ISSN 1725-2423

Official Journal

of the European Union

C 264

Volume 46

1 November 2003

English edition

Information and Notices

(Continued overleaf)

(Continued overleaf)

(Continued overleaf)

EN

(Continued overleaf)

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 September 2003

in Case C-197/99 P: Kingdom of Belgium v Commission of the European Communities [1]

(Appeal — ECSC Treaty — State aid — Fifth Steel Aid Code — Commission Decision 97/271/ECSC prohibiting certain financial assistance to a steel undertaking — Article 33 of the ECSC Treaty — Infringement)

(2003/C 264/01)

(Language of the case: French)

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

In Case C-197/99 P, Kingdom of Belgium (Agent: A. Snoecx, assisted by J.-M. De Backer, G. Vandersanden and L. Levi), supported by Compagnie belge pour le financement de l'industrie SA (Belfin), represented by M. van der Haegen, D. Waelbroeck and A. Fontaine, avocats, with an address for service in Luxembourg: Appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 25 March 1999 in Case T-37/97 Forges de Clabecq v Commission [1999] ECR II-859, seeking to have that judgment set aside, the other parties to the proceedings being: Commission of the European Communities, represented by G. Rozet, acting as Agent, with an address for service in Luxembourg, defendant at first instance, Forges de Clabecq SA, a company in receivership established in Clabecq (Belgium), applicant at first instance, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, F. Macken (Rapporteur), N. Colneric and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 11 September 2003, in which it:

1. *Sets aside the judgment of the Court of First Instance of 25 March 1999 in Case T-37/97 Forges de Clabecq v Commission, in so far as:*

   — *it distorted the scope of Commission Decision 97/271/ECSC of 18 December 1996, ECSC steel — Forges de Clabecq declaring that certain financial assistance granted to Forges de Clabecq was incompatible with the internal market,*

   — *it is vitiated by a failure to state reasons, in breach of Article 30 and the first paragraph of Article 46 of the ECSC Statute of the Court of Justice;*

2. *Dismisses the remainder of the appeal;*

3. *Dismisses the action for annulment brought by Forges de Clabecq SA;*

4. *Orders the Kingdom of Belgium, the Commission of the European Communities and the Compagnie belge pour le financement de l'industrie SA to bear the costs they incurred before the Court of Justice.*

---

[1] OJ C 281 of 2.10.1999.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-137/00 (Reference for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office): The Queen v The Competition Commission, formerly The Monopolies and Mergers Commission, Secretary of State for Trade and Industry, The Director General of Fair Trading, ex parte: Milk Marque Ltd, National Farmers' Union, third party: Dairy Industry Federation (DIF) [1]

(Common agricultural policy — Articles 32 EC to 38 EC — Regulation (EEC) No 804/68 — Common organisation of the market in milk and milk products — Target price for milk — Regulation No 26 — Application of certain competition rules to the production of and trade in agricultural products — Whether Member States may apply national competition rules to milk producers who choose to organise themselves into cooperatives and hold market power)

(2003/C 264/02)

(Language of the case: English)

In Case C-137/00: Reference to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office) for a preliminary ruling in the proceedings pending before that court between The Queen and The Competition Commission, formerly The Monopolies and Mergers Commission, Secretary of State for Trade and Industry, The Director General of Fair Trading, ex parte: Milk Marque Ltd, National Farmers' Union, third party: Dairy Industry Federation (DIF), on the interpretation of Articles 12, 28 to 30, 32 to 38, 49 and 55 EC, of Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (OJ, English Special Edition 1959-1962, p. 129) and of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176), as amended by Council Regulation (EC) No 1587/96 of 30 July 1996 (OJ 1996 L 206, p. 21), the Court, composed of: M. Wathelet, President of the First and Fifth Chambers, acting as President, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris (Rapporteur), F. Macken, N. Colneric, and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. *Articles 32 to 38 EC, Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products and Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products, as amended by Council Regulation (EC) No 1587/96 of 30 July 1996, must be interpreted as meaning that, in the sector governed by the common organisation of the market in milk and milk products, the national authorities in principle retain jurisdiction to apply national competition law to a milk producers' cooperative in a powerful position on the national market.*

   Where the national competition authorities act in the sector governed by the common organisation of the market in milk and milk products, they are under an obligation to refrain from adopting any measure which might undermine or create exceptions to that common organisation.

   Measures taken by national competition authorities in the sector governed by the common organisation of the market in milk and milk products may not, in particular, produce effects which are such as to impede the working of the machinery provided for by that common organisation. However, the mere fact that the prices charged by a dairy cooperative were already lower than the target price for milk before those authorities intervened is not sufficient to render the measures taken by them in relation to that cooperative in application of national competition law unlawful under Community law.

   Furthermore, such measures may not compromise the objectives of the common agricultural policy as set out in Article 33(1) EC. The national competition authorities are under an obligation to ensure that any contradictions between the various objectives laid down in Article 33 EC are reconciled where necessary, without giving any one of them so much weight as to render the achievement of the others impossible.

2. *The function of the target price for milk laid down in Article 3(1) of Regulation No 804/68, as amended by Regulation No 1587/96, does not preclude the national competition authorities from using that price for the purposes of investigating the market power of an agricultural undertaking by comparing variations in actual prices with the target price.*

3. *In the context of the application of national competition law, the Treaty rules on the free movement of goods do not preclude the competent authorities of a Member State from prohibiting a dairy cooperative which enjoys market power from entering into contracts with undertakings, including undertakings established in other Member States, for the processing, on its behalf, of milk produced by its members.*

4. *Article 12 EC and the second subparagraph of Article 34(2) EC do not preclude the adoption of measures such as those at issue in the main proceedings against a dairy cooperative which enjoys market power and exploits that position in a manner contrary to the public interest, even though large vertically-integrated dairy cooperatives are permitted to operate in other Member States.*

([1]) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 September 2003

in Case C-331/00: Hellenic Republic v Commission of the European Communities ([1])

(EAGGF — Clearance of accounts — Financial years 1996, 1997 and 1998 — Arable crops — Beef — Aid for early retirement)

(2003/C 264/03)

(Language of the case: Greek)

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

In Case C-331/00, Hellenic Republic (Agents: V. Kontolaimos and I. K. Chalkias, as well as by C. Tsiavou) v Commission of the European Communities (Agent: M. Condou-Durande): Application for partial annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49), in so far as its concerns the Hellenic Republic, the Court (Fifth Chamber), composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola, P. Jann, S. von Bahr and A. Rosas, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 18 September 2003, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 18 September 2003

in Case C-338/00 P: Volkswagen AG ([1])

(Appeal — Competition — Distribution of motor vehicles — Partitioning of the market — Article 85 of the EC Treaty (now Article 81 EC) — Regulation (EEC) No 123/85 — Whether the infringement can be attributed to the undertaking concerned — Right to a fair hearing — Duty to state reasons — Legal consequences of disclosure to the press — Effect of propriety of the notification on the calculation of the fine — Cross-appeal)

(2003/C 264/04)

(Language of the case: German)

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

In Case C-338/00 P, Volkswagen AG, established in Wolfsburg (Germany) (represented by R. Bechtold): Appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 6 July 2000 in Case T-62/98 Volkswagen v Commission [2000] ECR II-2707, seeking to have that judgment set aside in part, the other party to the proceedings being: Commission of the European Communities (Agent: K. Wiedner, assisted by H.-J. Freund), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, V. Skouris (Rapporteur), F. Macken and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 18 September 2003, in which it:

1. *Dismisses the main appeal and the cross-appeal;*

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

([1]) OJ C 335 of 25.11.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 September 2003

in Case C-346/00: United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities [1]

(EAGGF — Clearance of accounts — Financial years 1996 and 1997 — Arable crops)

(2003/C 264/05)

(Language of the case: English)

In Case C-346/00, United Kingdom of Great Britain and Northern Ireland (Agent: R. Magrill, assisted by P. Roth, QC) v Commission of the European Communities (Agents: M. Niejahr and K. Fitch): Application for partial annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49), in so far as it excluded from Community financing, for the financial years 1996 and 1997, expenditure of EUR 5 039 175.46 incurred by the United Kingdom in the arable crops sector, the Court (Fifth Chamber), composed of: D.A.O. Edward, acting for the President of the Fifth Chamber, A. La Pergola, P. Jann, S. von Bahr (Rapporteur) and A. Rosas, Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 18 September 2003, in which it:

1. *Dismisses the application;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

[1] OJ C 335 of 25.11.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 September 2003

in Case C-416/00 (Reference for a preliminary ruling from the Tribunale Civile di Padova): Tommaso Morellato v Comune di Padova [1]

(Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC — Selling arrangements — National legislation requiring prior packaging and specific labelling for the marketing of deep-frozen bread lawfully produced in a Member State and placed on the market in another Member State after further baking)

(2003/C 264/06)

(Language of the case: Italian)

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

In Case C-416/00: Reference to the Court under Article 234 EC by the Tribunale Civile di Padova (Italy) for a preliminary ruling in the proceedings pending before that court between Tommaso Morellato and Comune di Padova, on the interpretation of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 and 30 EC), the Court (Fifth Chamber), composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, P. Jann and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 18 September 2003, in which it has ruled:

1. *The requirement for prior packaging imposed by the law of a Member State on the sale of bread obtained by completing, in that Member State, the baking of partly baked bread, whether deep-frozen or not, that has been imported from another Member State does not constitute a quantitative restriction or a measure having equivalent effect within the meaning of Article 30 of the EC Treaty (now, after amendment, Article 28 EC), provided that it applies without distinction to both national and imported products and that it does not in reality constitute discrimination against imported products.*

If the national court, in examining these measures, finds that that requirement results in an obstacle to imports, then it cannot be justified by reasons relating to the protection of the health and life of humans within the meaning of Article 36 of the EC Treaty (now, after amendment, Article 30 EC).

2. *National courts have an obligation to ensure the full effect of Article 30 of the Treaty by disapplying on their own initiative domestic provisions which do not comply with that article.*

---

(1) OJ C 28 of 27.1.2001.

JUDGMENT OF THE COURT

of 11 September 2003

in Case C-445/00: Republic of Austria v Council of the European Union (1)

(System of ecopoints for heavy goods vehicles transiting through Austria — Amendment by Regulation (EC) No 2012/2000 — Illegality)

(2003/C 264/07)

(Language of the case: German)

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

In Case C-445/00, Republic of Austria (Agent: H. Dossi) v Council of the European Union (Agents: A. Lopes Sabino and G. Houttuin) supported by Federal Republic of Germany (Agents: W.-D. Plessing, assisted by J. Sedemund), by Italian Republic (Agent: U. Leanza, assisted by M. Fiorilli) and by Commission of the European Communities (Agents: initially by C. Schmidt and M. Wolfcarius, and, subsequently, C. Schmidt and W. Wils): Application for annulment of Council Regulation (EC) No 2012/2000 of 21 September 2000 amending Annex 4 to Protocol No 9 to the 1994 Act of Accession and Regulation (EC) No 3298/94 with regard to the system of ecopoints for heavy goods vehicles transiting through Austria (OJ 2000 L 241, p. 18), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet and R. Schintgen (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues (Rapporteur), Judges; J. Mischo, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it:

1. *Annuls Article 2(1) of Council Regulation (EC) No 2012/2000 of 21 September 2000 amending Annex 4 to Protocol No 9 to the 1994 Act of Accession and Regulation (EC) No 3298/94 with regard to the system of ecopoints for heavy goods vehicles transiting through Austria;*

2. *Annuls Article 1 and Article 2(4) of that regulation but declares that their effects are to be regarded as definitive;*

3. *Dismisses the remainder of the action;*

4. *Orders each party to bear its own costs, including those of the interlocutory proceedings and of the procedure relating to the withdrawal of a document from the case-file;*

5. *Orders the Federal Republic of Germany, the Italian Republic and the Commission of the European Communities to bear their own costs.*

---

(1) OJ C 45 of 10.2.2001.

