Plingers, Administrator, for the Registrar, has given a judgment on 17 July 2003, in which it:

1. *Dismisses the application;*

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

([1]) OJ No C 131 of 1 June 2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 25 June 2003

in Case T-287/02 Asian Institute of Technology v Commission of the European Communities ([1])

(Action for annulment — Decision to conclude a research contract — Time-limit — Inadmissible)

(2003/C 226/35)

(Language of the case: French)

In Case T-287/02: Asian Institute of Technology (AIT), whose registered office is at Pathumthani (Thailand), represented by H. Teissier du Cros, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: P. Kuijper and B. Schöfer) — application for annulment of the decision of the Commission of 4 July 2000 to conclude a research contract under the 'Asia-Invest' programme with the Center for Energy-Environment Research and Development — the Court of First Instance (Fifth Chamber), composed of R. Garcia-Valdecasas, President, P. Lindh and J.D. Cooke, Judges; H. Jung, Registrar, has given a judgment on 25 June 2003, in which it:

1. *Dismisses the application as inadmissible.*

2. *Orders the applicant to pay its own costs and those incurred by the Commission.*

([1]) OJ C 289, 23.11.2002.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 15 May 2003

in Case T-47/03 R: Jose Maria Sison v Council of the European Union

(Interlocutory proceedings — Restrictive measures with a view to combating terrorism — Freezing of funds — Disallowance of benefits — Partial inadmissibility of the orders sought — Urgency — Absence)

(2003/C 226/36)

(Language of the case: English)

In Case T-47/03 R, Jose Maria Sison, resident in Utrecht (the Netherlands), represented by J. Fermon, A. Comte, H.E. Schultz, D. Gurses, T. Olsson and J. Lamchek, lawyers, against Council of the European Union (Agents: M. Vitsentzatos and M. Bishop): Application for, first, an order suspending the operation of Decision 2002/974/EC implementing Article 2 (3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/848/EC (OJ 2002 L 337, p. 85) in so far as it mentions the name of the applicant, second, an order requesting the Council not to include the applicant in any new decision implementing Article 2(3) of Regulation No 2580/2001 and, third, an order requesting the Council to inform all Member States that the restrictive measures adopted in relation to the applicant have no legal basis, the President of the Court of First Instance made an order on 15 May 2003, the operative part of which is as follows:

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

2. *Costs are reserved.*

ORDER OF THE COURT OF FIRST INSTANCE

of 16 May 2003

in Case T-140/03: Forum 187 ASBL v Commission of the European Communities ([1])

(Declining of jurisdiction)

(2003/C 226/37)

(Language of the case: English)

In Case T-140/03, Forum 187 ASBL, represented by A. Sutton and J. Killick, Barristers, v Commission of the European Communities (Agents: V. Di Bucci, R. Lyal and G. Rozet):

Application for annulment of decision C(2003) 564 final of 17 February 2003 concerning the system of State aid implemented by Belgium in favour of coordination centres established in Belgium, the Court of First Instance (First Chamber, Extended Composition), composed of: B. Vesterdorf, President, J. Azizi, M. Jaeger, H. Legal and E. Martins Ribeiro, Judges; H. Jung, Registrar, has made an order on 16 May 2003, the operative part of which is as follows:

1. *The Court of First Instance declines jurisdiction in Case T-140/03 Forum 187 ASBL v Commission in favour of the Court of Justice in order to enable the latter to rule on the application for annulment.*

2. *The costs are reserved.*

(1) OJ C 158 of 5.7.2003.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 3 July 2003

in Case T-249/03 R: Y v Commission of the European Communities

(Interim measures — Official — Article 105(2) of the Rules of Procedure)

(2003/C 226/38)

(Language of the case: French)

In Case T-249/03 R Y, an official of the Commission of the European Communities, represented by S. Papanikolaou, lawyer, against Commission of the European Communities — application for suspension of enforcement of the Commission Decision of 18 June 2003 terminating the applicant's assignment to a post in the delegation of that institution in Nairobi (Kenya) with effect from 15 July 2003, the President of the Court of First Instance made an order of 3 July 2003, the operative part of which is as follows:

1. *Enforcement of the Commission Decision of 18 June 2003 terminating the applicant's assignment to a post in the delegation of that institution in Nairobi (Kenya) is suspended with effect from 15 July 2003 until the end of the present interim proceedings.*

2. *Costs are reserved.*

Removal from the register of Case T-78/03 (1)

(2003/C 226/39)

(Language of the Case: French)

By order of 26 June 2003 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-78/03: Haladjian Frères v Commission of the European Communities.

(1) OJ C 112 of 10.5.2003.

III

(Notices)

(2003/C 226/40)

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

OJ C 213, 6.9.2003

Past publications

OJ C 200, 23.8.2003

OJ C 184, 2.8.2003

OJ C 171, 19.7.2003

OJ C 158, 5.7.2003

OJ C 146, 21.6.2003

OJ C 135, 7.6.2003

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