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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

of 30 September 2003

in Case C-301/96: Federal Republic of Germany v Commission of the European Communities [1]

(State aid — Decision 96/666/EC — Compensation for the economic disadvantages caused by the division of Germany — Serious disturbance in the economy of a Member State — Regional economic development)

(2003/C 275/01)

(Language of the case: German)

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

In Case C-301/96, Federal Republic of Germany (Agents: W.-D. Plessing and T. Oppermann) v Commission of the European Communities (Agent: K.-D. Borchardt, assisted by M. Núñez Müller), supported by United Kingdom of Great Britain and Northern Ireland (Agent: J.E. Collins): Application for partial annulment of Commission Decision 96/666/EC of 26 June 1996 concerning aid granted by Germany to the Volkswagen Group in Mosel and Chemnitz (OJ 1996 L 308, p. 46), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, P. Jann, V. Skouris, F. Macken (Rapporteur), S. von Bahr and J.N. Cunha Rodrigues, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it:

1. *Dismisses the application;*

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

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

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[1] OJ C 336 of 9.11.1996.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-176/99 P: ARBED SA v Commission of the European Communities [1]

(Appeal — Agreements and concerted practices — European producers of beams — Notification of the statement of objections)

(2003/C 275/02)

(Language of the case: French)

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

In Case C-176/99 P, ARBED SA established in Luxembourg (Luxembourg), (represented by A. Vandencasteele): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-137/94 ARBED v Commission [1999] ECR II-303, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: J. Currall and W. Wils, assisted by J.-Y. Art), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Annuls the judgment of the Court of First Instance of 11 March 1999 in Case T-137/94 ARBED v Commission;*

2. *Annuls Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams in so far as it concerns ARBED SA;*

3. *Orders the Commission of the European Communities to pay the costs of both the proceedings before the Court of First Instance and the present appeal proceedings.*

([1]) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-179/99 P: Eurofer ASBL v Commission of the European Communities ([1])

(Appeal — Agreements and concerted practices — European producers of beams)

(2003/C 275/03)

(Language of the case: German)

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

In Case C-179/99 P, Eurofer ASBL, established in Luxembourg (Luxembourg), (represented by N. Koch): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-136/94 Eurofer v Commission [1999] ECR II-263, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: J. Currall and W. Wils, assisted by H.-J. Freund), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Eurofer ASBL to pay the costs.*

([1]) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-182/99 P: Salzgitter AG v Commission of the European Communities ([1])

(Appeal — Agreements and concerted practices — European producers of beams)

(2003/C 275/04)

(Language of the case: German)

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

In Case C-182/99 P, Salzgitter AG, formerly Preussag Stahl AG, established in Salzgitter (Germany), (represented by H. Satzky and C. Frick): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-148/94 Preussag v Commission [1999] ECR II-613, seeking to have that judgment set aside in part, the other party to the proceedings being: Commission of the European Communities (Agents: J. Currall and W. Wils, assisted by H.-J. Freund), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Salzgitter AG to pay the costs.*

([1]) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-194/99 P: Thyssen Stahl AG v Commission of the European Communities [1]

(Appeal — Agreements and concerted practices — European producers of beams)

(2003/C 275/05)

(Language of the case: German)

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

In Case C-194/99 P, Thyssen Stahl AG, established in Duisburg (Germany) (represented by F. Montag): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-141/94 Thyssen Stahl v Commission [1999] ECR II-347, seeking to have that judgment set aside in part, the other party to the proceedings being: Commission of the European Communities (Agents: J. Currall and W. Wils, assisted by H.-J. Freund), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Thyssen Stahl AG to pay the costs.*

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[1] OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-196/99 P: Siderúrgica Aristrain Madrid SL v Commission of the European Communities [1]

(Appeal — Agreements and concerted practices — European producers of beams)

(2003/C 275/06)

(Language of the case: Spanish)

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

In Case C-196/99 P, Siderúrgica Aristrain Madrid SL established in Madrid (Spain) (represented by A. Creus Carreras and N. Lacalle Mangas): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-156/94 Aristrain v Commission [1999] ECR II-645, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: J. Currall and W. Wils, assisted by J. Rivas de Andrés), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Sets aside the judgment of the Court of First Instance of 11 March 1999 in Case T-156/94 Aristrain v Commission in so far as the Court of First Instance declared the application for annulment of Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams to be unfounded as regards the order that Siderúrgica Aristrain Madrid SL pay a fine which also took into account the conduct of Aristrain Olaberría SL;*

2. *Dismisses the remainder of the appeal;*

3. *Refers the case back to the Court of First Instance;*

4. *Reserves the costs.*

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[1] OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-198/99 P: Empresa Nacional Siderúrgica SA (Ensidesa) v Commission of the European Communities [1]

(Appeal — Agreements and concerted practices — European producers of beams)

(2003/C 275/07)

(Language of the case: Spanish)

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

In Case C-198/99 P, Empresa Nacional Siderúrgica SA (Ensidesa), established in Avilés (Spain), (represented by S. Martínez Lage and J. Pérez-Bustamante Köster): Appeal against the

judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-157/94 Ensidesa v Commission [1999] ECR II-707, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: J. Currall and W. Wils), assisted by J. Rivas de Andrés), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Empresa Siderúrgica SA (Ensidesa) to pay the costs.*

([1]) OJ C 299 of 16.10.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-199/99 P: Corus UK Ltd v Commission of the European Communities ([1])

(Appeal — Agreements and concerted practices — European producers of beams)

(2003/C 275/08)

(Language of the case: English)

In Case C-199/99 P, Corus UK Ltd, formerly British Steel plc, established in London (United Kingdom), (represented by P. Collins and M. Levitt, solicitors): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-151/94 British Steel v Commission [1999] ECR II-629, seeking to have that judgment set aside, the other party to the proceedings being: Commission of the European Communities (Agents: J. Currall and W. Wils, assisted by J. Flynn, barrister), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Corus UK Ltd to pay the costs.*

([1]) OJ C 204 of 17.7.1999.

JUDGMENT OF THE COURT

of 30 September 2003

In Joined Cases C-57/00 P and C-61/00 P: Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH v Commission of the European Communities ([1])

(State aid — Compensation for the economic disadvantages caused by the division of Germany — Serious disturbance in the economy of a Member State — Regional economic development — Community framework for State aid in the motor vehicle industry)

(2003/C 275/09)

(Language of the case: German)

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

In Joined Cases C-57/00 P and C-61/00 P, Freistaat Sachsen (represented by J. Sedemund) with an address for service in Luxembourg (C-57/00 P), Volkswagen AG and Volkswagen Sachsen GmbH (represented by M. Schütte) with an address for service in Luxembourg (C-61/00 P): Appeals against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 15 December 1999 in Joined Cases T-132/96 and T-143/96 Freistaat Sachsen and Others v Commission [1999] ECR II-3663, seeking to have that judgment set aside, the other parties to the proceedings being: Commission of the European Communities (Agent: K.-D. Borchardt, assisted by M. Núñez-Müller) with an address for service in Luxembourg, Federal Republic of Germany (Agent: T. Oppermann) and United Kingdom of Great Britain and Northern Ireland, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, P. Jann, V. Skouris, F. Macken (Rapporteur), S. von Bahr and J.N. Cunha Rodrigues, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it:

1. *Dismisses the appeals;*

2. *Orders the Freistaat Sachsen to pay the costs in Case C-57/00 P;*

3. *Orders Volkswagen AG and Volkswagen Sachsen GmbH to pay the costs in Case C-61/00 P;*

4. *Orders the Federal Republic of Germany to bear its own costs.*

([1]) OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 2 October 2003

in Case C-322/00: Commission of the European Communities v Kingdom of the Netherlands ([1])

(Failure of a Member State to fulfil its obligations — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Article 5(4) and (5), paragraphs A(1), (2), (4) and (6) of Annex II and paragraph 1(2) and (3) and paragraph 2 of Annex III — Capacity of storage vessels for livestock manure — Limitation of the land application of fertilisers based on a balance between the foreseeable nitrogen requirements of crops and the nitrogen supply to crops from the soil and from fertilisation — Ensuring that the amount of livestock manure applied to land each year does not exceed a specified amount per hectare — Provisions contained in a code of good agricultural practice and covering periods, conditions and procedures for the land application of fertilisers — Obligation to adopt any additional measures or reinforced actions necessary)

(2003/C 275/10)

(Language of the case: Dutch)

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

In Case C-322/00, Commission of the European Communities (Agents: G. Valero Jordana and C. van Hauwaert) v Kingdom of the Netherlands (Agent: J. G. M. van Bakel): Application for a declaration that, by failing to adopt the necessary legislative and administrative provisions laid down in Article 4 and Article 5(4) and (5) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1) and in paragraphs A(1), (2), (4) and (6) of Annex II and paragraph 1(2) and (3) and paragraph 2 of Annex III thereto, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, V. Skouris, F. Macken (Rapporteur) and N. Colneric, Judges; P. Léger, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Declares that by failing to adopt the necessary laws, regulations and administrative provisions laid down in:*

   — *Article 5(4)(a) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, in conjunction with paragraph 1(2) and (3) and paragraph 2 of Annex III thereto;*

   — *Article 5(4)(b) of the Directive, in conjunction with Article 4(1)(a) thereof and paragraphs A(1), (2), (4) and (6) of Annex II thereto; and*

   — *Article 5(5) of the Directive,*

   the Kingdom of the Netherlands has failed to fulfil its obligations under the Directive;

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

([1]) OJ C 335 of 25.11.2002.

JUDGMENT OF THE COURT

of 23 September 2003

in Case C-30/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland ([1])

(Failure of a Member State to fulfil its obligations — Failure to implement, in respect of Gibraltar, Directives 67/548/EEC and 87/18/EEC (concerning dangerous chemical substances); 93/12/EEC (concerning liquid fuels); 79/113/EEC, 84/533/EEC, 84/534/EEC, 84/535/EEC, 84/536/EEC, 84/537/EEC, 84/538/EEC, 86/594/EEC and 86/662/EEC (concerning noise emission); 94/62/EC (concerning packaging waste) and 97/35/EC (concerning the deliberate release into the environment of genetically modified organisms))

(2003/C 275/11)

(Language of the case: English)

In Case C-30/01, Commission of the European Communities (Agent: R.B. Wainwright) supported by Kingdom of Spain (Agent: R. Silva de Lapuerta) v United Kingdom of Great Britain and Northern Ireland (Agent: R. Magrill, assisted by D. Wyatt QC): Application for a declaration that by failing, in respect of Gibraltar, to adopt the laws, regulations or administrative provisions necessary to comply with

— Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions in relation to the classification, packaging and labelling of dangerous substances (OJ 1967 L 196, p; 1), as amended by Commission Directive 97/69/EC of 5 December 1997 (OJ 1997 L 343. p; 19);

— Council Directive 87/18/EEC of 18 December 1986 on the harmonisation of laws, regulations and administrative practice relating to the application of good laboratory practice and the verification of their application for tests on chemical substances (OJ 1987 L 15, p; 29);

— Council Directive 93/12/EEC of 23 March 1993 relating to the sulphur content of certain liquid fuels (OJ 1993 L 74, p. 81), as amended by Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 (OJ 1998 L 350, p. 58);

— Council Directive 79/113/EEC of 19 December 1978 on the approximation of the laws of the Member States relating to the determination of the noise emission of construction plant and equipment (OJ 1979 L 33, p. 15), as amended by Commission Directive 85/405/EEC of 11 July 1985 (OJ 1985 L 233, p. 9);

— Council Directive 84/533/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of compressors (OJ 1984 L 300, p; 123), as amended by Commission Directive 85/406/EEC of 11 July 1985 (OJ 1985 L 233, p. 11);

— Council Directive 84/534/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of tower cranes (OJ 1984 L 300, p. 130), as amended by Council Directive 87/405/EEC of 25 June 1987 (OJ 1987 L 220, p. 60);

— Council Directive 84/535/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of welding generators (OJ 1984 L 300, p. 142), as amended by Commission Directive 85/407/EEC of 11 July 1985 (OJ 1985 L 233, p. 16);

— Council Directive 84/536/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of power generators (OJ 1984 L 300, p. 149), as amended by Commission Directive 85/408/EEC of 11 July 1985 (OJ 1985 L 233, p. 18);

— Council Directive 84/537/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of powered hand-held concrete breakers and picks (OJ 1984 L 300, p. 156), as amended by Commission Directive 85/409/EEC of 11 July 1985 (OJ 1985 L 233, p. 20);

— Council Directive 84/538/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of lawnmowers (OJ 1984 L 300, p. 171), as amended by Council Directive 88/181/EEC of 22 March 1988 (OJ 1988 L 81, p. 71);

— Council Directive 86/594/EEC of 1 December 1986 on airborne noise emitted by household appliances (OJ 1986 L 344, p. 24);