JUDGMENT OF THE COURT

(Third Chamber)

of 11 September 2003

in Case C-6/01 (Reference for a preliminary ruling from the Tribunal Cível da Comarca de Lisboa): Associação Nacional de Operadores de Máquinas Recreativas (Anomar) and Others v Estado português (1)

(Freedom to provide services — Operation of games of chance or gambling — Gaming machines)

(2003/C 264/08)

(Language of the case: Portuguese)

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

In Case C-6/01: Reference to the Court under Article 234 EC by the Tribunal Cível da Comarca de Lisboa (Portugal) for a preliminary ruling in the proceedings pending before that court between Associação Nacional de Operadores de Máquinas Recreativas (Anomar) and Others and Estado português, on

the interpretation of Articles 2 EC, 28 EC, 29 EC, 31 EC and 49 EC, the Court (Third Chamber), composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, C. Gulmann and F. Macken, Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it has ruled:

1. *Games of chance and gambling constitute economic activities within the meaning of Article 2 EC.*

2. *The activity of operating gaming machines must, irrespective of whether or not it is separable from activities relating to the manufacture, importation and distribution of such machines, be considered a service within the meaning of the Treaty and, accordingly, it cannot come within the scope of Articles 28 EC and 29 EC relating to the free movement of goods.*

3. *A monopoly in the operation of games of chance or gambling does not fall within the scope of Article 31 EC.*

4. *National legislation such as the Portuguese legislation which authorises the operation and playing of games of chance or gambling solely in casinos in permanent or temporary gaming areas created by decree-law and which is applicable without distinction to its own nationals and nationals of other Member States constitutes a barrier to the freedom to provide services. However, Articles 49 EC et seq. do not preclude such national legislation, in view of the concerns of social policy and the prevention of fraud which justify it.*

5. *The fact that there might exist, in other Member States, legislation laying down conditions for the operation and playing of games of chance or gambling which are less restrictive than those provided for by the Portuguese legislation has no bearing on the compatibility of the latter with Community law.*

6. *In the context of legislation which is compatible with the EC Treaty, the choice of methods for organising and controlling the operation and playing of games of chance or gambling, such as the conclusion with the State of an administrative licensing contract or the restriction of the operation and playing of certain games to places duly licensed for that purpose, falls within the margin of discretion which the national authorities enjoy.*

(1) OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 September 2003

in Case C-13/01 (Reference for a preliminary ruling from the Giudice di pace di Genova): Safalero Srl v Prefetto di Genova (1)

(Directive 1999/5/EC — Radio equipment and telecommunications terminal equipment — Effective judicial protection of rights conferred by the Community legal order — Permissibility of administrative penalties under national legislation — Application to set aside a seizure measure against a third party)

(2003/C 264/09)

(Language of the case: Italian)

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

In Case C-13/01: Reference to the Court under Article 234 of the EC Treaty by the Giudice di pace di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between Safalero Srl and Prefetto di Genova, on the interpretation of the principles of proportionality, effectiveness and judicial protection of rights conferred by the Community legal order, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, C. Gulmann, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it has ruled:

The principle of effective judicial protection of the rights which the Community legal order confers on individuals is to be construed, in circumstances such as those in the main proceedings, as not precluding national legislation under which an importer cannot bring court proceedings to challenge a measure adopted by the public authorities under which goods sold to a retailer are seized, where there is available to that importer a legal remedy which ensures respect for the rights conferred on him by Community law.

(1) OJ C 79 of 10.3.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 September 2003

in Case C-114/01 (Reference for a preliminary ruling from the Korkein hallinto-oikeus): AvestaPolarit Chrome Oy, formerly Outokumpu Chrome Oy [1]

(Approximation of laws — Directives 75/442/EEC and 91/156/EEC — Meaning of 'waste' — Production residue — Mine — Use — Storage — Article 2(1)(b) — Meaning of 'other legislation' — National legislation outside the framework of Directives 75/442/EEC and 91/156/EEC)

(2003/C 264/10)

(Language of the case: Finnish)

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

In Case C-114/01: Reference to the Court under Article 234 EC by the Korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings brought before that court by AvestaPolarit Chrome Oy, formerly Outokumpu Chrome Oy, on the interpretation of Articles 1(a) and 2(1)(b) 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), 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; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it has ruled:

1. *In a situation such as that at issue in the main proceedings, the holder of leftover rock and residual sand from ore-dressing operations from the operation of a mine discards or intends to discard those substances, which must consequently be classified as waste 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, unless he uses them lawfully for the necessary filling in of the galleries of that mine and provides sufficient guarantees as to the identification and actual use of the substances to be used for that purpose.*

2. *In so far as it does not constitute a measure of application of Directive 75/442, as amended by Directive 91/156, and in particular Article 11 of that directive, national legislation must be regarded as 'other legislation' within the meaning of Article 2(1)(b) of that directive covering a category of waste mentioned in that provision, if it relates to the management of that waste as such within the meaning of Article 1(d) of Directive 75/442, and if it results in a level of protection of the environment at least equivalent to that aimed at by that directive, whatever the date of its entry into force.*

([1]) OJ C 173 of 16.6.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 September 2003

in Case C-125/01 (Reference for a preliminary ruling from the Sozialgericht Leipzig): Peter Pflücke v Bundesanstalt für Arbeit [1]

(Protection of workers — Insolvency of the employer — Guarantee of payment of outstanding salary — National provision laying down a two-month time-limit for lodging applications for payment and providing for an extension of that time-limit)

(2003/C 264/11)

(Language of the case: German)

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

In Case C-125/01: Reference to the Court under Article 234 EC by the Sozialgericht Leipzig (Germany) for a preliminary ruling in the proceedings pending before that court between Peter Pflücke and Bundesanstalt für Arbeit, on the interpretation of Article 9 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward (Rapporteur), P. Jann and A. Rosas, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 18 September 2003, in which it has ruled:

1. *Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer does not preclude the application of a time-limit laid down by national law for the lodging of an application by an employee seeking to obtain, in accordance with the detailed rules laid down in that directive, a compensation payment in respect of outstanding salary claims resulting from his employer's insolvency, provided that the time-limit is no less favourable than those governing similar domestic applications (principle of equivalence) and is not framed in such a way as to render impossible in practice the exercise of rights conferred by Community law (principle of effectiveness);*

2. *If the national court finds that the national provision laying down the time-limit is not compatible with the requirements of Community law and that no compatible interpretation of that provision is possible, it must refuse to apply the provision in question.*

(1) OJ C 161 of 2.6.2001.

JUDGMENT OF THE COURT

(First Chamber)

of 11 September 2003

in Case C-155/01 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Cookies World Vertriebsgesellschaft mbH iL v Finanzlandesdirektion für Tirol (1)

(Sixth VAT Directive — Motor vehicle made available under a leasing contract — Taxable transactions — Own consumption — Article 17(6) and (7) — Exclusions provided for under national law at the date of entry into force of the directive)

(2003/C 264/12)

(Language of the case: German)

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

In Case C-155/01: Reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Cookies World Vertriebsgesellschaft mbH iL and Finanzlandesdirektion für Tirol, on the interpretation, in particular, of Articles 5 and 6 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 (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; L.A. Geelhoed, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it has ruled:

The provisions 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 preclude a measure of a Member State which provides that payment for services supplied in other Member States to a person in the first Member State is subject to VAT whereas, had the services in question been supplied within the territory of the country, the person to whom they were supplied would not have been entitled to deduction of input tax.

(1) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 September 2003

in Case C-168/01 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Bosal Holding BV v Staatssecretaris van Financiën (1)

(Freedom of establishment — Taxation — Taxes on company profits — Limitation of the deductibility in one Member State of costs connected with holdings of a parent company in its subsidiaries established in other Member States — Coherence of the tax system)

(2003/C 264/13)

(Language of the case: Dutch)

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

In Case C-168/01: 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 Bosal Holding BV and Staatssecretaris van Financiën, on the interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC), of Article 58 of the EC Treaty (now Article 48 EC), and of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward (Rapporteur), P. Jann and S. von Bahr, Judges; S. Alber, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 18 September 2003, in which it has ruled:

Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, interpreted in the light of Article 52 of the EC Treaty (now, after amendment, Article 43 EC) precludes a national provision which, when determining the tax on the profits of a parent company established in one Member State, makes the deductibility of costs in connection with that company's holding in the capital of a subsidiary established in another Member State subject to the condition that such costs be indirectly instrumental in making profits which are taxable in the Member State where the parent company is established.

(1) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-198/01 (Reference for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio): Consorzio Industrie Fiammiferi (CIF) v Autorità Garante della Concorrenza e del Mercato [1]

(Competition law — National legislation anti-competitive — National competition authority's power to declare such legislation inapplicable — Circumstances in which undertakings not answerable for anti-competitive conduct)

(2003/C 264/14)

(Language of the case: Italian)

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

In Case C-198/01: Reference to the Court under Article 234 EC by the Tribunale amministrativo regionale per il Lazio (Italy) for a preliminary ruling in the proceedings pending before that court between Consorzio Industrie Fiammiferi (CIF) and Autorità Garante della Concorrenza e del Mercato, on the interpretation of Article 81 EC, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet (Rapporteur) and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, S. von Bahr and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. *Where undertakings engage in conduct contrary to Article 81(1) EC and where that conduct is required or facilitated by national legislation which legitimises or reinforces the effects of the conduct, specifically with regard to price-fixing or market-sharing arrangements, a national competition authority, one of whose responsibilities is to ensure that Article 81 EC is observed:*

   — *has a duty to disapply the national legislation;*

   — *may not impose penalties in respect of past conduct on the undertakings concerned when the conduct was required by the national legislation;*

   — *may impose penalties on the undertakings concerned in respect of conduct subsequent to the decision to disapply the national legislation, once the decision has become definitive in their regard;*

   — *may impose penalties on the undertakings concerned in respect of past conduct where the conduct was merely facilitated or promoted by the national legislation, whilst taking due account of the specific features of the legislative framework in which the undertakings acted;*

2. *It is for the referring court to assess whether national legislation such as that at issue in the main proceedings, under which competence to fix the retail selling prices of a product is delegated to a ministry and power to allocate production between undertakings is entrusted to a consortium to which the relevant producers are obliged to belong, may be regarded, for the purposes of Article 81(1) EC, as precluding those undertakings from engaging in autonomous conduct which remains capable of preventing, restricting or distorting competition.*

---

[1] OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 September 2003

in Case C-207/01 (Reference for a preliminary ruling from the Corte d'appello di Firenze): Altair Chimica SpA v ENEL Distribuzione SpA [1]

(Competition — Dominant position — Supply of electricity — Imposition of a 'sovrapprezzo')

(2003/C 264/15)

(Language of the case: Italian)

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

In Case C-207/01: Reference to the Court under Article 234 EC by the Corte d'appello di Firenze (Italy) for a preliminary ruling in the proceedings pending before that court between Altair Chimica SpA and ENEL Distribuzione SpA on the interpretation of Articles 81, 82 and 85 EC, Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), as amended by Council Directive 96/99/EC of 30 December 1996 (OJ 1997 L 8, p. 12), and Council Recommendation 81/924/EEC of 27 October 1981 on electricity tariff structures in the Community (OJ 1981 L 337, p. 12), 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 11 September 2003, in which it has ruled:

Articles 81, 82 and 85 EC and Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 96/99/EC of 30 December 1996, must be interpreted as meaning that they do not preclude a national rule providing for the levy of surcharges on the price of electricity such as those at issue in the main proceedings when the electricity is used in an electro-chemical process and that Council Recommendation 81/924/EEC of 27 October 1981 on electricity tariff structures in the Community is not capable of preventing a Member State from levying such surcharges.

([1]) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 September 2003

in Case C-211/01: Commission of the European Communities v Council of the European Union ([1])

(EC/Bulgaria and EC/Hungary Agreements — Carriage of goods by road and combined transport — Taxation — Legal basis — Articles 71 EC and 93 EC)

(2003/C 264/16)

(Language of the case: French)

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

In Case C-211/01, Commission of the European Communities (Agent: initially by M. Wolfcarius, subsequently by W. Wils) v Council of the European Union (Agents: A. Lopes Sabino and E. Karlsson) supported by Federal Republic of Germany (Agents: W.-D. Plessing and M. Lumma) and by Grand Duchy of Luxembourg (Agents: J. Falts and N. Mackel): Application for the annulment of Council Decisions 2001/265/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Bulgaria establishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 4), and 2001/266/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 27), but only in so far as they are based on Article 93 EC and without altering their effects, which should be maintained, the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, A. La Pergola and S. von Bahr, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 September 2003, in which it:

1. *Annuls Council Decision 2001/265/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Bulgaria establishing certain conditions for the carriage of goods by road and the promotion of combined transport and 2001/266/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of combined transport;*

2. *Declares that the effects of the decisions are to be maintained until the measures necessary to implement the present judgment have been adopted;*

3. *Orders the Council of the European Union to pay the costs;*

4. *Orders the Federal Republic of Germany and the Grand Duchy of Luxembourg to bear their own costs.*

([1]) OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-236/01 (Reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio): Monsanto Agricoltura Italia SpA and Others v Presidenza del Consiglio dei Ministri and Others ([1])

(Regulation (EC) No 258/97 — Novel foods — Placing on the market — Safety assessment — Simplified procedure — Substantial equivalence to existing foods — Foods produced from genetically modified maize — Presence of residues of transgenic protein — Measure by a Member State temporarily restricting or suspending the trade in or use of a novel food in its territory)

(2003/C 264/17)

(Language of the case: Italian)

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

In Case C-236/01: Reference to the Court under Article 234 EC by the Tribunale amministrativo regionale del Lazio (Italy)

for a preliminary ruling in the proceedings pending before that court between Monsanto Agricoltura Italia SpA and Others and Presidenza del Consiglio dei Ministri and Others, on the interpretation and validity of the first subparagraph of Article 3(4) and the first paragraph of Article 5 of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ 1997 L 43, p. 1), and on the interpretation of Article 12 thereof, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet and C.W.A. Timmermans (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; S. Alber, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. *The first subparagraph of Article 3(4) of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients must be interpreted as meaning that the mere presence in novel foods of residues of transgenic protein at certain levels does not preclude those foods from being considered substantially equivalent to existing foods and, consequently, use of the simplified procedure for placing those foods on the market. However, that is not the case where the existence of a risk of potentially dangerous effects on human health can be identified on the basis of the scientific knowledge available at the time of the initial assessment. It is for the national court to determine whether that condition is satisfied.*

2. *In principle, the issue of the validity of the use of the simplified procedure laid down in Article 5 of Regulation No 258/97 for the placing of novel foods on the market does not affect the power of the Member States to adopt measures falling under Article 12 of the Regulation, such as the Decree of 4 August 2000 at issue in the main proceedings. Since the simplified procedure does not imply any consent, even tacit, by the Commission, a Member State is not required to challenge the lawfulness of such a consent before adopting such measures. Nevertheless, those measures can be adopted only if the Member State has first carried out a risk assessment which is as complete as possible given the particular circumstances of the individual case, from which it is apparent that, in the light of the precautionary principle, the implementation of such measures is necessary in order to ensure that novel foods do not present a danger for the consumer, in accordance with the first indent of Article 3(1) of Regulation No 258/97.*

3. *Consideration of the fourth question has disclosed no factor such as to affect the validity of Article 5 of Regulation No 258/97 as regards, inter alia, the condition for application of that provision relating to substantial equivalence within the meaning of the first subparagraph of Article 3(4) of the Regulation.*

([1]) OJ C 259 of 15.9.2001.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-285/01 (Reference for a preliminary ruling from the Cour administrative d'appel de Douai): Isabel Burbaud v Ministère de l'Emploi et de la Solidarité ([1])

(Recognition of diplomas — Hospital managers in the public service — Directive 89/48/EEC — Definition of 'diploma' — Entrance examination — Article 48 of the EC Treaty (now, after amendment, Article 39 EC))

(2003/C 264/18)

(Language of the case: French)

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

In Case C-285/01: Reference to the Court under Article 234 EC by the Cour administrative d'appel de Douai (France) for a preliminary ruling in the proceedings pending before that court between Isabel Burbaud and Ministère de l'Emploi et de la Solidarité, on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and 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 (OJ 1989 L 19, p. 16), 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; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, subsequently H. von Holstein, Deputy Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. *Confirmation of passing the final examination of the École nationale de la santé publique, which leads to permanent appointment to the French hospital public service, must be regarded as a 'diploma' within the meaning 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. It is for the national court to determine, for the purposes of applying point (a) of the first paragraph of*

Article 3 of that directive, whether a qualification obtained in another Member State by a national of a Member State wishing to pursue a regulated profession in the host Member State can be regarded as a diploma within the meaning of that provision and, if so, to determine the extent to which the training courses whose successful completion leads to the award of those diplomas are similar with regard to both their duration and the matters covered. If it is apparent from that court's examination that both qualifications constitute diplomas within the meaning of that directive and that those diplomas are awarded on the completion of equivalent education or training, the directive precludes the authorities of the host Member State from making access by that national of a Member State to the profession of manager in the hospital public service subject to the condition that he complete the training given by the École nationale de la santé publique and pass the final examination at the end of that training.

2. *Where a national of a Member State holds a diploma obtained in one Member State which is equivalent to the diploma required in another Member State in order to take up employment in the hospital public service, Community law precludes the authorities of the second Member State from making that national's access to the employment in question subject to his passing a competition such as the entrance examination of the École nationale de la santé publique.*

([1]) OJ C 275 of 29.9.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 18 September 2003

In Joined Cases C-292/01 and C-293/01 (Reference for a preliminary ruling from the Consiglio di Stato): Albacom SpA (C-292/01), Infostrada SpA (C-293/01) v Ministero del Tesoro, del Bilancio e della Programmazione Economica, Ministero delle Comunicazioni ([1])

(Telecommunications services — General authorisations and individual licences — Directive 97/13/EC — Fees and charges for individual licences)

(2003/C 264/19)

(Language of the case: Italian)

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

In Joined Cases C-292/01 and C-293/01: Reference to the Court under Article 234 EC by the Consiglio di Stato (Italy) for a preliminary ruling in the proceedings pending before that court between Albacom SpA (C-292/01), Infostrada SpA (C-293/01) and Ministero del Tesoro, del Bilancio e della Programmazione Economica, Ministero delle Comunicazioni, on the interpretation of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15), 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; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 18 September 2003, in which it has ruled:

Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services and, in particular, Article 11 thereof, prohibit Member States from imposing financial charges other than and in addition to those allowed by the directive, such as the contested charge in the main proceedings, on undertakings which hold individual licences in the telecommunications sector solely because they hold such licences.

([1]) OJ C 275 of 29.9.2001 and OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT

(First Chamber)

of 11 September 2003

in Case C-331/01: Kingdom of Spain v Commission of the European Communities ([1])

(EAGGF — Clearance of accounts — Additional payments granted to producers of bovine animals in 1996 — Time-limits for notification of results of checks)

(2003/C 264/20)

(Language of the case: Spanish)

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

In Case C-331/01, Kingdom of Spain (Agent: initially by M. López-Monís Gallego and subsequently by L. Fraguas Gadea) v Commission of the European Communities (Agent: S. Pardo Quintillán): Application for the annulment of Commission Decision 2001/557/EC of 11 July 2001 excluding from Community financing certain expenditure incurred by

the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2001 L 200, p. 28) in so far as it concerns the Kingdom of Spain, the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 11 September 2003, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 303 of 27.10.2001.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-361/01 P: Christina Kik v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Regulation (EC) No 40/94 — Article 115 — Rules in force governing languages at the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) — Plea of illegality — Principle of non-discrimination)

(2003/C 264/21)

(Language of the case: Dutch)

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

In Case C-361/01 P, Christina Kik (represented by E. H. Pijnacker Hordijk and S. B. Noë): Appeal against the judgment of the Court of First Instance of the European Communities in Case T-120/99 Kik v OHIM [2001] ECR II-2235, seeking to have that judgment set aside, the other parties to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühendahl, O. Montalto and J. Miranda de Sousa) supported by Commission of the European Communities (Agents: W. Wils and N. Rasmussen), Hellenic Republic (Agents: A. Samoni-Rantou and S. Vodina), Kingdom of Spain (Agent: S. Ortiz Vaamonde) and Council of the European Union (Agent: G. Houttuin and A. Lo Monaco), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans, Presidents of Chamber, 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 (Rapporteur), Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 9 September 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Ms Kik to pay the costs;*

3. *Orders the Hellenic Republic, the Kingdom of Spain, the Council of the European Union and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 331 of 24.11.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 11 September 2003

in Case C-22/02: Commission of the European Communities v Italian Republic ([1])

(Failure of a Member State to fulfil obligations — Failure to implement Directive 1999/94/EC)

(2003/C 264/22)

(Language of the case: Italian)

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

In Case C-22/02, Commission of the European Communities (Agents: G. Valero Jordana and R. Amorosi) v Italian Republic (Agent: I.M. Braguglia, assisted by A. De Stefano): Application for a declaration that, by failing to adopt or, in any event, to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars (OJ 2000 L 12, p. 16), the Italian Republic has failed to fulfil its obligations under that directive, the Court (Second Chamber), composed of: R. Schintgen, President of the Chamber, V. Skouris and N. Colneric (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 11 September 2003, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars, the Italian Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 68 of 16.3.2002.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-25/02 (Reference for a preliminary ruling from the Bundesverwaltungsgericht): Katharina Rinke v Ärztekammer Hamburg ([1])

(Equal treatment for men and women — Directives 86/457/EEC and 93/16/EEC — Obligation to undertake certain periods of full-time training during part-time training in general medical practice)

(2003/C 264/23)

(Language of the case: German)

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

In Case C-25/02: Reference to the Court under Article 234 EC by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Katharina Rinke and Ärztekammer Hamburg on the interpretation of Article 5 of Council Directive 86/457/EEC of 15 September 1986 on specific training in general medical practice (OJ 1986 L 267, p. 26) and Article 34 of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1), and on the compatibility of those provisions with the prohibition of indirect discrimination on grounds of sex as laid down in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and 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; L.A. Geelhoed, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. *Compliance with the prohibition of indirect discrimination on grounds of sex is a condition governing the legality of all measures adopted by the Community institutions.*

2. *Examination of Question 1 has failed to disclose any factor capable of affecting the validity of the provision contained in Article 5(1) of Council Directive 86/457/EEC of 15 September 1986 on specific training in general medical practice and Article 34(1) of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, according to which part-time training in general medical practice must include a certain number of periods of full-time training.*

([1]) OJ C 97 of 20.4.2002.