— Council Directive 86/662/EEC of 22 December 1986 on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders (OJ 1986 L 384, p. 1), as amended by Directive 95/27/EC of the European Parliament and of the Council of 29 June 1995 (OJ 1995 L 168, p. 14);

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

— Commission Directive 97/35/EC of 18 June 1997 adapting to technical progress for the second time Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms (OJ 1997 L 169, p. 72),

or, in any event, by failing to inform the Commission of the adoption of such provisions, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under those directives, 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 (Rapporteur), S. von Bahr and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 23 September 2003, in which it:

1. *Dismisses the application.*

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

3. *Orders the Kingdom of Spain to bear its own costs.*

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(1) OJ C 108 of 7.4.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 September 2003

in Case C-58/01 (Reference for a preliminary ruling from the Special Commissioners of Income Tax): Océ van der Grinten NV v Commissioners of Inland Revenue [1]**,**

(Directive 90/435/EEC — Corporation tax — Parent companies and subsidiaries of different Member States — Concept of withholding tax)

(2003/C 275/12)

(Language of the case: English)

In Case C-58/01: Reference to the Court under Article 234 EC by the Special Commissioners of Income Tax (United Kingdom) for a preliminary ruling in the proceedings pending before them between Océ van der Grinten NV and Commissioners of Inland Revenue, on the interpretation of Article 5(1) 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, corrigendum at OJ 1991 L 23, p. 35) and the interpretation and validity of Article 7(2) of that directive, the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann and A. Rosas, Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 25 September 2003, in which it has ruled:

1. *In so far as taxation such as the 5 % charge envisaged by the double taxation convention at issue in the main proceedings is imposed on the dividends paid by a subsidiary resident in the United Kingdom to its parent company resident in another Member State, it amounts to a withholding tax on profits which a subsidiary distributes to its parent company within the meaning of Article 5(1) 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. On the other hand, such taxation does not amount to a withholding tax prohibited by Article 5(1) of the Directive in so far as it is imposed on the tax credit to which that distribution of dividends confers entitlement in the United Kingdom.*

2. *Article 7(2) of Directive 90/435 is to be interpreted as allowing taxation such as the 5% charge envisaged by the double taxation convention at issue in the main proceedings even though that charge, in so far as it applies to dividends paid by the subsidiary to its parent company, amounts to a withholding tax within the meaning of Article 5(1) of the Directive.*

3. *Examination of the third question has revealed no formal or procedural defects such as to affect the validity of Article 7(2) of the Directive.*

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[1] OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-76/01 P: Comité des industries du coton et des fibres connexes de l'Union européenne (Eurocoton) and Others [1]

(Appeal — Dumping — Failure by the Council to adopt a proposal for a regulation imposing definitive anti-dumping duties — Lack of simple majority necessary for the adoption of the regulation — Expiry of the time-limit for the anti-dumping investigation — Definition of a reviewable act — Obligation to state reasons)

(2003/C 275/13)

(Language of the case: English)

In Case C-76/01 P, Comité des industries du coton et des fibres connexes de l'Union européenne (Eurocoton), established in Brussels (Belgium), Ettlin Gesellschaft für Spinnerei und Weberei AG, established in Ettlingen (Germany), Textil Hof Weberei GmbH & Co. KG, established in Hof (Germany), H. Hecking Söhne GmbH & Co., established in Stadtlohn (Germany), Spinnweberei Uhingen GmbH, established in Uhingen (Germany), F. A. Kümpers GmbH & Co., established in Rheine (Germany), Tenthorey SA, established in Éloyes (France), Les tissages des héritiers de G. Perrin — Groupe Alain Thirion (HPG–GAT Tissages), established in Cornimont (France), Établissements des fils de Victor Perrin SARL, established in

Thiéfosse (France), Filatures et tissages de Saulxures-sur-Moselotte, established in Saulxures-sur-Moselotte (France), Tissage Mouline Thillot, established in Thillot (France), Filature Niggeler & Küpfer SpA, established in Capriolo (Italy), Standardtela SpA, established in Milan (Italy), (Agents: C. Stanbrook and P. Bentley, QC): Appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 29 November 2002 in Case T-213/97 Eurocoton and Others v Council [2000] ECR II-3727, seeking to have that judgment set aside, the other parties to the proceedings being: Council of the European Union (Agents: S. Marquardt acting as Agent, assisted by G.M. Berrisch and H.P. Nehl), United Kingdom of Great Britain and Northern Ireland (Agent: K. Manji) and Tessival SpA, established in Azzano S. Paolo (Italy), the Court, composed of: G.C. Rodríguez Iglesias, President, M. Wathelet and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, P. Jann, F. Macken, N. Colneric, S. von Bahr (Rapporteur), J.N. Cunha Rodrigues and A. Rosas, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 29 November 2000 in Case T-213/97 Eurocoton and Others v Council in so far as it concerns the appellants.*

2. *Sets aside the decision of the Council of the European Union of 16 May 1997, which became final on 21 May 1997, not to adopt the proposal for a Council regulation (EC) imposing a definitive anti-dumping duty on the import of unbleached cotton fabric from the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey (COM (97) 160 final), submitted by the Commission of the European Communities on 21 April 1997, in so far as it concerns the appellants.*

3. *Dismisses the action for damages.*

4. *Orders the Council of the European Union and the appellants to bear their own costs at first instance.*

5. *Orders the Council of the European Union to pay the costs of the appeal.*

6. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs both at first instance and on appeal.*

([1]) OJ C 108 of 7.4.2001.

JUDGMENT OF THE COURT

of 23 September 2003

in Case C-78/01 (Reference for a preliminary ruling from the Bundesgerichtshof): Bundesverband Güterkraftverkehr und Logistik eV (BGL) v Bundesrepublik Deutschland, represented by the Hauptzollamt Friedrichshafen ([1])

(Free movement of goods — External transit operation — Transport under cover of a TIR carnet — Offences or irregularities — Possibility for a guaranteeing association to prove the place where the offence or irregularity was committed — Time-limit for furnishing proof — Existence of an obligation for the Member State which detects an offence or irregularity to investigate the place where it was committed)

(2003/C 275/14)

(Language of the case: German)

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

In Case C-78/01: Reference to the Court under Article 234 EC by the Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between Bundesverband Güterkraftverkehr und Logistik eV (BGL) and Bundesrepublik Deutschland, represented by the Hauptzollamt Friedrichshafen, third party: Préservatrice Foncière Tiard SA, on the interpretation of Articles 454 and 455 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, A. La Pergola, V. Skouris, F. Macken, N. Colneric, J.N. Cunha Rodrigues and A. Rosas (Rapporteur), Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 23 September 2003, in which it has ruled:

1. *The first subparagraph of Article 454(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code does not preclude a guaranteeing association against which proceedings are brought by a Member State for payment of customs duties on the basis of the guarantee contract it has concluded with that State in accordance with the Customs Convention on the International Transport of Goods under cover of TIR Carnets from being able to furnish proof of the place where the offence or irregularity was committed, provided that that proof is furnished within the period laid down in that provision, that time-limit being peremptory.*

2. *The first paragraph of Article 454(3) and Article 455 of Regulation No 2454/93 must be interpreted as meaning that the guaranteeing association has available, to furnish proof of the place where the offence or irregularity was actually committed, a period of two years running from the date of the claim for payment made to it.*

3. *Articles 454 and 455 of Regulation No 2454/93 do not require the Member State which detects an offence or irregularity in connection with a transport operation under cover of a TIR carnet, in addition to making the notifications prescribed in Article 455(1) of that regulation and an enquiry to the office of destination, to investigate the actual place where the offence or irregularity was committed and the identity of the customs debtors, by seeking the administrative assistance of another Member State for elucidation of the facts.*

([1]) OJ C 118 of 21.4.2001.

JUDGMENT OF THE COURT

of 23 September 2003

in Case C-109/01 (Reference for a preliminary ruling from the Immigration Appeal Tribunal): Secretary of State for the Home Department v Hacene Akrich ([1])

(Freedom of movement for workers — National of a non-Member State who is the spouse of a national of a Member State — Spouse under a prohibition on entering and remaining in that Member State — Temporary establishment of the couple in another Member State — Establishment with a view to acquisition by spouse of a right under Community law to enter and remain in the first Member State — Abuse)

(2003/C 275/15)

(Language of the case: English)

In Case C-109/01: Reference to the Court under Article 234 EC by the Immigration Appeal Tribunal (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Secretary of State for the Home Department and Hacene Akrich, on the interpretation of Community law on freedom of movement for persons and the right to remain of a national of a non-Member State who is the spouse of the national of a Member State, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P.- Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, A. La Pergola, P. Jann, F. Macken, N. Colneric (Rapporteur) and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 23 September 2003, in which it has ruled:

1. *In order to be able to benefit in a situation such as that at issue in the main proceedings from the rights provided for in Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, a national of a non-Member State married to a citizen of the Union must be lawfully resident in a Member State when he moves to another Member State to which the citizen of the Union is migrating or has migrated.*

2. *Article 10 of Regulation No 1612/68 is not applicable where the national of a Member State and the national of a non-Member State have entered into a marriage of convenience in order to circumvent the provisions relating to entry and residence of nationals of non-Member States.*

3. *Where the marriage between a national of a Member State and a national of a non-Member State is genuine, the fact that the spouses installed themselves in another Member State in order, on their return to the Member State of which the former is a national, to obtain the benefit of rights conferred by Community law is not relevant to an assessment of their legal situation by the competent authorities of the latter State.*

4. *Where a national of a Member State married to a national of a non-Member State with whom she is living in another Member State returns to the Member State of which she is a national in order to work there as an employed person and, at the time of her return, her spouse does not enjoy the rights provided for in Article 10 of Regulation No 1612/68 because he has not resided lawfully on the territory of a Member State, the competent authorities of the first-mentioned Member State, in assessing the application by the spouse to enter and remain in that Member State, must none the less have regard to the right to respect for family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, provided that the marriage is genuine.*

([1]) OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-147/01 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Weber's Wine World Handels-GmbH, Ernestine Rathgeber, Karl Schlosser, Beta-Leasing GmbH v Abgabenberufungskommission Wien [1]

(Indirect taxation — Duty on sales of alcoholic beverages — Incompatibility with Community law — Recovery of duty)

(2003/C 275/16)

(Language of the case: German)

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

In Case C-147/01: Reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Weber's Wine World Handels-GmbH, Ernestine Rathgeber, Karl Schlosser, Beta-Leasing GmbH and Abgabenberufungskommission Wien, on the interpretation of Article 5 of the EC Treaty (now Article 10 EC) and paragraph 3 of the operative part of the judgment of the Court in Case C-437/97 EKW and Wein & Co [2000] ECR I-1157, the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, A. La Pergola, P. Jann and S. von Bahr, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it has ruled:

1. *The adoption by a Member State of rules, such as the Wiener Abgabenordnung, fixing more restrictive procedural rules on recovery of sums levied but not due, in order to forestall the possible effects of a judgment of the Court holding that Community law precludes the maintenance of a national duty, is contrary to Community law and, more particularly, to Article 5 of the EC Treaty (now Article 10 EC) only in so far as it is aimed specifically at that duty, a point which falls to be determined by the national court.*

2. *The rules of Community law on the recovery of sums levied but not due are to be interpreted as meaning that they preclude national rules which refuse — a point which falls to be determined by the national court — repayment of a charge incompatible with Community law on the sole ground that the charge was passed on to third parties, without requiring that the degree of unjust enrichment that repayment of the charge would entail for the taxable person be established.*

3. *The principle of equivalence precludes national rules which lay down less favourable procedural rules for claims for repayment of a charge which has been levied though not due from the aspect of Community law than those applicable to similar actions based on certain provisions of domestic law. It is for the national court to ascertain, on the basis of a comprehensive assessment of national law, whether it is actually the case that only claimants who bring proceedings based on domestic constitutional law may rely on the 'Anlaßfallwirkung' and that the rules governing repayment of charges held to be incompatible with domestic constitutional law are more favourable than those applicable to actions relating to taxes held to be contrary to Community law.*

4. *The principle of effectiveness precludes national legislation or a national administrative practice which makes the exercise of the rights conferred by the Community legal order impossible in practice or excessively difficult by establishing a presumption of unjust enrichment on the sole ground that the duty was passed on to third parties.*

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[1] OJ C 173 of 16.6.2001.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-167/01 (Reference for a preliminary ruling from the Kantongerecht te Amsterdam): Kamer van Koophandel en Fabrieken voor Amsterdam, v Inspire Art Ltd [1]

(Articles 43 EC, 46 EC and 48 EC — Company formed in one Member State and carrying on its activities in another Member State — Application of the company law of the Member State of establishment intended to protect the interests of others)

(2003/C 275/17)

(Language of the case: Dutch)