JUDGMENT OF THE COURT

of 9 September 2003

in Case C-151/02 (Reference for a preliminary ruling from the Landesarbeitsgericht Schleswig-Holstein): Landeshauptstadt Kiel v Norbert Jaeger ([1])

(Social policy — Protection of the safety and health of workers — Directive 93/104/EC — Concepts of 'working time' and 'rest period' — On-call service ('Bereitschaftsdienst') provided by doctors in hospitals)

(2003/C 264/24)

(Language of the case: German)

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

In Case C-151/02: Reference to the Court under Article 234 EC by the Landesarbeitsgericht Schleswig-Holstein (Germany) for a preliminary ruling in the proceedings pending before that court between Landeshauptstadt Kiel and Norbert Jaeger on the interpretation of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) and, in particular, Articles 2(1) and (3) thereof, the Court, composed of: G.C. Rodríguez Iglesias, President, M. Wathelet, R. Schintgen (Rapporteur) and C.W.A. Timmermans, Presidents of Chambers, C. Gulmann, D.A.O. Edward, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 9 September 2003, in which it has ruled:

1. *Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time must be interpreted as meaning that on-call duty ('Bereitschaftsdienst') performed by a doctor where he is required to be physically present in the hospital must be regarded as constituting in its totality working time for the purposes of that directive even where the person concerned is permitted to rest at his place of work during the periods when his services are not required with the result that that directive precludes legislation of a Member State which classifies as rest periods an employee's periods of inactivity in the context of such on-call duty.*

2. *Directive 93/104 must also be interpreted as meaning that:*

   — *in circumstances such as those in the main proceedings, that directive precludes legislation of a Member State which, in the case of on-call duty where physical presence in the hospital is required, has the effect of enabling, in an appropriate case by means of a collective agreement or a works agreement based on a collective agreement, an offset only in respect of periods of on-call duty during which the worker has actually been engaged in professional activities;*

   — *in order to come within the derogating provisions set out in Article 17(2), subparagraph 2.1(c)(i) of the directive, a reduction in the daily rest period of 11 consecutive hours by a period of on-call duty performed in addition to normal working time is subject to the condition that equivalent compensating rest periods be accorded to the workers concerned at times immediately following the corresponding periods worked;*

   — *furthermore, in no circumstances may such a reduction in the daily rest period lead to the maximum weekly working time laid down in Article 6 of the directive being exceeded.*

([1]) OJ C 156 of 29.6.2002.

Reference for a preliminary ruling by the Tribunale Civile e Penale di Perugia — Ufficio per le indagini preliminari — by order of that Court of 12 June 2003 in the case against Alessandrello Rosario and Others

(Case C-338/03)

(2003/C 264/25)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Civile e Penale di Perugia — Ufficio per le indagini preliminari — (District Civil and Criminal Court, Perugia — Preliminary Investigations Section) of 12 June 2003, received at the Court Registry on 1st August 2003, for a preliminary ruling in the case against Alessandrello Rosario and Others on the following questions:

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

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

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

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

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

6. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which, in response to the infringement by companies of those obligations concerning disclosure and the provision of accurate information imposed on them in order to safeguard 'the interests of both members and third parties', provides for prosecution machinery and a sanctionative system which are markedly differentiated, whereby the possibility of the imposition of a punishment upon complaint being made, together with more serious and effective penalties, is reserved solely for infringements occasioning loss to members and creditors?

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

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

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

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

Reference for a preliminary ruling by the Tribunale di Cagliari — Sezione Civile — by order of that Court of 29 April 2003 in the case of Giuseppe Atzeni and Others against Regione Autonoma della Sardegna

(Case C-346/03)

(2003/C 264/26)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Cagliari — Sezione Civile (Cagliari District Court — Civil Chamber) of 29 April 2003, received at the Court Registry on 6 August 2003, for a preliminary ruling in the case of Giuseppe Atzeni and Others against Regione Autonoma della Sardegna on the following questions on the validity of Commission Decision No 612/97 (1), with regard to the following defects:

(a) lack of competence of the Commission to adopt the contested decision inasmuch as it infringes Article 32 of the Treaty on European Union in conjunction with Articles 33, 34, 35, 36, 37 and 38 thereof;

(b) infringement of the rules which govern the procedure provided for in Article 88(1) of the Treaty on European Union;

(c) infringement of the rules which govern the procedure provided for in Article 88(2) and (3) of the Treaty on European Union;

(d) failure to provide a statement of reasons as required by Article 253 of the Treaty on European Union in conjunction with Articles 88(3) and 87(1) thereof;

(e) infringement and misapplication of Council Regulation No 797/85 (2) on improving the efficiency of agricultural structures;

(f) infringement of and failure to observe 'practice for aid to farms in difficulty' and the 'Community guidelines on State aid for rescuing and restructuring firms in difficulty'.

(1) OJ L 248 of 11.9.1997, p. 27.
(2) OJ L 93 of 30.3.1985, p. 1.

Reference for a preliminary ruling by the Tribunale Amministrativo Regionale del Lazio — Sezione Seconda ter — by order of that Court of 9 June 2003 in the case of Regione Autonoma Friuli Venezia Giulia and Agenzia Regionale per lo Sviluppo Rurale (ERSA) against Ministero per le Politiche Agricole e Forestali and Regione Veneto

(Case C-347/03)

(2003/C 264/27)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrativo Regionale del Lazio — Sezione Seconda ter (Regional Administrative Court for Lazio — Second Division / III) of 9 June 2003, received at the Court Registry on 7 August 2003, for a preliminary ruling in the case of Regione Autonoma Friuli Venezia Giulia and Agenzia Regionale per lo Sviluppo Rurale (ERSA) against Ministero per le Politiche Agricole e Forestali and Regione Veneto on the following questions:

1. Can the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, concluded on 16 December 1991 and published in OJ 1993 L 347, provide a proper and sufficient legal basis for conferring on the European Community power to conclude the Community Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names of 29 November 1993 [1] (OJ 1993 L 337), with particular reference to Article 65(1), to joint declaration no 13 and to Annex XIII (points 3, 4 and 5) of the European Agreement of 1991 on the possible reservation of the sovereignty and jurisdiction of the Member States in the matter of national geographical names used with reference to food and wine and restraint of any transfer of jurisdiction of competence in that matter to the European Community.

2. In view of what is said in opinion no 1/94 of the Court of Justice of the European Communities concerning the exclusive jurisdiction of the European Community, should the Community Agreement between the European Community and the Republic of Hungary on the protection and control of wine names of 29 November 1993 (OJ 1993 L 337), which specifies the protection of geographical names which have intellectual and commercial property significance, be declared invalid and of no effect within the Community legal order because the agreement itself has not been ratified by the individual Member States of the European Community?

3. In the event that the Community Agreement of 1993 (OJ 1993 L 337) is to be regarded as lawful and applicable in its entirety, should the prohibition of the use in Italy after 2007 of the name 'Tocai', which arises from the exchange of letters between the parties to the agreement, annexed to the agreement, be regarded as invalid and of no effect because it is inconsistent with the rules governing geographical homonyms established in the agreement itself (see Article 4(5) of the protocol to the agreement)?

4. Should the Second Joint Declaration annexed to the 1993 agreement (OJ 1993 L 337), which implies that the contracting parties were unaware, at the time of their negotiations, of the existence of homonyms connected with European and Hungarian wines, be regarded as a clear misrepresentation of reality (given that the Italian and Hungarian names used to refer to 'Tocai' wines have existed alongside each other for centuries, were officially recognised in 1948 in an agreement between Italy and Hungary and were recently brought within the scope of Community law) such as to render null and void that part of the 1993 agreement which prohibits the use in Italy of the name Tocai, on the basis of Article 48 of the Vienna convention on the law of the Treaties?

5. In light of Article 59 of the Vienna convention on the law of the Treaties, is the TRIPS agreement on trade-related aspects of intellectual property rights (OJ 1994 L 336), which was concluded within the context of the World Trade Organisation and entered into force on 1 January 1996, thus after the Community Agreement of 1993 (OJ 1994 L 337) entered into force, to be interpreted as meaning that its provisions governing homonyms in vine names apply in place of those of the Community Agreement of 1993 where there is inconsistency between the two, given that the parties to both agreements are the same?

6. In the case of two names that are homonyms and refer to two different wines produced in two different countries both party to the TRIPS Agreement (and both where the homonym relates to two geographical names used in both the countries party to TRIPS and where it relates to a geographical name in one country and the like name relates to a vine traditionally cultivated in another country party to TRIPS), must Articles 22 to 24 of the Third Part of Annex C to the Treaty Establishing the World Trade Organisation, which contains the TRIPS Agreement (OJ 1994 L 336), which entered into force on 1 January 1996, be interpreted as meaning that both the names may continue to be used provided that they have been used in the past by the respective producers either in good faith or for at least 10 years prior to 15 April 1994 (Article 24(4)) and each name clearly indicates the country or region or area of the origin of the wine to which it refers in such a way as not to mislead consumers?

7. Does the right of ownership set out in Article 1 of Protocol No 1 to the European Convention on Human Rights (The Rome Convention of 1950) and taken up in Article 17 of the Charter of Fundamental Rights of the European Union proclaimed in Nice in October 2000 also cover intellectual property in the names of the places of origin of wines and the exploitation of those names, and, consequently, does the principle expressed by that law preclude application of the agreement set out in the exchange of letters annexed to the Agreement between the European Community and the Republic of Hungary on reciprocal protection and control of wine names (OJ 1994 L 337), but not included in the body of that agreement, under which wine-producers of the Friuli-Venezia Giulia region are not permitted to use the name 'Tocai Friulano', particularly in view of the total lack of any compensation to the wine-producers of Friuli-Venezia Giulia thus dispossessed, the lack of any general public interest justifying their dispossession and the evident disregard for the principle of proportionality?

8. In the event that it is held that the Community laws contained in the Community Agreement between the European Community and the Republic of Hungary on the protection and control of wine names of 29 November 1993 (OJ 1993 L 337) and/or the exchange of letters annexed thereto are unlawful to the extent described in the preceding questions, must the provisions of Regulation (EC) No 753/2002 [2], under which use of the name 'Tocai Friulano' is to be prohibited after 31 March 2007 (Article 19(2)) be regarded as invalid and of no effect?

---

[1] Read: 23 November 1993.
[2] OJ L 118 of 4.5.2002, p. 1.

Reference for a preliminary ruling by the Landgericht Bochum by order of that Court of 29 July 2003 in the proceedings between 1. Mrs Elisabeth Schulte, 2. Mr Wolfgang Schulte and Deutsche Bausparkasse Badenia AG

(Case C-350/03)

(2003/C 264/28)

Reference has been made to the Court of Justice of the European Communities by order of the Landgericht Bochum (Bochum Regional Court) of 29 July 2003, received at the Court Registry on 11 August 2003, for a preliminary ruling in the proceedings between 1. Mrs Elisabeth Schulte, 2. Mr Wolfgang Schulte and Deutsche Bausparkasse Badenia AG on the following questions:

1. Does Article 3(2)(a) of Council Directive 85/577/EEC [1] of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises also cover such contracts for the purchase of immovable property which must be regarded as merely a component of a credit-financed capital investment model and in the case of which the contract negotiations conducted up to the conclusion of the contract were held in a doorstep-selling situation, as defined in Paragraph 1 of the Gesetz über den Widerruf von Haustürgeschäften und ähnlichen Geschäften (Law on the cancellation of doorstep transactions and analogous transactions), both as regards the contract for the purchase of the immovable property and the loan agreement serving solely to finance that purchase?

2. Are the requirements of the rule concerning a high level of protection in the field of consumer protection (Article 95(3) EC) and the effectiveness of consumer protection safeguarded by Directive 85/577/EEC satisfied by a national legal system or the interpretation thereof which limits merely to the reversal of the loan agreement the legal effects of the revocation of the declaration of intent to enter into a loan agreement, even in connection with such capital investment models in which the loan would not have been granted at all without the acquisition of the immovable property?

3. Is a national rule on the legal effects of cancelling a loan agreement to the effect that the cancelling consumer must pay back the loan proceeds to the financing bank, even though according to the plan drawn up for the capital investment the loan serves solely to finance the immovable property and is paid directly to the vendor of the immovable property, consistent with the protective purpose of the rule on cancellation laid down in Article 5(2) of Directive 85/577/EEC?

4. Where a legal effect of cancellation, under national law, results in the consumer being required, after declaring cancellation, immediately to pay back — in accordance with the plan drawn up for the capital investment — the loan proceeds which have thus far not been redeemed at all, plus interest thereon at the normal market rate, is this effect contrary to the rule concerning a high level of protection in the field of consumer protection (Article 95(3) EC) and to the principle of the effectiveness of consumer protection enshrined in Directive 85/577/EEC?

---

[1] OJ L 372, p. 31.

Reference for a preliminary ruling by the Bundesgerichtshof by order of that Court of 9 July 2003 in the case of Dr Elisabeth Mayer against Versorgungsanstalt des Bundes und der Länder

(Case C-356/03)

(2003/C 264/29)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesgerichtshof (Federal Court of Justice) of 9 July 2003, received at the Court Registry on 18 August 2003, for a preliminary ruling in the case of Dr Elisabeth Mayer against Versorgungsanstalt des Bundes und der Länder on the following questions:

1. Do Article 119 of the EC Treaty and/or Article 11(2)(a) of Directive 92/85/EEC [1] and Article 6(1)(g) of Directive 86/378/EEC [2], as amended by Directive 96/97/EC [3], preclude provisions of statutes governing a supplementary occupational pension scheme of the kind at issue in this case under which an employee, during statutory maternity leave (in this case from 16 December 1992 to 5 April 1993 and from 17 January to 22 April 1994), acquires no deferred rights to an insurance annuity which, in the event of her early departure from the compulsory insurance scheme, may be claimed monthly from the time the insurance contingency (pensionable age, occupational disability or invalidity) materialises, because the accrual of such rights is conditional upon the employee's receiving taxable pay during the relevant period, but the benefits paid to her during maternity leave do not constitute taxable pay under the provisions of national law?

2. Is this the case in particular if account is taken of the fact that the insurance annuity is not — like the occupational pension which would be paid if the insurance contingency materialised whilst she was still in the compulsory pension scheme — intended to cover the employee in old age or in the event of invalidity but to reimburse the contributions made in respect of her during the period of compulsory insurance?

---

[1] OJ L 348 [1992], p. 1.
[2] OJ L 225 [1986], p. 40.
[3] OJ L 46 [1997], p. 20.

Action brought on 19 August 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-357/03)

(2003/C 264/30)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 19 August 2003 by the Commission of the European Communities, represented by Denis Martin, Member of the Legal Service of the European Commission, and Horstpeter Kreppel, seconded to the Commission's Legal Service within the framework of an exchange with national officials, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt or at any rate to notify the laws, regulations and administrative provisions necessary fully to comply with Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (14th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [1], the Republic of Austria has failed to fulfil its obligations under Article 14 of that directive;

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

Pleas in law and main arguments

The period for transposition expired on 5 May 2001.

---

[1] OJ 1998 L 131, p. 11.

Action brought on 19 August 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-358/03)

(2003/C 264/31)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 19 August 2003 by the Commission of the European Communities, represented by Denis Martin, Member of the Legal Service of the European Commission, and Horstpeter Kreppel, seconded to the Commission's Legal Service within the framework of an exchange with national officials, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt or at any rate to notify the laws, regulations and administrative provisions necessary fully to comply with Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [1], the Republic of Austria has failed to fulfil its obligations under Article 9 of that directive;

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

Pleas in law and main arguments

The Republic of Austria was to transpose Directive 90/269/EEC by the time of its accession to the European Union on 1 January 1995.

That period expired without the Republic of Austria having adopted the necessary provisions.

([1]) OJ 1990 L 156, p. 9.

Action brought on 19 August 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-359/03)

(2003/C 264/32)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 19 August 2003 by the Commission of the European Communities, represented by Denis Martin, Member of the Legal Service of the European Commission, and Horstpeter Kreppel, seconded to the Commission's Legal Service within the framework of an exchange with national officials, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt or at any rate to notify the laws, regulations and administrative provisions necessary fully to comply with Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ([1]), the Republic of Austria has failed to fulfil its obligations under Article 11 of that directive and the third paragraph of Article 249 of the Treaty.

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

Pleas in law and main arguments

The Republic of Austria was to transpose Directive 90/270/EEC by the time of its accession to the European Union on 1 January 1995.

That period expired without the Republic of Austria having adopted the necessary provisions.

([1]) OJ 1990 L 156, p. 14.

Action brought on 19 August 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-360/03)

(2003/C 264/33)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 19 August 2003 by the Commission of the European Communities, represented by Denis Martin, Member of the Legal Service of the European Commission, and Horstpeter Kreppel, seconded to the Commission's Legal Service within the framework of an exchange with national officials, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt or to notify the Commission of all the laws, regulations and administrative provisions necessary fully to comply with Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work ([1]), the Republic of Austria has failed to fulfil its obligations under Article 3 of that directive;

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

Pleas in law and main arguments

The period for transposition expired on 31 December 2001.

([1]) OJ 2000 L 142, p. 47.

Action brought on 21 August 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-362/03)

(2003/C 264/34)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 21 August 2003 by the Commission of the European Communities, represented by Arnaud Bordes and Gerald Braun, Members of the Legal Service of the European Commission, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt or to notify the Commission of the laws, regulations and administrative provisions necessary to transpose Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1], the Republic of Austria has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition expired on 1 January 2002.

---

[1] OJ 1999 L 203, p. 53.

Action brought on 21 August 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-363/03)

(2003/C 264/35)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 21 August 2003 by the Commission of the European Communities, represented by Wouter Wils, Member of the Legal Service of the European Commission, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to adopt or to notify the Commission of the laws, regulations and administrative provisions necessary to transpose Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community [1], the Republic of Austria has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition expired on 10 August 2002.

---

[1] OJ 2000 L 203, p. 1.

Action brought on 9 September 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-377/03)

(2003/C 264/36)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 9 September 2003 by the Commission of the European Communities, represented by C. Giolito and G. Wilms, acting as Agents, with an address for service in Luxembourg.

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

1. Declare that,

— by failing regularly to release certain transit documents (TIR carnets) with the result that the own resources arising therefrom were not properly accounted for or made available to the Commission within the prescribed periods;

— by failing to forward to the Commission all the other undisputed customs duties treated in the same way (entry in B accounts instead of A accounts) in respect of the Belgium customs authority's failure to release TIR carnets since 1996;

— by refusing to pay interest on the amounts due to the Commission

the Kingdom of Belgium has failed to fulfil its obligations under Articles 6, 9, 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 [1] of 22 May 2000 implementing Decision 94/728/EC, Euratom [2] on the system of the Communities' own resources which, with effect from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 [3] of 29 May 1989 implementing Decision 88/376/EEC, Euratom [4] on the system of the Communities' own resources, the purpose of which is the same.

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

Pleas in law and main arguments

During two checks of traditional own resources carried out in Belgium in 1996 and 1997, the Commission found that there were anomalies in the customs transit scheme in relation to the establishment, accounting and contribution of the own resources and the application of the Community TIR transit scheme. The anomalies were due to default or delay in the payment of the own resources to the Commission because of a failure to comply with the accounting rules laid down in Article 6(3) of Regulation 1150/2000.

The Commission cannot accept the justifications put forward by Belgium for those anomalies and delays. The delays greatly exceed the periods laid down by Article 6(3) of Regulation 1150/2000 for entry in both the A and B accounts. Where an item should have been entered in the A accounts, the effect of the delay has been belated availability of the own resources concerned and, therefore, interest for late payment is due.

[1] OJ L 130 of 31.5.2000, p. 1.
[2] OJ L 293 of 12.11.1994, p. 9.
[3] OJ L 155 of 7.6.1989, p. 1.
[4] OJ L 185 of 15.7.1988, p. 24.

Action brought on 9 September 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-378/03)

(2003/C 264/37)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 9 September 2003 by the Commission of the European Communities, represented by C. Giolito and G. Wilms, acting as Agents, with an address for service in Luxembourg.

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

— Declare that, by making late payments of the own resources where debtors pay in stages, the Kingdom of Belgium has failed to fulfil its obligations under Articles 6, 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 [1] of 22 May 2000 implementing Decision 94/728/EC, Euratom [2] on the system of the Communities' own resources which, with effect from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 [3] of 29 May 1989 implementing Decision 88/376/EEC, Euratom [4] on the system of the Communities' own resources, the purpose of which is the same.

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

During the check of traditional own resources carried out in Belgium in 1996, the Commission found that the Belgian authorities had not, within the period laid down by Community rules, paid to it the own resources recovered in the form of stage payments of import duties. Those duties ought to have been transferred from the B accounts to the A accounts as each stage payment was made by the debtor. The payment of duties to a separate account from the B accounts over a period of several months resulted in delays in making available the own resources, for which interest for late payment is due.

[1] OJ L 130 of 31.5.2000, p. 1.
[2] OJ L 293 of 12.11.1994, p. 9.
[3] OJ L 155 of 7.6.1989, p. 1.
[4] OJ L 185 of 15.7.1988, p. 24.

Action brought on 10 September 2003 by the Commission of the European Communities against the Italian Republic

(Case C-381/03)

(2003/C 264/38)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 10 September 2003 by the Commission of the European Communities, represented by K. Banks and K. Simonsson, acting as Agents.

The applicant claims that the Court should:

— find that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2001/53/EC of 10 July 2001 amending Council Directive 96/98/EC on marine equipment [1] or, in any event, by failing to communicate the same to the Commission, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposing the directive expired on 17 February 2002.

[1] OJ L 204 of 28.7.2001, p. 1.

Action brought on 12 September 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-384/03)

(2003/C 264/39)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 12 September 2003 by the Commission of the European Communities, represented by D. Gregorio Valero Jordana, with an address for service in Luxembourg.

The Commission claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to implement Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions [1] or, in any event, by failing to communicate such provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The time allowed for transposing the directive expired on 8 August 2002.

[1] OJ L 200 of 8.8.2000, p. 35.

Action brought on 12 September 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-386/03)

(2003/C 264/40)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 12 September 2003 by the Commission of the European Communities, represented by M. Huttunen and M. Niejahr of its Legal Service, with an address for service in Luxembourg.

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

1. declare that by adopting measures in Paragraphs 8(2) and 9(3) of the Verordnung über Bodenabfertigungsdienste auf Flugplätzen (German Regulation concerning groundhandling services at airports) of 10 December 1997 which are not compatible with Articles 16 and 18 of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports [1], the Federal Republic of Germany has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

Under Article 18 of Directive 96/67/EC the Member States are entitled to take measures to protect the rights of workers. However, such measures must be without prejudice to the application of that directive, and subject to the other provisions of Community law. Although Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses ([2]) does not apply in cases where only a specific share of the market is 'transferred' to another undertaking as part of an opening-up of the market, Paragraph 8(2) of the Verordnung über Bodenabfertigungsdienste auf Flugplätzen (BADV) authorises the managing body of an airport to impose a general obligation on new bidders to take on airport staff, as part of the standard terms for tender and selection procedures, irrespective of whether there has been a transfer for the purposes of Directive 2001/23/EC. The clear effect of Paragraph 8(2) of the BADV is therefore to deter new undertakings from entering the market and to impede their competitiveness, thereby reducing the benefits of liberalisation as regards reduction of prices and improvement in the quality of services.

Furthermore, Paragraph 9(3) of the BADV permits the managing body of an airport to charge higher fees for access to airport installations in cases where suppliers and selfhandlers do not take on any staff from the airport operator upon entering the market. That provision infringes Article 16(3) of Directive 96/67/EC which provides that the fee for access to airport installations is to be determined according to relevant, objective, transparent and non-discriminatory criteria. The failure to take on airport staff is not a criterion which meets any of those requirements. Rather, that provision even enables the airport operator to charge selfhandlers or suppliers of services a higher fee for access to airport installations if they do not take on its staff, and thereby makes it possible for the airport to discriminate against its direct competitors.

([1]) OJ 1996 L 272, p. 36.
([2]) OJ 2001 L 82, p. 16.

Action brought on 15 September 2003 by the Hellenic Republic against the Commission of the European Communities

(Case C-387/03)

(2003/C 264/41)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 15 September 2003 by the Hellenic Republic, represented by I. Khalkias and E. Svolopoulou, Members of the State Legal Service, with an address for service in Luxembourg at the Greek Embassy, 27 rue Marie-Adelaïde.

The applicant asks the Court to:

— annul Commission Decision C(2003)2587 excluding from Community financing certain expenditure incurred by the Member States under the EAGGF — Guarantee Section, in so far as concerns financial corrections chargeable to the Hellenic Republic in the wine, livestock premiums and olive oil sectors for the year 1999-2000.