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

In Case C-167/01: Reference to the Court under Article 234 EC by the Kantongerecht te Amsterdam (Netherlands) for a preliminary ruling in the proceedings pending before that court between Kamer van Koophandel en Fabrieken voor Amsterdam, and Inspire Art Ltd, on the interpretation of Articles 43 EC, 46 EC and 48 EC, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet (Rapporteur), R. Schintgen and C.W.A. Timmermans (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; S. Alber, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it has ruled:

1. *It is contrary to Article 2 of the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State for national legislation such as the Wet op de Formeel Buitenlandse Vennootschappen (Law on Formally Foreign Companies) of 17 December 1997 to impose on the branch of a company formed in accordance with the laws of another Member State disclosure obligations not provided for by that directive.*

2. *It is contrary to Articles 43 EC and 48 EC for national legislation such as the Wet op de Formeel Buitenlandse Vennootschappen to impose on the exercise of freedom of secondary establishment in that State by a company formed in accordance with the law of another Member State certain conditions provided for in domestic company law in respect of company formation relating to minimum capital and directors' liability. The reasons for which the company was formed in that other State, and the fact that it carries on its activities exclusively or almost exclusively in the Member State of establishment, do not deprive it of the right to invoke the freedom of establishment guaranteed by the Treaty, save where the existence of an abuse is established on a case-by-case basis.*

([1]) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Joined Cases C-172/01 P, C-175/01 P, C-176/01 P and C-180/01 P: International Power plc, British Coal Corporation, PowerGen (UK) plc, Commission of the European Communities v National Association of Licensed Opencast Operators (NALOO) ([1])

(Appeal — ECSC Treaty — Rejection of a complaint alleging discriminatory pricing and unreasonable royalties — Powers of the Commission)

(2003/C 275/18)

(Language of the case: English)

In Joined Cases C-172/01 P, C-175/01 P, C-176/01 P and C-180/01 P, International Power plc, formerly National Power plc, established in London (United Kingdom) (represented by D. Anderson, QC, and M. Chamberlain, barrister, instructed by S. Ramsay, solicitor), British Coal Corporation, established in London (represented by D. Vaughan and D. Lloyd Jones, QC, instructed by C. Mehta, solicitor), PowerGen (UK) plc, formerly PowerGen plc, established in London (K.P.E. Lasok, QC, instructed by P. Lomas, solicitor) and Commission of the European Communities (Agent: A. Whelan, assisted by J.E. Flynn, barrister): Appeals against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 7 February 2001 in Case T-89/98 NALOO v Commission [2001] ECR II-515, seeking to have that judgment set aside, the other party to the proceedings being: National Association of Licensed Opencast Operators (NALOO), established in Newcastle upon Tyne (United Kingdom) represented by M. Hoskins, barrister, instructed by A. Dowie, solicitor, with an address for service in Luxembourg, the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and A. Rosas, Judges; S. Alber, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it:

1. *Sets aside the judgment of the Court of First Instance of 7 February 2001 in Case T-89/98 NALOO v Commission in so far as it annuls:*

   — *the part of Decision IV/E-3/NALOO of 27 April 1998 in which the Commission of the European Communities held that Article 65 of the ECSC Treaty was not applicable to the setting of royalties for coal extraction;*

   — *the part of that decision in which the Commission of the European Communities rejected the complaint relating to the level of the royalties charged for coal extraction before 1 April 1990.*

2. *For the rest, dismisses the appeals.*

3. *Dismisses the application of the National Association of Licensed Opencast Operators (NALOO) in so far as it seeks:*

   — *annulment of the part of Decision IV/E-3/NALOO in which the Commission of the European Communities held that Article 65 of the ECSC Treaty was not applicable to the setting of royalties for coal extraction.*

   — *annulment of the part of that decision in which the Commission of the European Communities rejected the complaint relating to the level of the royalties charged for coal extraction before 1 April 1990.*

4. *In Case C-172/01 P, orders International Power plc to pay its own costs in the proceedings before the Court of Justice and those incurred by NALOO in these proceedings. The Commission of the European Communities is to pay its own costs.*

5. *In Case C-175/01 P, orders NALOO to pay its own costs in the proceedings before the Court of Justice and those incurred by British Coal Corporation and the Commission of the European Communities in these proceedings.*

6. *In Case C-176/01 P, orders PowerGen (UK) plc to pay its own costs in the proceedings before the Court of Justice and those incurred by NALOO in these proceedings. The Commission of the European Communities is to pay its own costs.*

7. *In Case C-180/01 P, orders each party to pay its own costs in the proceedings before the Court of Justice.*

8. *Orders the Commission of the European Communities and NALOO each to pay their own costs in the proceedings before the Court of First Instance. International Power plc, British Coal Corporation and PowerGen (UK) plc are each to pay their own costs as interveners in the proceedings before the Court of First Instance.*

([1]) OJ C 200 of 14.07.2001.

JUDGMENT OF THE COURT

of 23 September 2003

in Case C-192/01: Commission of the European Communities v Kingdom of Denmark ([1])

(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Prohibition on marketing of foodstuffs to which vitamins and minerals have been added — Justification — Public health — Nutritional need)

(2003/C 275/19)

(Language of the case: Danish)

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

In Case C-192/01, Commission of the European Communities (Agent: H. C. Støvlbæk) v Kingdom of Denmark (Agent: J. Molde): Application for a declaration that, by applying an administrative practice which entails that enriched foodstuffs lawfully produced or marketed in other Member States may be marketed in Denmark only if it is shown that such enrichment with nutrients meets a need in the Danish population, the Kingdom of Denmark has failed to fulfil its obligations under Article 28 EC, the Court, composed of: J.-P. Puissochet, President of the Sixth Chamber, acting for the President, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, A. La Pergola, F. Macken (Rapporteur), N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 23 September 2003, in which it:

1. *Declares that by applying an administrative practice which entails that enriched foodstuffs lawfully produced or marketed in other Member States can be marketed in Denmark only if it is shown that such enrichment with nutrients meets a need in the Danish population, the Kingdom of Denmark has failed to fulfil its obligations under Article 28 EC.*

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

([1]) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 September 2003

in Case C-201/01 (Reference for a preliminary ruling from the Oberster Gerichtshof): Maria Walcher v Bundesamt für Soziales und Behindertenwesen Steiermark ([1])

(Protection of workers — Insolvency of the employer — Scope of Directive 80/987/EEC — National case-law on shareholder loans in lieu of capital contributions — Total loss of entitlement)

(2003/C 275/20)

(Language of the case: German)

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

In Case C-201/01: Reference to the Court under Article 234 EC by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between

Maria Walcher and Bundesamt für Soziales und Behindertenwesen Steiermark, on the interpretation 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), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, F. Macken, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 11 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, as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded precludes a rule that an employee with a significant shareholding in the private limited company that employs him, but who does not exercise a dominant influence over that company, loses, pursuant to the Austrian case-law relating to shareholder loans in lieu of capital contributions, his entitlement to the guarantee in respect of claims for outstanding pay which result from the employer's insolvency and are covered by Article 4(2) of that directive if, in the 60 days from the time he first could have become aware that the company was no longer creditworthy, he fails to make any genuine demand for payment of salary owed to him.*

2. *To avoid abuses a Member State is, in principle, entitled to take measures that deny such an employee an entitlement to a guarantee in respect of claims for outstanding salary arising after the date on which an employee who is not a shareholder would have resigned on the ground of non-payment of his salary, unless it is established that there has been no abusive conduct. As regards the guarantee to pay claims covered by Article 4(2) of Directive 80/987, as amended, the Member State is not entitled to assume that, as a general rule, an employee who is not a shareholder would have resigned on the ground of non-payment of his salary before his salary had been in arrears for a period of three months.*

(1) OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-224/01 (Reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien): Gerhard Köbler v Republik Österreich (1)

(Equal treatment — Remuneration of university professors — Indirect discrimination — Length-of-service increment — Liability of a Member State for damage caused to individuals by infringements of Community law for which it is responsible — Infringements attributable to a national court)

(2003/C 275/21)

(Language of the case: German)

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

In Case C-224/01: Reference to the Court under Article 234 EC by the Landesgericht für Zivilrechtssachen Wien (Austria), for a preliminary ruling in the proceedings pending before that court between Gerhard Köbler and Republik Österreich, on the interpretation, first, of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and, secondly, the judgments of the Court in Joined Cases C-46/93 and C-48/93*Brasserie du Pêcheur and Factortame* [1996] ECR I-1029 and Case C-54/96*Dorsch Consult* [1997] ECR I-4961, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges; P. Léger, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it has ruled:

1. *The principle that Member States are obliged to make good damage caused to individuals by infringements of Community law for which they are responsible is also applicable where the alleged infringement stems from a decision of a court adjudicating at last instance where the rule of Community law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between that breach and the loss or damage sustained by the injured parties. In order to determine whether the infringement is sufficiently serious when the infringement at issue stems from such a decision, the competent national court, taking into account the specific nature of the judicial function, must determine whether that infringement is manifest. It is for the legal system of each Member State to designate the court competent to determine disputes relating to that reparation.*

2. *Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and Article 7(1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community are to be interpreted as meaning that they preclude the grant, under conditions such as those laid down in Article 50a of the Gehaltsgesetz 1956 (law on salaries of 1956), as amended in 1997, of a special length-of-service increment which, according to the interpretation of the Verwaltungsgerichtshof (Austria) in its judgment of 24 June 1998, constitutes a loyalty bonus.*

3. *An infringement of Community law, such as that stemming in the circumstances of the main proceedings from the judgment of the Verwaltungsgerichtshof of 24 June 1998, does not have the requisite manifest character for liability under Community law to be incurred by a Member State for a decision of one of its courts adjudicating at last instance.*

([1]) OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 2 October 2003

in Case C-232/01 (Reference for a preliminary ruling from the Politierechtbank te Mechelen): Criminal procedure against Hans van Lent ([1])

(Freedom of movement for workers — Vehicle leasing — Obligation to register vehicle in worker's Member State of residence)

(2003/C 275/22)

(Language of the case: Dutch)

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

In Case C-232/01: Reference to the Court under Article 234 EC by the Politierechtbank te Mechelen (Belgium) for a preliminary ruling in the criminal proceedings before that court against Hans van Lent, on the interpretation of Article 39 EC, the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, P. Jann, S. von Bahr (Rapporteur) and A. Rosas, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it has ruled:

Article 39 EC precludes national rules of a Member State, such as those in the present case, which prohibit a worker who is domiciled in that Member State from using on its territory a vehicle registered in another neighbouring Member State, belonging to a leasing company established in that second Member State, and made available to the worker by his employer who is also established in the second Member State.

([1]) OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-239/01: Federal Republic of Germany v Commission of the European Communities ([1])

(Agriculture — EAGGF — Partial annulment of Regulation (EC) No 690/2001 — Special market support measures in the beef sector — Implementing regulation of the Commission providing for compulsory co-financing by the Member States)

(2003/C 275/23)

(Language of the case: German)

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

In Case C-239/01, Federal Republic of Germany (Agent: W.-D. Plessing, acting as Agent, assisted by J. Sedemund) supported by Kingdom of Denmark (Agents: J. Molde and J. Bering Liisberg) with an address for service in Luxembourg v Commission of the European Communities (Agents: D. Booß and M. Niejahr): Application for annulment of Article 5(5) of Commission Regulation (EC) No 690/2001 of 3 April 2001 on special market support measures in the beef sector (OJ 2001 L 95, p. 8), in so far as that provision requires each Member State concerned to finance 30 % of the price of the meat purchased under that regulation, 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 (Rapporteur), P. Jann, V. Skouris, F. Macken, N. Colneric and S. von Bahr, Judges; J. Mischo, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it:

1. *Annuls Article 5(5) of Commission Regulation (EC) No 690/2001 of 3 April 2001 on special market support measures in the beef sector in so far as that provision requires each Member State concerned to finance 30 % of the price of the meat purchased under that regulation;*

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

([1]) OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-405/01 (Reference for a preliminary ruling from the Tribunal Supremo): Colegio de Oficiales de la Marina Mercante Española v Administración del Estado, intervener: Asociación de Navieros Españoles (ANAVE) [1]

(Freedom of movement for workers — Article 39(4) EC — Employment in the public service — Masters and chief mates of merchant navy ships — Conferment of powers of public authority on board — Posts reserved for nationals of the flag State — Posts open to nationals of other Member States on condition of reciprocity)

(2003/C 275/24)

(Language of the case: Spanish)

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

In Case C-405/01: Reference to the Court under Article 234 EC by the Tribunal Supremo (Spain) for a preliminary ruling in the proceedings pending before that court between Colegio de Oficiales de la Marina Mercante Española and Administración del Estado, intervener: Asociación de Navieros Españoles (ANAVE), on the interpretation of Article 39 EC and Articles 1 and 4 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet (Rapporteur), R. Schintgen and C.W.A. Timmermans (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; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it has ruled:

1. *Article 39(4) EC is to be construed as allowing a Member State to reserve for its nationals the posts of master and chief mate of merchant ships flying its flag only if the rights under powers conferred by public law on masters and chief mates of such ships are actually exercised on a regular basis and do not represent a very minor part of their activities.*

2. *Article 39 EC is to be construed as precluding a Member State making access by nationals of the other Member States to the posts of master and chief mate of merchant ships flying its flag, such as those covered by Article 8(3) of Royal Decree No 2062/1999 por el que se regula el nivel mínimo de formación en profesiones marítimas of 30 December 1999, subject to a condition of reciprocity.*

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[1] OJ C 17 of 19.1.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 2 October 2003

in Case C-411/01 (Reference for a preliminary ruling from the Tribunal d'instance de Metz): GEFCO SA v Receveur principal des douanes [1]

(Community Customs Code and implementing Regulation — Outward processing procedure — Exemption from the import duties applied to compensating products — Amount deductible in the event of an incorrect indication of a tariff heading in the temporary export declaration for the goods — Failure having no significant effect on the correct operation of the outward processing procedure)

(2003/C 275/25)

(Language of the case: French)

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

In Case C-411/01: Reference to the Court under Article 234 EC by the Tribunal d'instance de Metz (France) for a preliminary ruling in the proceedings pending before that court between GEFCO SA and Receveur principal des douanes, on the interpretation of Articles 145 to 151 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 2 October 2003, in which it has ruled:

1. *Articles 145 to 151 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that an economic operator who has declared goods under an incorrect tariff heading at the time of their temporary exportation from Community territory under the outward processing procedure is not prohibited, even in the absence of a formal amendment of the temporary export declaration, from adducing proof that the incorrect declaration had no significant effect on the correct operation of the procedure for the purposes of Article 150(2) of the Customs Code.*

2. *Such proof must make it possible to establish, without the slightest ambiguity, that the compensating products have resulted from processing of the temporary export goods.*

3. *It is for the national court to determine, in the light of all the circumstances of the main proceedings, whether or not the economic operator has adduced that proof.*

4. *If so, the amount of the import duty which would be applicable to the temporary export goods on the basis of their correct tariff heading may be deducted when the compensating products are released for free circulation.*

([1]) OJ C 369 of 22.12.2001.

JUDGMENT OF THE COURT

(First Chamber)

of 25 September 2003

in Case C-437/01: Commission of the European Communities v Italian Republic ([1])

(Failure of a Member State to fulfil its obligations — Directives 92/12/EEC and 92/81/EEC — Tax on lubricating oils — Excise duty on mineral oils)

(2003/C 275/26)

(Language of the case: Italian)

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

In Case C-437/01, Commission of the European Communities (Agents: E. Traversa and K. Gross) v Italian Republic (Agent: I. M. Braguglia, assisted by G. Aiello): Application for a declaration that, by retaining in force a tax on lubricating oils, the Italian Republic has failed to fulfil its obligations under Article 3(2) of 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), and Article 8(1)(a) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12), as amended by Council Directive 94/74/EEC of 22 December 1994 (OJ 1994 L 365, p. 46), the Court (First Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and A. Rosas, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 25 September 2003, in which it:

1. *Declares that, by retaining in force a tax on lubricating oils under the first paragraph of Article 62 of Legislative Decree No 504 of 26 October 1995, 'Testo unico delle disposizioni legislative concernenti le imposte sulla produzione e sui consumi e relative sanzioni penali e amministrative' (Consolidated Text of Legislative Provisions relating to duties on production and consumption and related criminal and administrative penalties) beyond the expiry of the period laid down in the reasoned opinion, the Italian Republic has failed to fulfil its obligations under Article 3(2) of 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, and Article 8(1)(a) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, as amended by Council Directive 94/74/EC of 22 December 1994;*

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

([1]) OJ C 31 of 2.2.2002.

JUDGMENT OF THE COURT

of 23 September 2003

in Case C-452/01 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Margarethe Ospelt and Schlössle Weissenberg Familienstiftung ([1])

(Free movement of capital — Article 73b of the EC Treaty (now Article 56 EC) — Article 40 of and Annex XII to the EEA Agreement — Prior authorisation procedure for the acquisition of agricultural and forestry plots — Admissibility — Conditions)

(2003/C 275/27)

(Language of the case: German)

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

In Case C-452/01: Reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Margarethe Ospelt and Schlössle Weissenberg Familienstiftung, on the interpretation of Article 6 of the EC Treaty (now, after amendment, Article 12 EC) and Articles 73b to 73d, 73f and 73g of the EC Treaty (now Articles 56 EC to 60 EC), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (Rapporteur), M. Wathelet, R. Schintgen and C.W.A. Timmermans (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; L.A. Geelhoed, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 23 September 2003, in which it has ruled:

1. *Rules such as those of the Vorarlberger Grundverkehrsgesetz (Vorarlberg Land Transfer Law) of 23 September 1993, as amended, making transactions relating to agricultural and forestry plots subject to administrative controls must, where a transaction is in issue between nationals of States party to the Agreement on the European Economic Area of 2 May 1992, be assessed in the light of Article 40 of and Annex XII to the aforementioned Agreement, which are provisions possessing the same legal scope as that of Article 73b of the EC Treaty (now Article 56 EC), which is identical in substance.*

2. *Article 73b of the Treaty in conjunction with Articles 73c, 73d, 73f and 73g of the EC Treaty (now Articles 57 EC to 60 EC) do not preclude the acquisition of agricultural land being made subject to the grant of prior authorisation such as that established by the VGVG. However, they do preclude such authorisation being refused in every case in which the acquirer does not himself farm the land concerned as part of a holding and on which he is not resident.*

([1]) OJ C 84 of 6.4.2002.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-47/02 (Reference for a preliminary ruling from the Schleswig-Holsteinisches Oberverwaltungsgericht): Albert Anker, Klaas Ras, Albertus Snoek v Bundesrepublik Deutschland ([1])

(Freedom of movement for workers — Article 39(4) EC — Employment in the public service — Masters of fishing vessels — Conferment of powers of public authority on board — Posts reserved for nationals of the flag State)

(2003/C 275/28)

(Language of the case: German)

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

In Case C-47/02: Reference to the Court under Article 234 EC by the Schleswig-Holsteinisches Oberverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Albert Anker, Klaas Ras, Albertus Snoek and Bundesrepublik Deutschland, represented by the Wasser- und Schiffahrtsdirektion Nord, on the interpretation of Article 39(4) EC, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet (Rapporteur), R. Schintgen and C.W.A. Timmermans (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; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it has ruled:

Article 39(4) EC must be construed as allowing a Member State to reserve for its nationals the post of master of vessels flying its flag and engaged in 'small-scale maritime shipping' ('Kleine Seeschifffahrt') only if the rights under powers conferred by public law granted to masters of such vessels are in fact exercised on a regular basis and do not represent a very minor part of their activities.

([1]) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 11 September 2003

in Case C-67/02: Commission of the European Communities v Ireland ([1])

(Failure of a Member State to fulfil obligations — Article 5 of Directive 79/923/EEC — Quality of shellfish waters — Pollution-reduction programme)

(2003/C 275/29)

(Language of the case: English)

In Case C-67/02, Commission of the European Communities (Agent: M. Shotter) v Ireland (Agent: D. O'Hagan): Application for a declaration that, by not adopting programmes for all its designated shellfish waters in accordance with Article 5 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters (OJ 1979 L 281, p. 47), Ireland has failed to fulfil its obligations under that directive, the Court (Fourth Chamber), composed of: C.W.A. Timmermans, President of the Chamber, A. La Pergola (Rapporteur) and S. von Bahr, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 11 September 2003, in which it:

1. *Declares that, by not adopting programmes for all its designated shellfish waters in accordance with Article 5 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters, Ireland has failed to fulfil its obligations thereunder;*

2. *Orders Ireland to pay the costs.*

([1]) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 25 September 2003

in Case C-74/02: Commission of the European Communities v Federal Republic of Germany [1]

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

(2003/C 275/30)

(Language of the case: German)

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

In Case C-74/02, Commission of the European Communities (Agent: G. zur Hausen) v Federal Republic of Germany (Agents: W.-D. Plessing and M. Lumma): Application for a declaration that, by failing to adopt within the prescribed period the measures 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 Federal Republic of Germany has failed to fulfil its obligations under that directive, the Court (First Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and A. Rosas, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 25 September 2003, in which it:

1. *Declares that, by failing to adopt within the prescribed period 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 Federal Republic of Germany has failed to fulfil its obligations under that directive;*

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

(1) OJ C 97 of 20.4.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 September 2003

in Case C-77/02 (Reference for a preliminary ruling from the Verwaltungsgericht Sigmaringen): Erika Steinicke v Bundesanstalt für Arbeit [1]

(Social policy — Equal treatment for men and women — Scheme of part-time work for older employees — Directive 76/207/EEC — Indirect discrimination — Objective justification)

(2003/C 275/31)

(Language of the case: German)

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

In Case C-77/02: Reference to the Court under Article 234 EC by the Verwaltungsgericht Sigmaringen (Germany) for a preliminary ruling in the proceedings pending before that court between Erika Steinicke and Bundesanstalt für Arbeit, on the interpretation of Article 141 EC and of Council Directives 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principles of equal pay for men and women (OJ 1975 L 45, p. 19), 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 1975 L 39, p. 40) and 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, F. Macken (Rapporteur) and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 11 September 2003, in which it has ruled:

Articles 2(1) and 5(1) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions must be interpreted as precluding a provision, such as point 2 of the first sentence of Paragraph 72(b)(1) of the Bundesbeamtengesetz (German Law on federal public servants), in the version of 31 March 1999 in force until 30 June 2000, by virtue of which part-time work for older employees may be authorised for public servants only if they have worked full-time for a total of at least three of the five years preceding such part-time work, when significantly more women than men work part-time and are consequently excluded by that provision from the scheme of part-time work for older employees, unless such provision is justified by objective factors unrelated to any discrimination on grounds of sex.

(1) OJ C 118 of 18.5.2002.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-93/02 P: Biret International SA v Council of the European Union [1]

(Appeal — Directives 81/602/EEC, 88/146/EEC and 96/22/EC — Prohibition on the use of certain substances having a hormonal action — Prohibition on the importation from third countries of meat from farm animals to which those substances have been administered — Application for damages — Direct effect of the WTO Agreement and the agreements annexed thereto — Agreement on the Application of Sanitary and Phytosanitary Measures — Recommendations and decisions of the WTO Dispute Settlement Body)

(2003/C 275/32)

(Language of the case: French)

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

In Case C-93/02 P, Biret International SA, a company in judicial liquidation, established in Paris (France) (represented by M. de Thoré and S. Rodrigues): Appeal against the judgment of the Court of First Instance of the European Communities (First Chamber) of 11 January 2002 in Case T-174/00 Biret International v Council [2002] ECR II-17, seeking to have that judgment set aside, the other parties to the proceedings being: Council of the European Union, (Agents: J. Carbery and F. P. Ruggeri Laderchi), supported by United Kingdom of Great Britain and Northern Ireland, (Agent: P. M. Ormond), and Commission of the European Communities, (Agents: T. Christoforou and A. Bordes), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet (Rapporteur), R. Schintgen 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 and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Biret International SA to bear its own costs and to pay two thirds of the costs of the Council of the European Union;*

3. *Orders the Council of the European Union to bear one third of its own costs;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to bear their own costs.*

[1] OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-94/02 P: Établissements Biret et Cie SA v Council of the European Union [1]

(Appeal — Directives 81/602/EEC, 88/146/EEC and 96/22/EC — Prohibition on the use of certain substances having a hormonal action — Prohibition on the importation from third countries of meat from farm animals to which those substances have been administered — Application for damages — Direct effect of the WTO Agreement and the agreements annexed thereto — Agreement on the Application of Sanitary and Phytosanitary Measures — Recommendations and decisions of the WTO Dispute Settlement Body)

(2003/C 275/33)

(Language of the case: French)

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

In Case C-94/02 P, Établissements Biret et Cie SA, established in Paris (France), (represented by S. Rodrigues): Appeal against the judgment of the Court of First Instance of the European Communities (First Chamber) of 11 January 2002 in Case T-210/00 Biret et Cie v Council [2002] ECR II-47, seeking to have that judgment set aside, the other party to the proceedings being: Council of the European Union, (Agents: J. Carbery and F. P. Ruggeri Laderchi), supported by United Kingdom of Great Britain and Northern Ireland, (Agents: P. M. Ormond), and Commission of the European Communities, (Agents: T. Christoforou and A. Bordes), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet (Rapporteur), R. Schintgen 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 and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Établissements Biret et Cie SA to bear its own costs and to pay two thirds of the costs of the Council of the European Union;*

3. *Orders the Council of the European Union to bear one third of its own costs;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to bear their own costs.*