Pleas in law and main arguments

1. Infringement of law and of general principles.

2. Infringement of the principle of proportionality — misuse of discretion.

3. Error as to the facts, misassessment of the factual circumstances, inadequate statement of reasons for the contested decision.

4. Misinterpretation and misapplication of Article 5(2)(c) of Regulation No 729/70.

Action brought on 16 September 2003 by the Commission of the European Communities against the Italian Republic

(Case C-392/03)

(2003/C 264/42)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 16 September 2003 by the Commission of the European Communities, represented by A. Bordes and L. Visaggio, acting as Agents.

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 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1] or, in any event, by failing to communicate the same to the Commission, the Italian Republic has failed to fulfil its obligations under Article 13(1) of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposing the directive expired on 1 January 2002.

---

[1] OJ L 203 of 3.8.1999, p. 53.

Action brought on 18 September 2003 by the Republic of Austria against the Commission of the European Communities

(Case C-393/03)

(2003/C 264/43)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 September 2003 (fax: 11.9.03) by the Republic of Austria, represented by Dr Harald Dossi of the Constitutional Service of the Federal Chancellor's Office of the Republic of Austria, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the negative opinion of the Commission of 1 July 2003 definitively refusing the request for action submitted to the Commission by the Republic of Austria under the second paragraph of Article 232 EC;

— order the Commission to pay the costs.

In the alternative, the Republic of Austria claims that the Court should:

— annul the Commission's decision of 1 July 2003 ordering the non-application of Article 11(2)(c) of Protocol No 9 to the 1994 Act of Accession [1] and the full award of ecopoints for the year 2003;

— order the Commission to pay the costs.

Pleas in law and main arguments

(Main application)

Infringement of the EC Treaty and/or of Protocol No 9 to the 1994 Act of Accession by definitively refusing the request made under the second paragraph of Article 232 EC. The Commission wrongly seeks to deduct from the number of transit journeys declared overall for the year 2002 (1 718 622) journeys declared as transit journeys in respect of which there is no information on departure (69 433), journeys declared as transit journeys where both entry and departure were effected at the same border point (52 642) and journeys involving 'piggyback transportation' (7 812).

The ecopoint system under Protocol No 9 to the 1994 Act of Accession is based on the principle of declarations. Accordingly, if journeys are clearly declared by a driver as transit journeys, they are included within the ecopoint statistics and are relevant to the question whether the 108 % threshold has been exceeded, whereupon the Commission is bound under Article 11(2)(c) of Protocol No 9, in conjunction with paragraph 3 of Annex 5 thereto, to adopt appropriate measures, namely to reduce the number of ecopoints for the following year in accordance with a calculation method laid down in the Annex to the Protocol. It cannot, in the light of the principle of declarations, be for the Republic of Austria, either legally or factually, to provide evidence in each individual case that, where a journey is clearly declared to be a transit journey, such a transit journey actually took place. The Republic of Austria merely has to deduct journeys declared to be transit journeys where it is beyond doubt that, despite a clear declaration, there cannot have been a transit journey. It clearly follows, therefore, that the 108 % threshold was exceeded in 2002. In the light of its decision of 1 July 2003, the Commission consequently failed to fulfil its obligations under Protocol 9 to the 1994 Act of Accession, in particular its obligations under Article 11(2)(c) in conjunction with Article 16 and paragraph 3 of Annex 5 to that Protocol, thereby creating grounds for annulment on account of infringement of the EC Treaty and/or of Protocol No 9 to the 1994 Act of Accession pursuant to the second paragraph of Article 230 EC.

(In the alternative)

Infringement of the EC Treaty and/or of Protocol No 9 to the 1994 Act of Accession. In relation to the grounds, the applicant refers to its arguments regarding the first plea in law.

---

[1] Protocol No 9 on road, rail and combined transport in Austria.

Action brought on 19 September 2003 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-395/03)

(2003/C 264/44)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 19 September 2003 by the Commission of the European Communities, represented by W. Wils and K. Banks, acting as Agents.

The applicant claims that the Court should:

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to give effect to Directive 98/44/EC [1] of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, or in any event by failing to inform the Commission of those provisions, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 30 July 2000.

[1] OJ L 213 of 30.7.1998, p. 13.

Removal from the register of Case C-214/02 [1]

(2003/C 264/45)

By order of 26 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-214/02 (Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat des Landes Vorarlberg): Gerhard Lintschinger.

[1] OJ C 180 of 27.7.2002.

Removal from the register of Case C-219/02 [1]

(2003/C 264/46)

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-219/02: Commission of the European Communities v Hellenic Republic.

[1] OJ C 191 of 10.8.2002.

Removal from the register of Joined Cases C-242/02 and C-243/02 [1]

(2003/C 264/47)

By order of 26 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Joined Cases C-214/02 and C-243/02 (Reference for a preliminary ruling by the Unabhängiger Verwaltungssenat des Salzburg): Manfred Hückel.

[1] OJ C 247 of 12.10.2002.

COURT OF FIRST INSTANCE

Action brought on 27 June 2003 by Guardant, Inc. against the Office for Harmonisation in the Internal Market

(Case T-243/03)

(2003/C 264/48)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 27 June 2003 by Guardant, Inc., Atlanta (USA), represented by G. Farrington, Solicitor.

The applicant claims that the Court should:

— annul the decision of the Defendant's Second Board of Appeal of 28 April 2003;

— order the Defendant to remit the application to its Examination Division for re-examination of Community Trade Mark number 1713213;

— order the Defendant to pay the costs.

Pleas in law and main arguments

The trade mark concerned:	The word mark 'PENSAMOS MÁS EN USTED' — application No 1713213
Goods or service concerned:	Services in Class 39 (transportation, storage and travel services; transportation of passengers and cargo, frequent flyer bonus programs)
Decision contested before the Board of Appeal:	Refusal of registration by the examiner
Decision of the Board of Appeal:	Dismissal of the appeal
Grounds of claim:	— The mark applied for is not devoid of any distinctive character within the meaning of Article 7(1)(b) of Regulation (EC) No 40/94 [1]. — The mark applied for is not the normal means of designating services in the field of transportation, storage and travel.

[1] Council Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark (OJ L 11, p. 1).

Action brought on 21 July 2003 by 'Z' against the Commission of the European Communities

(Case T-259/03)

(2003/C 264/49)

(Language of the case: Greek)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 July 2003 by 'Z', resident in Athens, Greece, represented by Vasilios Christianos, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— order the defendant to pay to her by way of damages, with interest from the time at which the damage or harm arose, the sum of EUR 900 000, comprising EUR 700 000 for non-material damage which she has suffered and EUR 200 000 for harm suffered to her health;

— order the defendant to pay the applicant's costs.

Pleas in law and main arguments

An investigation in relation to the applicant was ordered and carried out by the European Anti-Fraud Office (OLAF). After the investigation had been completed, certain items appeared in the European press referring to the applicant and the investigation of her, such that the applicant considers them disparaging and offensive. In addition, OLAF issued a press release concerning the investigation and also included a reference to it in its annual activity report. Although she was not referred to by name in the documents made public by OLAF, the applicant considers that the information which was given made it particularly easy to identify her, so that it was clear who was in question. Also, after the investigation had been completed, the applicant requested OLAF to disclose to her the file which it had drawn up on her, its final report and any other information concerning what its findings were on the accusations against her. However, OLAF refused to disclose anything at all to her.

The applicant seeks, by her action, compensation for the non-material damage and harm to her health which she claims to have suffered for the abovementioned reasons. She pleads in support of her action:

— Infringement by OLAF of the second subparagraph of Article 12(3) of Regulation No 1073/1999 ([1]), in conjunction with Directive 95/46 ([2]) and Regulation No 45/2001 ([3]). The applicant submits that it follows, on reading the foregoing provisions in conjunction with each other, that OLAF is obliged, when publishing reports of its activities, to provide information in such a way that the identity of the person to whom the investigation relates is not revealed, directly or indirectly.

— Infringement by OLAF of Article 8(2) of Regulation No 1073/1999 in that it accepted or acquiesced in, and ultimately allowed, the leaking of information to the press regarding the investigation in relation to the applicant.

— Infringement of Article 8(2) and (3) of Regulation No 1073/1999 which, in the applicant's submission, prohibits OLAF from publishing press releases relating to investigations which it carries out.

— Infringement by OLAF of Articles 4(1) and (2) and 6 of Regulation No 1073/1999, of Article 4 of Decision 99-50 of the Court of Auditors of 16 December 1999, and of the more general obligation to observe the right to good administration in accordance with Article 41 of the Charter of Fundamental Rights of the European Union, since it refused to disclose to the applicant the file on her and its final report and thus denied her any possibility of exercising her rights of defence effectively.

([1]) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 1).

([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

([3]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Action brought on 18 July 2003 by Euro Style '94 S.r.l. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-261/03)

(2003/C 264/50)

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

An action against 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 18 July 2003 by Euro Style '94 S.r.l., Barletta, (Italy), represented by G. Pica, lawyer, with an address for service in Luxembourg. RCN-Companhia de Importaçao e Esportaçao de Texteis, LDA. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— cancel or amed the decision of the Second Board of Appeal of OHIM no. R0067/2001-2;

— consequently to order the registration of the trademark 'GLOVE' also for class 25 as requested by the firm Euro Style '94 S.r.l.;

— order to bear the costs according to regulation.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant.
Community trade mark sought:	Figurative colour mark 'GLOVE' — Application No 464016 for a range of goods and services in Classes 25, 35 and 41.
Proprietor of mark or sign cited in the opposition proceedings:	RCN-Companhia de importaçao e esportaçao de Texteis, Lda.
Mark or sign cited in the opposition:	Spanish (registration No 1.629.840) and international (registration No 651.424) figurative trade mark 'GLOIBE' and portuguese (registration No 310.796) and spanish (registration No 1.981.850) word trade mark 'GLOBE' for goods in Class 25 (clothing, footwear and belts).
Decision of the Opposition Division:	Refusal of the application for goods in class 25 (namely clothing, footwear and belts) and admission of the Community trade mark application for the remaining services in Classes 35 and 41.
Decision of the Board of Appeal:	Rejection of the appeal.
Pleas in law:	Incorrect application of Article 8(1) of Regulation (EC) No 40/94 (Absence of confusion, lack of any risk of association and slight similarity of the products).

Action brought on 30 July 2003 by Deutsche Telekom AG against the Commission of the European Communities

(Case T-271/03)

(2003/C 264/51)

(Language of the case: German)

An Action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 July 2003 by Deutsche Telekom AG, Bonn (Germany), represented by K. Quack, U. Quack and S. Ohlhoff, lawyers.

The applicant claims that the Court should:

— annul the defendant's decision of 21 May 2003, published under Case No C(2003)1536 final;

— in the alternative, reduce the fine imposed in Article 3 of the decision at the Court's discretion;

— order the defendant to pay the costs, including pre-litigation costs.

Pleas in law and main arguments

By the contested decision the Commission decided that the applicant had infringed Article 82a of the EC Treaty by charging its competitors and final customers excessive monthly and flat-rate fees for access to its fixed network, thereby impeding competition for access to the network on the market. The applicant was fined EUR 12,6 million.

The applicant claims that the Commission infringed Article 82 EC on the basis that it could not be accused of anti-competitive conduct because the amount of the contested fees could not be excessive since there was no restriction of competition. Contrary to the Commission's view, the cost/price discrepancy according to the method it used is neither appropriate nor sufficient to support a finding that the applicant's advance and final-customer fees were anti-competitive. The Commission's analysis of the cost/price discrepancy was misconceived in its methods and there was no restriction of competition.

The applicant also claims that the Commission exceeded its discretion in adopting the contested decision. By its decision the Commission is impinging on the competencies conferred by Community law on the German regulatory authority for post and telecommunications and attempting to correct the way in which the contested fees are regulated. For the same reason the decision is disproportionate. Its effect is to subject the applicant's fees for access to the network to twofold regulation and it therefore undermines the legal certainty intended to be created by the allocation of competence established by Community law in respect of fees in the telecommunications sector.