[1] OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

of 30 September 2003

in Case C-140/02 (Reference for a preliminary ruling from the House of Lords): Regina on the application of S.P. Anastasiou (Pissouri) Ltd and Others v Minister for Agriculture, Fisheries and Food, interveners: Cypfruvex (UK) Ltd and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd [1]

(Approximation of laws — Protection of plant health — Directive 77/93/EEC — Import into the Community of plants originating in non-member countries and subject to special requirements — Special requirements which cannot be fulfilled at places other than that of origin — Affixing of an appropriate origin mark to plant packaging — Official statement that plants originate in an area known to be free from the relevant harmful organism)

(2003/C 275/34)

(Language of the case: English)

In Case C-140/02: Reference to the Court under Article 234 EC by the House of Lords (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Regina on the application of S.P. Anastasiou (Pissouri) Ltd and Others and Minister for Agriculture, Fisheries and Food, interveners: Cypfruvex (UK) Ltd and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd, on the interpretation of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ 1977 L 26, p. 20), as amended, inter alia, by Council Directive 91/683/EEC of 19 December 1991 (OJ 1991 L 376, p. 29) and Commission Directive 92/103/EEC of 1 December 1992 (OJ 1992 L 363, p. 1), and as subsequently amended, inter alia, by Commission Directive 98/2/EC of 8 January 1998 (OJ 1998 L 15, p. 34), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (Rapporteur), M. Wathelet, R. Schintgen and C.W.A. Timmermans (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, has given a judgment on 30 September 2003, in which it has ruled:

On a proper interpretation of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, as amended, inter alia, by Council Directive 91/683/EEC of 19 December 1991 and Commission Directive 92/103/EEC of 1 December 1992, the special requirement that an appropriate origin mark be affixed to the plants' packaging, laid down in item 16.1 of Annex IV, Part A, Section I, to that directive, can be fulfilled only in the country of origin of the plants concerned. The amendments which Commission Directive 98/2/EC of 8 January 1998 made to items 16.2 and 16.3 do not affect that interpretation. The phytosanitary certificate required in order to bring those plants into the Community must, therefore, be issued in their country of origin by, or under the supervision of, the competent authorities of that country.

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[1] OJ C 144 of 15.6.2002.

JUDGMENT OF THE COURT

of 2 October 2003

in Case C-148/02 (Reference for a preliminary ruling from the Conseil d'État): Carlos Garcia Avello v État Belge [1]

(Citizenship of the European Union — Handing down of surnames — Children of nationals of Member States — Dual nationality)

(2003/C 275/35)

(Language of the case: French)

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

In Case C-148/02: Reference to the Court under Article 234 EC by the Conseil d'État (Belgium) for a preliminary ruling in the proceedings pending before that court between Carlos Garcia Avello and État Belge, on the interpretation of Articles 17 EC and 18 EC, the Court, composed of: G.C. Rodríguez Iglesias, President, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur) and A. Rosas, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 2 October 2003, in which it has ruled:

Articles 12 EC and 17 EC must be construed as precluding, in circumstances such as those of the case in the main proceedings, the administrative authority of a Member State from refusing to grant an application for a change of surname made on behalf of minor children resident in that State and having dual nationality of that State and of another Member State, in the case where the purpose of that application is to enable those children to bear the surname to which they are entitled according to the law and tradition of the second Member State.

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[1] OJ C 144 of 15.6.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 25 September 2003

in Case C-170/02 P: Schlüsselverlag J.S. Moser GmbH and Others v Commission of the European Communities [1]

(Appeal — Action for a declaration of failure to act — Competition — Complaint — Control of concentrations — Definition of a position for the purposes of Article 232 EC — Inadmissibility)

(2003/C 275/36)

(Language of the case: German)

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

In Case C-170/02 P, Schlüsselverlag J.S. Moser GmbH, established in Innsbruck (Austria), J. Wimmer Medien GmbH & Co. KG, established in Linz (Austria), Styria Medien AG, established in Graz (Austria), Zeitungs- und Verlags-Gesellschaft mbH, established in Bregenz (Austria), Eugen Ruß Vorarlberger Zeitungsverlag und Druckerei GmbH, established in Schwarzach (Austria), 'Die Presse' Verlags-Gesellschaft mbH, established in Vienna (Austria), and 'Salzburger Nachrichten' Verlags-Gesellschaft mbH & Co. KG, established in Salzburg (Austria), represented by M. Krüger, Rechtsanwalt: Appeal against the order of the Court of First Instance of the European Communities (Third Chamber) of 11 March 2002 in Case T-3/02 Schlüsselverlag J.S. Moser and Others v Commission [2002] ECR II-1473, seeking to have that order set aside, the other party to the proceedings being: Commission of the European Communities (Agent: K. Wiedner), the Court (Sixth Chamber), composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, C. Gulmann, F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 25 September 2003, in which it:

1. *Dismisses the appeal;*

2. *Orders Schlüsselverlag J.S. Moser GmbH, J. Wimmer Medien GmbH & Co. KG, Styria Medien AG, Zeitungs- und Verlags-Gesellschaft mbH, Eugen Ruß Vorarlberger Zeitungsverlag und Druckerei GmbH, 'Die Presse' Verlags-Gesellschaft mbH and 'Salzburger Nachrichten' Verlags-Gesellschaft mbH & Co. KG to pay the costs.*

[1] OJ C 156 of 29.6.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 11 September 2003

in Case C-323/02: Commission of the European Communities v Hydrowatt SARL [1]

(Arbitration clause — Non-performance of contract — Termination — Recovery of sums advanced — Interest)

(2003/C 275/37)

(Language of the case: French)

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

In Case C-323/02, Commission of the European Communities (Agent: H. Støvlbaek assisted by E. Cabau) v Hydrowatt SARL, established in Lyon (France): Application by the Commission under Article 238 EC for recovery of the outstanding balance of an advance paid by the applicant to the defendant under Contract No HY 134/87 FR on the completion of a project receiving financial support pursuant to Council Regulation (EEC) No 3640/85 of 20 December 1985 on the promotion, by financial support, of demonstration projects and industrial pilot projects in the energy field (OJ 1985 L 350, p. 29), the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and A. Rosas, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 11 September 2003, in which it:

1. *Orders Hydrowatt SARL to pay to the Commission of the European Communities the sum of EUR 25 109, plus contractual interest of EUR 23 422,91;*

2. *Orders Hydrowatt SARL to pay the costs.*

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 2 October 2003

in Case C-348/02: Commission of the European Communities v Italian Republic [1]

(Failure of a Member State to fulfil its obligations — Failure to implement Directive 1999/13/EC)

(2003/C 275/38)

(Language of the case: Italian)

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

In Case C-348/02, Commission of the European Communities (Agents: G. Valero Jordana and R. Amorosi) v Italian Republic (Agent: U. Leanza, assisted by M. Fiorilli): Application for a declaration that by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (OJ 1999 L 85, p. 1, and corrigendum, OJ 1999 L 188, p. 54) the Italian Republic has failed to fulfil its obligations under Article 15 of that directive, the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 2 October 2003, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, the Italian Republic has failed to fulfil its obligations under Article 15 of that directive;*

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

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 2 October 2003

in Case C-89/03: Commission of the European Communities v Grand Duchy of Luxembourg [1]

(Failure of a Member State to fulfil its obligations — Failure to transpose Directive 93/15/EEC)

(2003/C 275/39)

(Language of the case: French)

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

In Case C-89/03, Commission of the European Communities (Agents: L. Ström and B. Stromsky) v Grand Duchy of Luxembourg (Agents: S. Schreiner): Application for a declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses (OJ 1993 L 121, p. 20), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive, the Court (First Chamber), composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 2 October 2003, in which it:

1. *Declares that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

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

[1] OJ C 101 of 26.4.2003.

Appeal brought on 15 May 2003 (fax 10.05.2003) by J.M. Le Pen against the judgment delivered on 10 April 2003 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-353/00 between J.M. Le Pen and the European Parliament, supported by the French Republic

(Case C-208/03 P)

(2003/C 275/40)

An appeal against the judgment delivered on 10 April 2003 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-353/00 Le Pen v European Parliament was brought before the Court of Justice of the European Communities on 15 May 2003 (fax 10.5.2003) by J.M. Le Pen, represented by F. Wagner, lawyer.

The appellant claims that the Court should:

— declare the appeal by J.M. Le Pen against the judgment of 10 April 2003 of the Court of First Instance to be admissible;

— declare the action brought by J.M. Le Pen against the decision taken in the form of a declaration by the President of the European Parliament of 23 October 2003 in the following terms: 'Pursuant to Article 12(2) of the 1976 Act, the European Parliament takes note of the notification from the French Government confirming [the appellant's] removal from office' to be admissible;

— set aside the contested judgment in whole or in part as regards its various limbs and grounds;

— give judgment on the points of law, quashing the contested judgment, or, in the alternative refer the case back to the Court of First Instance pursuant to Article 54 of the Statute of the Court;

— declare the contested act null and void;

— award J.M. Le Pen the sum of FRF 50 000 (or EUR 7 622,45) as irrecoverable expenses;

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

Pleas and main arguments

The appeal is based on an infringement of Community law committed by the Court of First Instance with regard to the admissibility of the action against the contested act.

Although in principle emanating from the President of the Parliament, the act is in the form of a communication to the effect that the European Parliament takes note of the notification from the French Government confirming Mr Le Pen's removal from office.

This is an act of a threefold nature:

— it has legal effects: in this case it is an act of the European Parliament affecting Mr Le Pen's legal position, his removal from office being announced or found by the contested act;

— it is definitive in nature, since it is an act which cannot be described as preparatory;

— it has effects beyond the purely internal sphere of the Parliament, since it affects Mr Le Pen's legal position and civil and political rights. The said decision by the President of the European Parliament concerns the legal status of the appellant, by depriving him of his elective office, thus affecting electoral representation and *ex post facto* distorting the result of the elections.

It is therefore a reviewable act and an action against it appears to be possible given its very nature.

It would appear that, by a mistaken assessment of law and fact, the Court of First Instance did not distinguish between the question of admissibility (nature of the act) and substance (competence of the author of the act).

It is only by retroactive reasoning, depriving an individual of the legal decision to which he is entitled, that the Court of First Instance, considering that the act had no substantive validity by reason of the lack of competence of its author, concluded that it not exist and that therefore the action was inadmissible.

Since the appeal should be held admissible, the action for the annulment of the decision by the President of the European Parliament of 23 October 2003 is based on the pleas in law and main arguments relied upon in the action lodged on 21 November 2000 ([1]).

([1]) Case T-353/00 Le Pen v European Parliament, OJ C 28 of 27.1.2001, p. 27.

Reference for a preliminary ruling by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen by order of that Court of 4 July 2003 in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen

(Case C-299/03)

(2003/C 275/41)

Reference has been made to the Court of Justice of the European Communities by order of the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Land of Nordrhein-Westfalen) of 4 July 2003, received at the Court Registry on 11 July 2003, for a preliminary ruling in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen on the following questions:

A. 1. Is the contested product

'C 1000 (1 000 mg Vitamin C with bioflavonoid complex)'

a foodstuff (perhaps in the form of a food supplement) or a medicinal product? Is this finding binding on all the Member States?

2. If the Court of Justice concludes that the product in question is medicinal, but that in those Member States where it has hitherto been regarded as a foodstuff it should continue to be a foodstuff, that raises problems for the referring Chamber such as those underlying the questions in B VI, in conjunction with those in B III. Reference is made to those questions and the observations thereon and an answer is requested.

B. In the event that — as has been the case hitherto — the questions posed in section A above are to be answered not by the Court of Justice but by the national courts, the replies are, in this Chamber's view, needed to the following questions:

I. a) Is the contested product to be classified according to the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1, 'the Basic Regulation'), or — once the period for transposition expires on 31 July 2003 — according to Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51, 'the Food Supplements Directive'), and if so according to which parts of the directive?

b) If the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation applies, the following question arises: is it the case that it is no longer the product's main (objective) purpose that is the decisive factor, but rather that a product which meets the criteria for both a food and a medicine is, legally speaking, always — and only — a medicinal product? How material for these purposes is the type of product and how material the individual product?

II. a) How is the term 'pharmacological effect', which is critical for the purposes of classification, inter alia, under the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation, to be defined for the purposes of Community law? In particular, does the definition include a requirement that there be a health risk?

b) Now that Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use has, by the second sentence of Article 1(2) (on 'functional' medicinal products), introduced the term 'physiological functions', the further question arises as to the meaning of that term and its relation to the term 'pharmacological effect'.

III. Does the view expressed by the Court of Justice in Case 227/82 van Bennekom [1983] ECR 3883, paragraph 39 on the general classification of vitamin preparations, in which it said that it must be possible to import a product that may be marketed as a food in the Member State in which it was manufactured by the granting of a marketing authorisation if, even though it is regarded as a medicine in the Member State of import, a marketing authorisation is compatible with the requirements of health protection, also apply to the product at issue here, and does the Court of Justice adhere to its view in the light of subsequent Community law?

IV. a) In so far as the term 'health risk' is relevant to the questions in sections II or III, or to other applicable Community law, such as Articles 28 and 30 EC: Is the relevant threshold the 'upper safe level' or should it be reduced, say, because the substances in question are also ingested with food and/or because — at least where they are taken long-term — regard may have to be had to the various consumer groups and their different sensitivities? How are the words 'reference intakes for the population' within the meaning of Article 5 of the Food Supplements Directive to be defined?

b) Is it an infringement of Community law for the specialist authorities to have a discretion under national law to determine (individual) upper safe levels and any (individual) reductions that is subject to only limited review by the courts?

V. a) If a product may be marketed in at least one other Member State as a foodstuff, is the fact that there is no 'nutritional need' for that product in Germany significant in terms of the freedom to market the product in Germany?

b) If so, is it compatible with Community law for the authority to have a discretion under national law that is subject to only limited review by the courts?

VI. If in regard to the questions posed in section III the Court confirms the judgment in van Bennekom and there is no incompatibility in this case with the requirements of health protection, how can the request for marketing authorisation be successfully pursued? Can a decision of general application under Paragraph 47a of the LMBG be refused, without Community law being infringed, on the basis that in the German classification system a product is medicinal, whereas it can be marketed as a foodstuff in the Member State where it was manufactured? Is it compatible with Community law, and in particular Articles 28 and 30 EC, not to apply the rule in Paragraph 47a of the LMBG to such medicinal products analogously? If not, can the German State, without thereby infringing Community law, evade an obligation which a German court intends to impose on it to adopt a decision of general application under Paragraph 47a of the LMBG (applied analogously) if it, or the authority responsible for food but not medicines, objects that because in the German classification system the product is medicinal no decision of general application under Paragraph 47a of the LMBG (analogously) may be adopted,

a) because the body competent to adopt decisions of general application under Paragraph 47a of the LMBG is not competent for medicines also,

b) because the product is not authorised as a medicine?

VII. If the Court declines itself to reply to the questions posed in section A, may the national court then direct questions on the classification of products or indeed scientific or methodological questions to the European Food Authority and to what extent are any guidelines provided by that authority binding on the national court?

Reference for a preliminary ruling by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen by order of that Court of 3 July 2003 in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen

(Case C-316/03)

(2003/C 275/42)

Reference has been made to the Court of Justice of the European Communities by order of the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Land of Nordrhein-Westfalen) of 3 July 2003, received at the Court Registry on 24 July 2003, for a preliminary ruling in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen on the following questions:

A. 1. Is the contested product

'OPC 85'

a foodstuff (perhaps in the form of a food supplement) or a medicinal product? Is this finding binding on all the Member States?

2. If the Court of Justice concludes that the product in question is medicinal, but that in those Member States where it has hitherto been regarded as a foodstuff it should continue to be a foodstuff, that raises problems for the referring Chamber such as those underlying the questions in B VI, in conjunction with those in B III. Reference is made to those questions and the observations thereon and an answer is requested.

B. In the event that — as has been the case hitherto — the questions posed in section A above are to be answered not by the Court of Justice but by the national courts, the replies are, in this Chamber's view, needed to the following questions:

I. a) Is the contested product to be classified according to the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1, 'the Basic Regulation'), or — once the period for transposition expires on 31 July 2003 — according to Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51, 'the Food Supplements Directive'), and if so according to which parts of the directive?

b) If the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation applies, the following question arises: is it the case that it is no longer the product's main (objective) purpose that is the decisive factor, but rather that a product which meets the criteria for both a food and a medicine is, legally speaking, always — and only — a medicinal product? How material for these purposes is the type of product and how material the individual product?

II. a) How is the term 'pharmacological effect', which is critical for the purposes of classification, inter alia, under the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation, to be defined for the purposes of Community law? In particular, does the definition include a requirement that there be a health risk?

b) Now that Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use has, by the second sentence of Article 1(2) (on 'functional' medicinal products), introduced the term 'physiological functions', the further question arises as to the meaning of that term and its relation to the term 'pharmacological effect'.

III. Does the view expressed by the Court of Justice in Case 227/82 van Bennekom [1983] ECR 3883, paragraph 39 on the general classification of vitamin preparations, in which it said that it must be possible to import a product that may be marketed as a food in the Member State in which it was manufactured by the granting of a marketing authorisation if, even though it is regarded as a medicine in the Member State of import, a marketing authorisation is compatible with the requirements of health protection, also apply to the product at issue here, and does the Court of Justice adhere to its view in the light of subsequent Community law?

IV. a) In so far as the term 'health risk' is relevant to the questions in sections II or III, or to other applicable Community law, such as Articles 28 and 30 EC: Is the relevant threshold the 'upper safe level' or should it be reduced, say, because the substances in question are also ingested with food and/or because — at least where they are taken long-term — regard may have to be had to the various consumer groups and their different sensitivities? How are the words 'reference intakes for the population' within the meaning of Article 5 of the Food Supplements Directive to be defined?

b) Is it an infringement of Community law for the specialist authorities to have a discretion under national law to determine (individual) upper safe levels and any (individual) reductions that is subject to only limited review by the courts?

V. a) If a product may be marketed in at least one other Member State as a foodstuff, is the fact that there is no 'nutritional need' for that product in Germany significant in terms of the freedom to market the product in Germany?

b) If so, is it compatible with Community law for the authority to have a discretion under national law that is subject to only limited review by the courts?

VI. If in regard to the questions posed in section III the Court confirms the judgment in van Bennekom and there is no incompatibility in this case with the requirements of health protection, how can the request for marketing authorisation be successfully pursued? Can a decision of general application under Paragraph 47a of the LMBG be refused, without Community law being infringed, on the basis that in the German classification system a product is medicinal, whereas it can be marketed as a foodstuff in the Member State where it was manufactured? Is it compatible with Community law, and in particular Articles 28 and 30 EC, not to apply the rule in Paragraph 47a of the LMBG to such medicinal

products analogously? If not, can the German State, without thereby infringing Community law, evade an obligation which a German court intends to impose on it to adopt a decision of general application under Paragraph 47a of the LMBG (applied analogously) if it, or the authority responsible for food but not medicines, objects that because in the German classification system the product is medicinal no decision of general application under Paragraph 47a of the LMBG (analogously) may be adopted,

a) because the body competent to adopt decisions of general application under Paragraph 47a of the LMBG is not competent for medicines also,

b) because the product is not authorised as a medicine?

VII. If the Court declines itself to reply to the questions posed in section A, may the national court then direct questions on the classification of products or indeed scientific or methodological questions to the European Food Authority and to what extent are any guidelines provided by that authority binding on the national court?

Reference for a preliminary ruling by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen by order of that Court of 7 July 2003 in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen

(Case C-317/03)

(2003/C 275/43)

Reference has been made to the Court of Justice of the European Communities by order of the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Land of Nordrhein-Westfalen) of 7 July 2003, received at the Court Registry on 24 July 2003, for a preliminary ruling in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen on the following questions:

A. 1. Is the contested product

'Acid Free C-1000'

a foodstuff (perhaps in the form of a food supplement) or a medicinal product? Is this finding binding on all the Member States?

2. If the Court of Justice concludes that the product in question is medicinal, but that in those Member States where it has hitherto been regarded as a foodstuff it should continue to be a foodstuff, that raises problems for the referring Chamber such as those underlying the questions in B VI, in conjunction with those in B III. Reference is made to those questions and the observations thereon and an answer is requested.

B. In the event that — as has been the case hitherto — the questions posed in section A above are to be answered not by the Court of Justice but by the national courts, the replies are, in this Chamber's view, needed to the following questions:

I. a) Is the contested product to be classified according to the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1, 'the Basic Regulation'), or — once the period for transposition expires on 31 July 2003 — according to Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51, 'the Food Supplements Directive'), and if so according to which parts of the directive?

b) If the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation applies, the following question arises: is it the case that it is no longer the product's main (objective) purpose that is the decisive factor, but rather that a product which meets the criteria for both a food and a medicine is, legally speaking, always — and only — a medicinal product? How material for these purposes is the type of product and how material the individual product?

II. a) How is the term 'pharmacological effect', which is critical for the purposes of classification, inter alia, under the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation, to be defined for the purposes of Community law? In particular, does the definition include a requirement that there be a health risk?

b) Now that Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use has, by the second sentence of Article 1(2) (on 'functional' medicinal products), introduced the

term 'physiological functions', the further question arises as to the meaning of that term and its relation to the term 'pharmacological effect'.

III. Does the view expressed by the Court of Justice in Case 227/82 van Bennekom [1983] ECR 3883, paragraph 39 on the general classification of vitamin preparations, in which it said that it must be possible to import a product that may be marketed as a food in the Member State in which it was manufactured by the granting of a marketing authorisation if, even though it is regarded as a medicine in the Member State of import, a marketing authorisation is compatible with the requirements of health protection, also apply to the product at issue here, and does the Court of Justice adhere to its view in the light of subsequent Community law?

IV. a) In so far as the term 'health risk' is relevant to the questions in sections II or III, or to other applicable Community law, such as Articles 28 and 30 EC: Is the relevant threshold the 'upper safe level' or should it be reduced, say, because the substances in question are also ingested with food and/or because — at least where they are taken long-term — regard may have to be had to the various consumer groups and their different sensitivities? How are the words 'reference intakes for the population' within the meaning of Article 5 of the Food Supplements Directive to be defined?

b) Is it an infringement of Community law for the specialist authorities to have a discretion under national law to determine (individual) upper safe levels and any (individual) reductions that is subject to only limited review by the courts?

V. a) If a product may be marketed in at least one other Member State as a foodstuff, is the fact that there is no 'nutritional need' for that product in Germany significant in terms of the freedom to market the product in Germany?

b) If so, is it compatible with Community law for the authority to have a discretion under national law that is subject to only limited review by the courts?

VI. If in regard to the questions posed in section III the Court confirms the judgment in van Bennekom and there is no incompatibility in this case with the requirements of health protection, how can the request for marketing authorisation be successfully pursued? Can a decision of general application under Paragraph 47a of the LMBG be refused, without Community law being infringed, on the basis that in the German classification system a product is medicinal, whereas it can be marketed as a foodstuff in the Member State where it was manufactured? Is it compatible with Community law, and in particular Articles 28 and 30 EC, not to apply the rule in Paragraph 47a of the LMBG to such medicinal products analogously? If not, can the German State, without thereby infringing Community law, evade an obligation which a German court intends to impose on it to adopt a decision of general application under Paragraph 47a of the LMBG (applied analogously) if it, or the authority responsible for food but not medicines, objects that because in the German classification system the product is medicinal no decision of general application under Paragraph 47a of the LMBG (analogously) may be adopted,

a) because the body competent to adopt decisions of general application under Paragraph 47a of the LMBG is not competent for medicines also,

b) because the product is not authorised as a medicine?

VII. If the Court declines itself to reply to the questions posed in section A, may the national court then direct questions on the classification of products or indeed scientific or methodological questions to the European Food Authority and to what extent are any guidelines provided by that authority binding on the national court?

Reference for a preliminary ruling by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen by order of that Court of 8 July 2003 in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen

(Case C-318/03)

(2003/C 275/44)

Reference has been made to the Court of Justice of the European Communities by order of the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Land of Nordrhein-Westfalen) of 8 July 2003, received at the Court Registry on 24 July 2003, for a preliminary ruling in the administrative proceedings between Orthica BV against Bundesrepublik Deutschland, represented by the Federal Ministry of Consumer Protection, Nutrition and Agriculture; Intervener: the representative of the public interest at the Oberverwaltungsgericht für das Land Nordrhein-Westfalen on the following questions:

A. 1. Is the contested product

'E-400' (natural vitamin E)

a foodstuff (perhaps in the form of a food supplement) or a medicinal product? Is this finding binding on all the Member States?

2. If the Court of Justice concludes that the product in question is medicinal, but that in those Member States where it has hitherto been regarded as a foodstuff it should continue to be a foodstuff, that raises problems for the referring Chamber such as those underlying the questions in B VI, in conjunction with those in B III. Reference is made to those questions and the observations thereon and an answer is requested.

B. In the event that — as has been the case hitherto — the questions posed in section A above are to be answered not by the Court of Justice but by the national courts, the replies are, in this Chamber's view, needed to the following questions:

I. a) Is the contested product to be classified according to the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1, 'the Basic Regulation'), or — once the period for transposition expires on 31 July 2003 — according to Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51, 'the Food Supplements Directive'), and if so according to which parts of the directive?

b) If the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation applies, the following question arises: is it the case that it is no longer the product's main (objective) purpose that is the decisive factor, but rather that a product which meets the criteria for both a food and a medicine is, legally speaking, always — and only — a medicinal product? How material for these purposes is the type of product and how material the individual product?