Finally, by imposing a fine on the applicant, the defendant infringed essential procedural requirements and Article 15(2) of Regulation No 17/62.

Action brought on 4 August 2003 by Focus Magazin Verlag GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-274/03)

(2003/C 264/52)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 4 August 2003 by Focus Magazin Verlag GmbH, Munich (Germany), represented by U. Gürtler, lawyer. France Telecom S.A., Paris, was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul Decision No 1956/2001 of the Opposition Division of the defendant of 2 August 2001 in opposition proceedings B 260576;

— annul the decision of the Fourth Board of Appeal of the defendant of 30 April 2003 in appeal proceedings R 849/2001-4;

— instruct the defendant to make a determination on the merits in opposition proceedings B 260576, taking account of the legal view of the matter formed by the adjudicating court;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	France Telecom S.A.
Community trade mark sought:	Word mark 'Focus One' in respect of goods and services in Classes 9, 35, 38 and 42 — application No 984 484
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	The German mark 'FOCUS' (No 395 46 204) in respect of goods and services in Classes 9, 16, 35, 36, 37, 38, 41 and 42
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Pleas in law:	— Submission in the opposition proceedings of adequate evidence of the applicant's earlier right; — Infringement of the applicant's right to a hearing; — Infringement of the applicant's right of due process; — Infringement of Article 42 of Regulation (EC) No 40/94 [1] and Rule 20(3) of Regulation (EC) No 2868/95 [2].

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).
[2] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 23 July 2003 by Dionisia Elefteriadi against the Commission of the European Communities

(Case T-277/03)

(2003/C 264/53)

(Language of the case: Greek)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 July 2003 by Dionisia Elefteriadi, residing in Athens, represented by Timotheos Sigalas.

The applicant claims that the Court should:

— Annul or vary Commission Decision E(2003)738 Final of 25 March 2003 concerning recovery of amounts unduly paid to Dionisia Vlakhaki, formerly an auxiliary agent, so as to remove from it Article 1(b) thereof and not to require her to pay to the defendant any of the amounts mentioned therein in addition to the principal sum claimed by the defendant and, specifically, not to require payment of interest on late payment together with additional amounts calculated up to 23 July 2003 in the amount of two thousand eight hundred and forty-seven euros and 32 cents (EUR 2 847,32) which is broken down in accordance with Article 1 of the contested decision into one thousand three hundred and forty-four cents (EUR 1 344,04) for the period until 10 April 2001, one thousand and twenty-three euros and eighty-eight cents (EUR 1 023,88) for the period from 11 April 2001 until 31 December 2002 and four hundred and seventy-nine euros and 40 cents (EUR 479,40) for the period from 1 January 2003 to 23 July 2003 (204 days at EUR 2,35 per day = EUR 479,40).

— In the alternative, annul or vary contested Decision E(2003)738 Final of 25 March 2003.

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

By the contested decision the applicant was required to repay to the defendant EUR 13 182,18 by way of principal sum in respect of amounts unduly paid to her after the expiry of her contract with the Commission, together with interest in respect of late payment. The action is directed against the part of the contested decision concerning payment of interest in respect of late payment. The applicant maintains that she was wrongly required to pay interest since her inability to repay the principal sum due is attributable to her severe financial problems and her family's health problems which constitute grounds of force majeure. Furthermore, she also alleges that she was not invited to put forward her views before the contested decision was adopted. Finally, she maintains that, in any event, she cannot be required to pay interest in respect of the period up to 10 April 2001 because the Commission had tacitly waived its claim to interest in respect of that period.

Action brought on 8 August 2003 by Van Mannekus & Co. B.V. against the Council of the European Union

(Case T-278/03)

(2003/C 264/54)

(Language of the case: German)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 8 August 2003 by Van Mannekus & Co. B.V., Schiedam (Netherlands), represented by H. Bleier, lawyer.

The applicant claims that the Court should:

— annul Council Regulation (EC) No 985/2003 of 5 June 2003 amending the antidumping duty measures imposed by Council Regulation (EC) No 1334/1999 on imports of magnesium oxide originating in the People's Republic of China ([1]);

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

Pleas in law and main arguments

By the contested regulation the Council altered the nature of the antidumping duties on imports of magnesium oxide originating in the People's Republic of China on the basis of a partial interim review. The applicant participated in the review procedure which preceded the contested regulation as an importer. It claims that the regulation infringes substantive Community law in that Council Regulation (EC) No 384/96 ([2]) was misapplied to a significant degree.

The applicant argues that it was a misuse of discretion to initiate a partial interim review ex officio at all. The grounds set out in the Commission's notice do not in any event justify a review. The Commission claimed that the fact that there was no differentiation between sales made to related parties and sales made to unrelated parties and between direct and indirect sales could 'lead to difficulties in applying the legal provisions'. That is not true however. There could be no more difficulty in applying the legal provision.

Further the statement of reasons given in the contested regulation is different from that which had been set out in the notice relating to the initiation of the partial interim review. That means that there was either a lack of formal reasons or a lack of sufficient grounds for altering the type of duty substantively. It was a misuse of discretion to differentiate in the contested regulation between trade with related parties and trade with unrelated parties and between direct and indirect sales in the Community.

The applicant further claims that the contested regulation infringes Regulation (EC) No 384/96 because the partial interim review does not justify altering the amount of duty. According to the notice the review should be confined to the nature of the applicable measure but it went further than that. In addition the amount of the duty was set entirely arbitrarily. Regulation (EC) No 384/96 does not provide for the possibility of using the results of reviews that are over 12 years old. It does not allow the results of reviews that are older than five years to be used.

Finally no specific dumping margin was laid down in the final review and it is impossible to see how a duty of 27,1 % could be arrived at based on that review.

(1) OJ L 143, p. 1.
(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, p. 1), most recently amended by Regulation (EC) No 1972/2002 (OJ L 305, p. 1).

Action brought on 19 August 2003 by British United Provident Association Limited, BUPA Insurance Limited and BUPA Ireland Limited against Commission of the European Communities

(Case T-289/03)

(2003/C 264/55)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 August 2003 by British United Provident Association Limited, London, (United Kingdom) and BUPA Insurance Limited, London, (United Kingdom) and BUPA Ireland Limited , Dublin, (Ireland), all represented by Mr N. Green QC, Mr K. Bacon Barrister, Mr B. Amory, lawyer and Mr J. Burke, Barrister.

The applicant claims that the Court should:

— annul the Commission decision C(2003)1322 fin of 13 May 2003;

— order that the Commission pays the applicant's costs.

Pleas in law and main arguments

The applicant provides private medical insurance in Ireland. In the contested decision, the Commission decided not to raise any objections to the risk equalisation scheme to be implemented by the Irish authorities in the Irish market for private medical insurance. According to the applicant, the effect of this scheme is to grant a subsidy to the dominant provider of medical insurance, the Voluntary Health Insurance Board; the subsidy would be funded by a charge to be imposed on the applicant.

In support of its application, the applicant invokes, firstly, the misapplication by the Commission of Article 87(1) EC. The applicant submits that the Commission considered that the risk equalisation scheme did, in principle, satisfy the conditions for aid under Article 87(1) EC. However, it decided that the scheme compensated the Voluntary Health Insurance Board for public service obligations.

According to the applicant, the Commission misapplied the public service compensation test as set out in the jurisprudence of the Court of Justice (1). The applicant states that the obligations identified by the Commission were the requirements for private medical insurers in Ireland to follow the principles of open enrolment, community rating, minimum benefits and lifetime cover. These are, according to the applicant, not to be considered as public service obligations or obligations following the operation of services of general economic interest. These obligations would rather represent general regulation of the private medical insurance market, applicable to all insurers. The applicant furthermore submits that the Commission did not consider whether these obligations imposed a financial burden on the Voluntary Health Insurance Board.

The applicant states that the Commission's alternative basis for the contested decision was that the risk equalisation scheme could be approved under Article 86(2) EC. The applicant submits that the Commission failed to ensure that the conditions for approval under that article were satisfied. According to the applicant, the relevant private medical insurance obligations were not services of general economic interest. The applicant furthermore submits that the Commission's arguments on necessity and proportionality were based on both errors of reasoning and manifest errors of fact. The applicant also claims that the Commission did not consider whether the scheme would affect the development of trade contrary to the interests of the Community.

The applicant also submits that the Commission erred in failing to consider whether the risk equalisation scheme infringed Article 82 EC taken together with Article 86(1) EC, Articles 43 and 49 EC and Council Directive 92/49/EEC (2).

The applicant finally submits that the Commission should have initiated a formal investigation procedure under Article 88(2) EC given the complexity of the arguments in fact and law raised by the applicant and the economic analysis required.

---

(1) Case C-53/00 Ferring [2001] ECR I-9067 and Case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg, not yet published in the ECR.

(2) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, p. 1).

Action brought on 18 August 2003 by Georgios Pantoulis against the Commission of the European Communities

(Case T-290/03)

(2003/C 264/56)

(Language of the case: Greek)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 August 2003 by Georgios Pantoulis, resident in Brussels (Belgium), represented by Kharissios Tagaras, lawyer.

The applicant claims that the Court should:

— annul the decision of the selection board for Competition COM/A/6/01 — section 02 not to include him on the list of successful candidates in that competition and the defendant's reply of 10 June 2003 by which it rejected his complaint under no R/55/2003, lodged on 10 February 2003, requesting revocation of the selection board;

— order the defendant to pay his costs.

Pleas in law and main arguments

In support of his action, the applicant pleads breaches of the competition notice, of the principles and rules governing the functioning of selection boards, of the principle of equal treatment and of the Staff Regulations (Annex III). In his submission those breaches have arisen:

— from the failure to examine an unknown number of candidates in the language which they had declared to be their 'principal' language;

— from the failure to examine the applicant in the third language declared by him, and also from the (in his submission) different treatment of the candidates as regards examination of the third language and any further languages known by them;

— from the appointment of further members of the selection board in addition to those initially appointed, after notification of the names of the candidates admitted to the oral examination, from the fact that the selection board included two members appointed by the Staff Committee instead of one, and from the alteration in the composition of the board when the oral examinations were conducted.

Action brought on 20 August 2003 by Messe Berlin GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-292/03)

(2003/C 264/57)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 20 August 2003 by Messe Berlin GmbH, Berlin, represented by R. Lange and E. Schalast, lawyers.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 June 2003 (Case No R 646/2001-2);

— order the defendant Office to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark sought:	The word mark 'HOMETECH' — application No 1985118

Goods or services:	Goods and services in Classes 16 and 41
Decision contested before the Board of Appeal:	Refusal by the examiner to register the mark in respect of 'printed matter' in Class 16 and 'arranging and organising of trade fairs, exhibitions, seminars and congresses' in Class 41
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Pleas in law:	— The mark is distinctive within the meaning of Article 7(1)(b) of Regulation (EC) No 40/94; — The mark is not a descriptive indication within the meaning of Article 7(1)(c) of Regulation (EC) No 40/94.

Action brought on 29 August 2003 by Poli Sud s.r.l. against the Commission of the European Communities

(Case T-295/03)

(2003/C 264/58)

(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 29 August 2003 by Poli Sud s.r.l., represented by M.A. Calabrese, lawyer.

The applicant claims that the Court should:

— annul the contested refusal.

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case T-139/03 Nuova Agricast v Commission ([1]).

([1]) OJ C 146 of 21.6.2003, p. 43.

Action brought on 29 August 2003 by Proteco s.r.l. against the Commission of the European Communities

(Case T-296/03)

(2003/C 264/59)

(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 29 August 2003 by Proteco s.r.l., represented by M.A. Calabrese, lawyer.

The applicant claims that the Court should:

— annul the contested refusal.

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case T-139/03 Nuova Agricast v Commission ([1]).

([1]) OJ C 146 of 21.6.2003, p. 43.

Action brought on 29 August 2003 by Tomasetto Achille s.a.s. di Tomasetto Andrea & C. against the Commission of the European Communities

(Case T-297/03)

(2003/C 264/60)

(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 29 August 2003 by Tomasetto Achille s.a.s. di Tomasetto Andrea & C., represented by M.A. Calabrese, lawyer.