II. a) How is the term 'pharmacological effect', which is critical for the purposes of classification, inter alia, under the first and second paragraphs of Article 2, in conjunction with point (d) of the third paragraph of Article 2 of the Basic Regulation, to be defined for the purposes of Community law? In particular, does the definition include a requirement that there be a health risk?

b) Now that Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use has, by the second sentence of Article 1(2) (on 'functional' medicinal products), introduced the term 'physiological functions', the further question arises as to the meaning of that term and its relation to the term 'pharmacological effect'.

III. Does the view expressed by the Court of Justice in Case 227/82 van Bennekom [1983] ECR 3883, paragraph 39 on the general classification of vitamin preparations, in which it said that it must be possible to import a product that may be marketed as a food in the Member State in which it was manufactured by the granting of a marketing authorisation if, even though it is regarded as a medicine in the Member State of import, a marketing authorisation is compatible with the requirements of health protection, also apply to the product at issue here, and does the Court of Justice adhere to its view in the light of subsequent Community law?

IV. a) In so far as the term 'health risk' is relevant to the questions in sections II or III, or to other applicable Community law, such as Articles 28 and 30 EC: Is the relevant threshold the 'upper safe level' or should it be reduced, say, because the substances in question are also ingested with food and/or because — at least where they are taken long-term — regard may have to be had to the various consumer groups and their different sensitivities? How are the words 'reference intakes for the population' within the meaning of Article 5 of the Food Supplements Directive to be defined?

b) Is it an infringement of Community law for the specialist authorities to have a discretion under national law to determine (individual) upper safe levels and any (individual) reductions that is subject to only limited review by the courts?

V. a) If a product may be marketed in at least one other Member State as a foodstuff, is the fact that there is no 'nutritional need' for that product in Germany significant in terms of the freedom to market the product in Germany?

b) If so, is it compatible with Community law for the authority to have a discretion under national law that is subject to only limited review by the courts?

VI. If in regard to the questions posed in section III the Court confirms the judgment in van Bennekom and there is no incompatibility in this case with the requirements of health protection, how can the request for marketing authorisation be successfully pursued? Can a decision of general application under Paragraph 47a of the LMBG be refused, without Community law being infringed, on the basis that in the German classification system a product is medicinal, whereas it can be marketed as a foodstuff in the Member State where it was manufactured? Is it compatible with Community law, and in particular Articles 28 and 30 EC, not to apply the rule in Paragraph 47a of the LMBG to such medicinal products analogously? If not, can the German State, without thereby infringing Community law, evade an obligation which a German court intends to impose on it to adopt a decision of general application under Paragraph 47a of the LMBG (applied analogously) if it, or the authority responsible for food but not medicines, objects that because in the German classification system the product is medicinal no decision of general application under Paragraph 47a of the LMBG (analogously) may be adopted,

a) because the body competent to adopt decisions of general application under Paragraph 47a of the LMBG is not competent for medicines also,

b) because the product is not authorised as a medicine?

VII. If the Court declines itself to reply to the questions posed in section A, may the national court then direct questions on the classification of products or indeed scientific or methodological questions to the European Food Authority and to what extent are any guidelines provided by that authority binding on the national court?

Action brought on 2 September 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-372/03)

(2003/C 275/45)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 2 September 2003 by the Commission of the European Communities, represented by Gerald Braun and Wouter Wils, members of the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg.

The applicant claims that the Court should

1. declare that by failing to adopt within the period laid down all the laws and administrative provisions required to transpose Council Directive 91/439/EEC of 29 July 1991 on driving licences [1] the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and that Directive;

2. Order the defendant to pay the costs.

Pleas in law and main arguments

The Commission takes the view that German law is inconsistent with Directive 91/439/EEC on the following points:

— Minimum age for direct access to heavy motor-cycles in category A

Paragraph 6.2, second sentence, of the regulation on granting persons permission to drive on the road (1998 regulation on permission to drive, hereinafter 'the FeV') provides for a minimum age of 25 for direct access to heavy motor-cycles in category A. Article 6(1)(b), first indent, last paragraph, of the Directive, however, provides for a minimum age of 21 years for direct access.

— Permission to drive motor vehicles in category DE with permission to drive vehicles in categories C1E and D

Under paragraph 6.3.6 of the FeV, it is permissible to drive vehicles in category DE with a driving permit for categories C1E and D, whereas Article 5(2)(b) of the Directive expressly permits only the driving of motor vehicles in category D with a driving permit covering categories CE and D

— Permission to drive motor vehicles in category D for holders of driving permits in categories C1, C1E, C or CE in certain cases

Paragraph 6.4 of the FeV entitles holders of driving permits in categories C1, C1E, C and CE in their Member State of origin to drive motor vehicles in category D (motorised omnibuses) without passengers if the journey is made merely for the purposes of examining the technical state of the vehicle or of transfering the vehicle to another location. However the Directive does not draw any distinction between the carriage of passengers and driving an empty bus. The Directive does not make provision for the driving of motor vehicles in category D without the corresponding driving licence, although such vehicles may be so driven for the purposes of examining the technical state of the vehicle after repairs have been carried out on grounds of practical convenience. A more

wide-ranging authority to transfer vehicles in category D with a category C driving licence is clearly contrary to the wording of Article 3(1), fifth indent, of the Directive.

— Minimum age for access to categories C1 and C1E

The FeV makes provision in paragraph 10.2.1 for access to categories C1 and C1E at the age of 17, in so far as the relevant persons are training to become professional drivers. That rule is contrary to the provisions of Article 6(1)(b), third indent, of the Directive, in conjunction, as regards to access to vehicles in categories C1 and C1E of over 7.5 tonnes, with Article 5(1)(b), second indent, of Regulation EC 3820/85.

— Registration of driving licences issued in other Member States

The systematic registration procedure contained in paragraph 29.1 of FeV and the provision for a penalty contained in paragraph 75.11 of the FeV infringe the principle of mutual recognition laid down in Article 1(2) of the Directive.

— Exchange of driving licences issued in other Member States

The exchange of driving licences for the purposes of registering what may be a shorter national period of validity in paragraph 29.3 of the FeV contravenes applicable Community law. Although an exchange of driving licence as provided for in paragraph 42 of the FeV in the event that it is not possible to enter limitations or conditions because of the nature of the driving licence does amount to an exchange for the reasons laid down in Article 8(2) of the Directive (which also includes the entry of medical limitations), the entry of other administrative observations (for example the applicability of the conditions on probationary permission to drive) is not covered by Article 8(2) of the Directive, which is why neither such entries nor exchanges are compatible with Community law.

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(1) OJ 1991 L 237, p. 1.

Action brought on 10 September 2003 (by fax on 9 September 2003) by the Federal Republic of Germany against the European Parliament and the Council of the European Union

(Case C-380/03)

(2003/C 275/46)

An action against the European Parliament and the Council of the European Union was brought before the Court of Justice of the European Communities on 10 September 2003 (by fax on 9 September 2003) by the Federal Republic of Germany represented by Wolf-Dieter Plessing and Moritz Lumma of the Federal Ministry for Finances and Jochim Sedemund, Rechtsanwalt, with an address for service at the Federal Ministry of Finances, Berlin.

The applicant claims that the Court should:

1. annul Articles 3 and 4 of Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (1);

2. order the defendant to pay the costs.

Pleas in law and main arguments

By its action the Federal Government claims that the Parliament and the Council, by adopting the contested provisions in the Directive, went beyond the boundaries of the jurisdiction of the Community legislature laid down by the Court of Justice in its judgment in Case C-376/98 [2000] ECR I-8419 and failed to have regard to the factual requirements for Community jurisdiction to exist established by the Court of Justice. The contested provisions almost exclusively govern factual situations with no cross-border effect. Accordingly, there are neither actual impediments to trade or any discernible distortion of competition which, under the judgment of the Court of Justice in Case C-376/98, are a necessary factual precondition in order for the Community to have jurisdiction under Article 95 EC. For that reason Article 95 does not provide a basis for jurisdiction on the part of the Community legislature to adopt the contested provisions. Since, given that there are no impediments to trade or discernible distortion of competition, the contested provisions do not in fact pursue the goal of improving the internal market but rather the protection of health, there is also an infringement of the prohibition on harmonisation in Article 152(4)(c) EC.

In addition the Federal Government claims in the alternative that no statement of reasons was given. The Community legislature failed to provide an adequate statement of reasons establishing that the factual requirements in Article 95 EC which confer jurisdiction were met, in particular in regard to the presence of impediments to trade, and failed to refer even once in the statement of reasons to the existence of any discernible distortion of competition with regard to press products and broadcasts, with the result that to that extent the Directive in any event infringes the obligation to give reasons in Article 253 EC.

Furthermore, the substantive amendments made by the Council following the Opinion of the Parliament give rise to a claim that the Parliament's rights under the co-decision procedure under Article 251 EC were infringed.

Finally the Federal Government claims in the alternative that the principle of proportionality has been infringed since the total bans provided for in Articles 3 and 4 on advertising in the press and/or printed publications as well as on the radio and the internet deliberately and specifically target local or regional situations with no cross-border element almost exclusively, with the result that the extensive prohibitions, within the meaning of Article 14(1) EC on the improvement of the internal market, are not necessary and are therefore disproportionate. The infringement of the principle of proportionality is all the more serious because the prohibitions have a significant adverse effect on the basic right of freedom of thought and press freedom, owing to the excessively broad and unspecific definition of the terms 'advertising' in Article 2(b) and 'the press and other printed publications' in Articles 1(a) and 3 of the Directive.

([1]) OJ L 152, p. 16.

Reference for a preliminary ruling by the Supreme Court, Ireland, by order of that court dated 2 April 2003, in the case of Ryanair Ltd against Aer Rianta cpt

(Case C-382/03)

(2003/C 275/47)

Reference has been made to the Court of Justice of the European Communities by an order of the Supreme Court, Ireland, dated 2 April 2003, which was received at the Court Registry on 10 September 2003, for a preliminary ruling in the case of Ryanair Ltd and Aer Rianta cpt on the following questions:

A. Is an airport check-in desk an 'airport installation' within the meaning of Article 16 (3) of the Directive ([1])?

B. If the answer to A is in the affirmative, is a rent charged for the exclusive right to occupy a particular check-in desk for a period of one year or greater a fee for access to airport installations within the meaning of Article 16 (3) of the Directive?

([1]) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports OJ L 272, 25.10.1996, p. 36-45.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 30 July 2003 in the case of Hauptzollamt Hamburg-Jonas against Käserei Champignon Hofmeister GmbH & Co. KG

(Case C-385/03)

(2003/C 275/48)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 30 July 2003, received at the Court Registry on 12 September 2003, for a preliminary ruling in the case of Hauptzollamt Hamburg-Jonas against Käserei Champignon Hofmeister GmbH & Co. KG on the following question:

Must the first and second subparagraphs of Article 11(1) of Regulation (EEC) No 3665/87 ([1]), as amended by Regulation (EC) No 2945/94 ([2]), be interpreted — also in the light of the principle of proportionality — as meaning that false information relating to individual items listed in the export declaration, which could result in the exporter receiving a higher export refund than that to which it is entitled, is by itself sufficient to give rise to a punitive reduction in the export refund in the amount set out in those provisions, even though the exporter expressly stated in connection with the separate application for payment which must be submitted under national law that it would not be applying for an export refund in respect of the relevant items in the export declaration?

([1]) OJ L 351 of 14.12.1987, p. 1.
([2]) OJ L 310 of 3.12.1994, p. 57.

Action brought on 5 September 2003 by the Kingdom of the Netherlands against the Commission of the European Communities

(Case C-388/03)

(2003/C 275/49)

An action against the Commission was brought before the Court of Justice of the European Communities on 5 September 2003 by the Kingdom of the Netherlands, represented by H.G. Sevenster, Head of the European Law Division of the Ministry of Foreign Affairs in The Hague.

The applicant claims that the Court should:

1. Annul Commission Decision SG (2003) D/230248 of 26 June 2003 concerning Aid measure No N 35/2003 relating to tradeable NO_x emission rights in so far as the Commission takes the view in that decision that the notified measure constitutes State aid for the purposes of Article 87(1) EC ([1]);

2. Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, namely the Kingdom of the Netherlands, notified the Commission under Article 88(3) EC of the 'NO_x emission rights trading scheme'. It requested a decision by the Commission that that scheme 'does not constitute aid' within the meaning of Article 4(2) of Regulation No 659/99/EC (OJ 1999 L 83, p. 1). By the scheme, the Netherlands Government has complied with its obligations to transpose Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ 2001 L 309, p. 22) in so far as reductions in emissions by large industrial plants are concerned. With respect to the Netherlands, that directive lays down a national NO_x emission ceiling of 260 kilotonnes, which is to be achieved by 2010. By the contested decision of 24 June 2003, the Commission concluded that the measure constitutes State aid and declared that it had no objection to the notified measure. The Commission takes the view that the measure is a valuable contribution to Community environmental policy.