The applicant claims that the Court should:

— annul the contested refusal.

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case T-139/03 Nuova Agricast v Commission ([1]).

([1]) OJ C 146 of 21.6.2003, p. 43.

Action brought on 29 August 2003 by Lavorazione Cuoio e Pelli Bieffe s.r.l. against the Commission of the European Communities

(Case T-298/03)

(2003/C 264/61)

(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 29 August 2003 by Lavorazione Cuoio e Pelli Bieffe s.r.l., represented by M.A. Calabrese, lawyer.

The applicant claims that the Court should:

— annul the contested refusal.

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case T-139/03 Nuova Agricast v Commission ([1]).

([1]) OJ C 146 of 21.6.2003, p. 43.

Action brought on 29 August 2003 by Nuova Fa.U.Di. s.r.l. against the Commission of the European Communities

(Case T-299/03)

(2003/C 264/62)

(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 29 August 2003 by Nuova Fa.U.Di. s.r.l., represented by M.A. Calabrese, lawyer.

The applicant claims that the Court should:

— annul the contested refusal.

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those advanced in Case T-139/03 Nuova Agricast v Commission ([1]).

([1]) OJ C 146 of 21.6.2003, p. 43.

Action brought on 29 August 2003 by Moser Baer India Limited against the Council of the European Union

(Case T-300/03)

(2003/C 264/63)

(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 29 August 2003 by Moser Baer India Limited, New Delhi (India), represented by P. Bently, QC, K. Adamantopoulos, lawyer, R. MacLean and J. Branto, Solicitors, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Council Regulation (EC) 960/2003 of 2 June, insofar as it applies to the Applicant; and

— order the Council to pay the legal costs and expenses of the procedure.

Pleas in law and main arguments

The applicant in the present case is a company formed under the laws of India manufacturing recordable compact disks (CD-Rs), rewritable compacts disks (CD-RWs) and read only memory compact disks (CD-ROMs). In addition, it manufactures other forms of storage media, and notably micro-diskettes, in an export processing zone (EPZ).

Following a complaint lodged by the Community producers of CD-Rs, grouped in Association CECMA, pursuant to which the Commission announced the initiation of parallel anti-dumping and anti-subsidy proceedings against imports into the European Community of CD-Rs originating in India. The anti-dumping proceedings having been terminated without the adoption of measures, the present procedure concerns only the countervailing proceedings against CD-Rs that culminated in the contested Regulation, imposing countervailing duties of 7,3 % on imports of recordable compact disks originating in India. ([1]).

In support of its application the applicant submits that:

— In determining 4,2 years as the period over which the alleged subsidy should be allocated, the Council made a manifest error of assessment in the determination of the normal depreciation of the applicant's plant and machinery, and infringed Articles 5, 7(3) and 11(1) of the Basic Anti-Subsidy Regulation and Article 253 EC.

— The contested Regulation should be invalid because during the administrative procedure, an incomprehensible explanation of the calculation of the 4.2 years was provided to the applicant in violation of the rights of defence, or, alternatively, in violation of Article 253.

— In analysing the consequent impact of imports from India into the Community industry and also the question as to whether such imports were causing injury to this industry the Council failed to carry out an objective examination of all the relevant evidence as required by Articles 8(2) and (6) of the Basic Anti-Subsidy Regulation and/or committed a series of manifests errors of assessment.

— In determining the injury caused by another known injurious factor, namely imports from Taiwan were not attributed to the subsidised imports, the Council committed a manifest error of assessment in the application of Articles 8(6) and (7) of the Basic Anti-Cubsidy Regulation.

— In determining that injury caused by another known injurious factor, namely the alleged anti-competitive discrimantory pricing by the Community supplier of technology, was not attributed to the subsidied imports, the Council did not follow the correct procedures for the application of Articles 8(6) and (7) of the Basic anti-Subsidy Regulation.

([1]) Council Regulation (EC) No 960/2003 of 2 June 2003 imposing a definitive countervailing duty on imports of recordable compact disks originating in India (OJ L 138 of 5.6.2003, p. 1).

Action brought on 4 September 2003 by PTV Planung Transport Verkehr AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-302/03)

(2003/C 264/64)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 4 September 2003 by PTV Planung Transport Verkehr AG, Karlsruhe (Germany), represented by F. Nielsen, lawyer.

The applicant claims that the Court should:

— annul the decision of 1 July 2003 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Case R 1046/2001-2);

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark sought:	The word mark 'map&guide' — application No 2089829
Goods or services:	Goods and services in Classes 9, 41 and 42 (computer software, conducting training events for computer software and computer programming)
Decision contested before the Board of Appeal:	Refusal by the examiner to register the mark in respect of 'computer software' and 'computer programming'
Decision of the Board of Appeal:	Dismissal of the appeal
Pleas in law:	Infringement of Article 7(1)(b) of Regulation (EC) No 40/94

Action brought on 8 September 2003 by Bayer AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-304/03)

(2003/C 264/65)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 8 September 2003 by Bayer AG, Leverkusen (Germany), represented by M. Wolpert, lawyer. Sanofi-Synthelabo (Société Anonyme), Paris, was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— amend the decision of 4 June 2003 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Case R 452/2002-4) and reject the opposition;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant in this casey
Community trade mark sought:	The word mark 'NEXAVAR' for goods in Class 5 (pharmaceutical and veterinary preparations, diagnostic preparations for medicinal purposes) — Application No 1534213
Proprietor of mark or sign cited in the opposition proceedings:	Sanofi-Synthelabo (Société Anonyme)
Mark or sign cited in opposition:	The national word mark 'BESAVAR' for goods in Class 5 (pharmaceutical preparations)
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and refusal of the application
Pleas in law:	There is no similarity between the marks which could lead to confusion

---

Action brought on 4 September 2003 by WHG Westdeutsche Handelsgesellschaft mbH against the Office for Harmonisation in the Internal Market (Trade marks and Designs) (OHIM)

(Case T-307/03)

(2003/C 264/66)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 4 September 2003 by WHG Westdeutsche Handelsgesellschaft mbH, represented by U. Schuster, lawyer. Kaufring AG, Düsseldorf (Germany) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case R 52/2002-4 of 12 May 2003 in so far as paragraph 2 of the decision dismisses the appeal for the goods 'jewellery' and 'bags for sports equipment, suitable for carrying objects';

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	Kaufring AG
Community trade mark sought:	Figurative mark 'UNICA' inter alia for goods in Classes 14, 22, 23, 24 and 28 — Application No 41244
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	German word mark 'UNI CAT' (No 2070 215 for goods in Class 25 (clothing, head coverings)
Decision of the Opposition Division:	Partial rejection of the opposition
Decision of the Board of Appeal:	Annulment of the Decision in relation to 'artificial textile fibres' (Class 22) and 'yarns and threads, for textile use' (Class 23). For the rest, dismissal of the applicant's appeal
Pleas in law:	Infringement of Article 8(1)(b) of Regulation (EC) No 40/94

Action brought on 8 September 2003 by Valérie Wiame against the Commission of the European Communities

(Case T-308/03)

(2003/C 264/67)

(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 8 September 2003 by Valérie Wiame, residing in Enghien (Belgium), represented by S. Orlandi, A. Coolen, J. Louis and E. Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court of First Instance should:

— Annul the Commission's decision of 22 July 2002 laying down the detailed rules for the engagement of the applicant as a member of the temporary staff on the ground that the contract was unlawfully based on Article 2(b) of the Conditions of Employment of Other Servants of the European Communities for a fixed period from 1 July 2002 to 31 March 2003 inclusive;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant worked for the Commission as a member of its temporary staff until 31 March 2002. The applicant states that, in the light of specific assurances from her superiors as to the renewal of her contract, she continued to perform the permanent duties assigned to her in the European public service from 1 April 2002 to 30 June 2002. On 22 July 2002, the Commission drew up a new contract as a member of the temporary staff for the period from 1 July 2002 to 31 March 2003 inclusive. That contract was based on Article 2(b) of the Conditions of Employment of Other Servants of the European Communities ('the Conditions').

As a result of the applicant's complaint, the Commission paid her a sum equal to three months' basic salary by way of compensation, but refused to give her a contract for an indefinite period pursuant to Article 2(a) of the Conditions.

In support of her application the applicant alleges breach of Articles 2 and 8 of the Conditions, breach of the principle of legitimate expectations and breach of the duty to have regard for the welfare of officials.

Action brought on 12 September 2003 by Wassen International Limited against the Office for Harmonisation in the Internal Market

(Case T-312/03)

(2003/C 264/68)

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

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 12 September 2003 by Wassen International Limited, Leatherhead (United Kingdom), represented by M. Edenborough, Barrister. Stroschein Gesundkost GmbH was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— allow the appeal by the applicant to the Court of First Instance;

— remit the Community trade mark application No 1083567 to the Office so as to allow it to proceed to registration;

— annul the decision of the Opposition Division No 2920/2001;

— annul the decision of the Fourth Board of Appeal No R 0121/2002-4;

— order the opponent to pay to the applicant the costs incurred by the applicant in connection with this appeal and the appeal before the Board of Appeal and the opposition before the Opposition Division.

Pleas in law and main arguments

Applicant for the Community trade mark:	Wassen International Limited
The Community trade mark sought:	The word mark 'SELENIUM-ACE' for goods in class 3 and 5 (cosmetics, soaps, lotions, nutritional supplements, vitamins, ...)
Proprietor of mark or sign cited in the opposition proceedings:	Stroschein Gesundkost GmbH
Mark or sign cited in opposition:	The national figurative mark Selenium Spezial A-C-E and device for goods in class 5 and 30 (Non-medical and non-pharmaceutical preparations on the basis of starch, calcium salts, magnesium stearate and yeast as nutritional additives)
Decision of the Opposition Division:	Rejection of the Community trade mark application and upholding of the opposition
Decision of the Board of Appeal:	Dismissal of the appeal lodged by the applicant for the community trade mark, Wassen International Limited
Pleas in law:	The applicant invokes an infringement of regulation No 40/94 [1] in that the contested decision determined that there existed a likelihood of confusion between the marks.

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

Removal from the register of Case T-250/99 [1]

(2003/C 264/69)

(Language of the case: Dutch)

By order of 2 September 2003 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-250/99: Shell Nederland Verkoopmaatschappij B.V. v Commission of the European Communities.

[1] OJ C 20 of 22.1.2000.

Removal from the register of Case T-288/99 [1]

(2003/C 264/70)

(Language of the case: Dutch)

By order of 2 September 2003 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-288/99: Evers V.O.F. v Commission of the European Communities.

[1] OJ C 63 of 4.3.2000.

Removal from the register of Case T-318/99 [1]

(2003/C 264/71)

(Language of the case: Dutch)

By order of 2 September 2003 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-318/99: Avia Nederland Coöperatie U.A. v Commission of the European Communities.

[1] OJ C 63 of 4.3.2000.

Removal from the register of Case T-111/03 [1]

(2003/C 264/72)

(Language of the case: French)

By order of 16 July 2003 the President of the Second Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-111/03: Michel Nolin v Commission of the European Communities.

[1] OJ C 124 of 24.5.2003.

Removal from the register of Case T-249/03 R

(2003/C 264/73)

(Language of the case: French)

By order of 5 August 2003 the President of the Court of First Instance of the European Communities ordered the removal from the register of Case T-249/03 R: Y v Commission of the European Communities.

III

(Notices)

(2003/C 264/74)

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

OJ C 251, 18.10.2003

Past publications

OJ C 239, 4.10.2003

OJ C 226, 20.9.2003

OJ C 213, 6.9.2003

OJ C 200, 23.8.2003

OJ C 184, 2.8.2003

OJ C 171, 19.7.2003

These texts are available on:

EUR-Lex: http://europa.eu.int/eur-lex

CELEX: http://europa.eu.int/celex