Although the Netherlands Government welcomes the fact that the European Commission has not objected to the measure, notified by it on a precautionary basis, it seeks, by this action, annulment of the Decision in so far as the Commission concludes therein that the notified measure constitutes State aid. The Netherlands Government takes the view that it does not in any way constitute aid.

In support of its action, the Netherlands Government submits that there has been an infringement of Article 87 EC. The Netherlands scheme makes no use of State resources within the meaning of Article 87(1) EC. The measures relating to emission rights are financed entirely by private funds. Any profit made by undertakings on the sale of credits does not arise from the allocation of rights by the State but from the undertakings' own earnings made as a result of above-standard performance. The undertakings are not placed at any advantage. There is therefore no question of aid distorting competition or affecting trade.

The applicant further claims that there has been an infringement of the principle that reasons must be stated. The Commission's conclusion that the NO_x emission rights trading scheme constitutes State aid and must therefore be approved by the Commission is not substantiated by the explicit and coherent statement of reasons required for such a conclusion.

([1]) OJ L 213, 30.7.1998, p. 13.

Appeal brought on 24 September 2003 by Archer Daniels Midland Company and Archer Daniels Midland Ingredients Limited against the judgment delivered on 9 July 2003 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-224/00 ([1]) between Archer Daniels Midland Company and Archer Daniels Midland Ingredients Limited and the Commission of the European Communities

(Case C-397/03 P)

(2003/C 275/50)

An appeal against the judgment delivered on 9 July 2003 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-224/00 between Archer Daniels Midland Company and Archer Daniels Midland Ingredients Limited and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 24 September 2003 by Archer Daniels Midland Company, established in Decatur, Illinois (United States of America) and Archer Daniels Midland Ingredients Limited, established in Erith (United Kingdom), represented by C.O. Lenz, L. Martin Alegi, E.W. Batchelor and M. Garcia, lawyers, with an address for service in Luxembourg.

The Appellants claim that the Court should:

(i) set aside the judgment in so far as it dismisses the application brought by ADM in respect of the Decision ([2]);

(ii) annul Article 2 of the Decision in so far as it pertains to ADM;

(iii) in the alternative to (ii), modify Article 2 of the Decision to reduce further or cancel the fine imposed on ADM;

(iv) in the alternative to (ii) and (iii), refer the case back to the CFI for judgment in accordance with the judgment of the ECJ as to the law;

(v) in any event, order that the Commission bear its own costs and pay ADM's costs relating to the proceedings before the CFI and the ECJ.

Pleas in law and main arguments

The grounds relied upon by the Appellants are as follows:

(1) the CFI infringes the principle of non-retroactivity by upholding the Commission's retroactive application of the Guidelines on Fines;

(2) the CFI infringes the principle of equality:

(a) by upholding the Commission's discrimination as to the method of calculation of fines applied to contemporaneous competition law infringements depending on whether the Commission adopts its decision before or after publication of the Guidelines;

(b) by upholding an equal starting point for the fine on ADM and Ajinomoto, notwithstanding Ajinomoto's market share in the EEA is almost twice the size of ADM's;

(3) the CFI infringes the principle of *ne bis in idem* by holding that the Commission is not required to set off or take into account fines paid by ADM to other authorities in respect of the same actions;

(4) the CFI infringes the duty to state reasons:

(a) in finding that the Commission is not required to take account of fines paid by ADM in third countries notwithstanding that the Commission's fine is based, inter alia, on ADM's global turnover and therefore penalises ADM on the basis of its sales in countries where ADM has already been fined;

(b) in finding that the fine is reasonable notwithstanding the Commission's failure to take into account ADM's EEA lysine sales;

(5) the CFI distorts the evidence by finding that the Commission has proven actual economic impact as the evidence in question does not analyse price levels absent collusion and therefore cannot show that prices were higher than they otherwise would have been;

(6) the CFI infringes the principle that the Commission must follow self-imposed rules by permitting the Commission to infringe the Guidelines;

(7) the CFI infringes the principle of proportionality, as interpreted by the ECJ and CFI, which requires that fines bear some relationship to relevant turnover.

([1]) OJ C 316, 4.11.2002, p. 32.

([2]) 2001/418/EC: Commission Decision of 7 June 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/36.545/F3 Amino Acids) (Text with EEA relevance) (OJ L 152, 7.6.2001, p. 24).

Reference for a preliminary ruling by the Helsingin Hallinto-oikeus by order of that Court of 22 September 2003 in the case brought by E. Gavrielides Oy

(Case C-398/03)

(2003/C 275/51)

Reference has been made to the Court of Justice of the European Communities by order of the Helsingin Hallinto-oikeus (Helsinki Administrative Court) of 22 September 2003, received at the Court Registry on 24 September 2003, for a preliminary ruling in the case brought by E. Gavrielides Oy on the following questions:

Is Article 1(1) of Council Directive 90/642/EEC of 27 November 1990 ([1]) on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables, as subsequently amended, to be interpreted as meaning that the directive applies to leaves of the vine?

If the directive applies,

is Annex I to the directive to be interpreted as meaning that leaves of the vine are classified in the product group Leaf vegetables and fresh herbs and Annex II as meaning that leaves of the vine are classified under the point Herbs, Others?

In which product group and point are leaves of the vine to be classified if they are not to be classified under the point Herbs, Others?

(1) OJ L 350 of 14.12.1990, p. 71.

Action brought on 25 September 2003 by the Commission of the European Communities against the Council of the European Union

(Case C-399/03)

(2003/C 275/52)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 25 September 2003 by the Commission of the European Communities, represented by G. Rozet and V. di Bucci, acting as Agents, with an address for service in Luxembourg.

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

1) annul Council Decision 2003/531/EC of 16 July 2003 (1),

2) order the defendant to pay the costs.

Pleas in law and main arguments

The Council Decision of 16 July 2003 authorised the granting of aid identical to aid declared incompatible by the Commission's final negative decision of 17 February 2003. An individual Council Decision on State aid is in principle extraneous to the monitoring system established by the Treaty and must be confined to exceptional situations.

The Council Decision is vitiated in several regards:

— Lack of competence of the Council: Only a body independent of the States providing aid is in a position to examine objectively and impartially the different national measures. Thus it is for the Commission, as a general rule, to monitor State aid. Certainly, the Council has a decision-making power in the matter but it is an exceptional power which must be strictly interpreted.

— Misuse of powers and procedure: The power conferred on the Council exceptionally to authorise State aid instead of the Commission and, where proceedings are initiated, subject to closely defined time-limits, was used in order to neutralise the Commission's Decision of 17 February 2003, that is to say to annul its effects, by authorising aid identical to the aid declared incompatible. The contested decision is also vitiated by a misuse of powers because it was adopted in order to produce the same effects as an annulment judgment by the Court of Justice.

— Infringement of the Treaty and of the general principles of Community law. The contested decision not only was adopted in breach of the third subparagraph of Article 88(2) EC but also disturbs the institutional equilibrium established by the Treaty as between the Commission and the Council. That equilibrium entails observance by the other institutions, in particular the Council, of the Commission's sphere of competence. That means that, except in the case of an express derogatory power, the Council may not impinge on the Commission's sphere of competence. However, in the present case, the Council acted *ultra vires*. The procedure at issue also disturbs the equilibrium between the 'executive' institutions and the Community judicature and, in general terms, jeopardises the adjudication system established by the Treaty. Finally, the Council Decision infringes the substantive law in the matter of State aid and Council Directive 69/335/EEC, as well as the obligation in that regard to provide a statement of reasons.

— In the alternative, manifest error of assessment and misuse of powers as to the existence of exceptional circumstances. The Council manifestly erred in its assessment in particular by deeming exceptional circumstances to exist owing to the fact that Belgium did not have the time necessary to put in place measures different from those declared incompatible with the common market by the Commission Decision of 17 February 2003 in favour of coordination centres established in its territory.

(1) Council Decision 2003/531/EC of 16 July 2003 on the granting of aid by the Belgian Government to certain coordination centres in Belgium (OJ 2003 L 184, p. 17).

Reference for a preliminary ruling by the Tribunal d'instance du VIIème arrondissement de Paris by judgment of that Court of 21 August 2003 in the case of Waterman SA against Directeur Général des Douanes et Droits Indirects

(Case C-400/03)

(2003/C 275/53)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal d'instance du VIIème arrondissement de Paris of 21 August 2003, received at the Court Registry on 26 September 2003, for a preliminary ruling in the case of Waterman SA against Directeur Général des Douanes et Droits Indirects on the following question:

Is the Explanatory Note to the Combined Nomenclature relating to subheadings 4202 12 11 and 4202 12 19, which clarifies the term 'in the form of plastic sheeting' as follows: 'if a container has an outer material that is a combination of materials where the outer layer being visible to the naked eye is plastic sheeting (e.g., woven fabric of textile fibres in combination with plastic sheeting) it is irrelevant for classification purposes whether the sheeting was manufactured separately before creating the combined material or whether the plastic layer is the result of applying a coating or covering of plastics to the material ... provided that the resultant outer layer being visible to the naked eye has the same visual appearance as an applied layer of manufactured plastic sheeting', contrary to the tariff?

Reference for a preliminary ruling by the Tribunal de Grande Instance du Mans by judgment of that Court of 8 September 2003 in the case of The Procureur de la Republique against Oliver Dupuy and Hervé Rouvre

(Case C-404/03)

(2003/C 275/54)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Grande Instance du Mans (Regional Court, Le Mans) of 8 September 2003, received at the Court Registry on 29 September 2003, for a preliminary ruling in the case of The Procureur de la Republique against Oliver Dupuy and Hervé Rouvre on the following question:

Do the provisions of Community law relating to restrictions on the marketing of dangerous substances and preparations, and in particular the provisions of Directive 76/769 [1] and Directive 94/60 [2] of 20 December 1994, prohibit the placing on the market for sale to the public of drying agent products containing lead compounds classified as toxic for reproductive purposes, or do those provisions permit the relevant derogation laid down for 'artists' paints' to be applied to those products?

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[1] Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ L 262 of 27.9.1976, p. 201).

[2] European Parliament and Council Directive 94/60/EC of 20 December 1994 amending for the 14th time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ L 365 of 31.12.1994, p. 1).

Action brought on 29 September 2003 by the Commission of the European Communities against the Republic of Finland

(Case C-407/03)

(2003/C 275/55)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 29 September 2003 by the Commission of the European Communities, represented by M. van Beek and M. Huttunen, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that, by failing to require in its legislation with sufficient legal certainty that an appropriate assessment is to be made with respect to all projects, including those which are the subject of an 'environmental impact assessment', the Republic of Finland has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1];

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

Pleas in law and main arguments

Finland has failed to fulfil its obligations under the nature directive by failing to require in its legislation with sufficient legal certainty that an appropriate assessment is to be made in respect of all projects, including those which are the subject of an environmental impact assessment. That fact alone suffices to found the present action.

Finland took the view in its response to the letter of formal notice that if the Environmental Impact Assessment Law applies to a project, the explanations made in connection with the environmental impact assessment procedure may be the appropriate assessment within the meaning of Paragraph 65 of the Nature Protection Law. According to Finland, overlapping procedures are thus prevented. Finland repeated its view in its reply to the reasoned opinion.

In so far as Finland refers to difficulties in practice in bringing its legislation into line with its Treaty obligations, the Commission recalls the settled case-law of the Court of Justice which says that internal difficulties within the State connected with the conditions in which laws and regulations are drafted cannot release a Member State from its obligations under Community law. Similarly, in accordance with the settled case-law of the Court of Justice, when assessing whether a Member State has failed to fulfil its obligations of membership, regard must be had to the situation of the Member State as it is at the expiry of the time-limit set in the reasoned opinion.

As yet, it has not yet come to the knowledge of the Commission that the necessary measures for aligning national legislation with Article 6(3) of the nature directive have been carried out, or at least they have not been notified to the Commission.

([1]) OJ L 206, 22.7.1992, p. 7.

Action brought on 30 September 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-408/03)

(2003/C 275/56)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 30 September 2003 by the Commission of the European Communities, represented by M. Condou Durande and D. Martin, acting as Agents, with an address for service in Luxembourg.

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

1. declare that the Kingdom of Belgium:

   — has failed to fulfil its obligations under Article 18 EC and Directive 90/364/EEC on the right of residence, by making the right of residence of citizens of the Union subject to the condition that they have sufficient personal resources;

   — has failed to fulfil its obligations under Directive 90/364/EEC on the right of residence ([1]), under Article 4 of Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families ([2]), under Article 4 of Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services ([3]), under Article 2 of Directive 93/96/EEC on the right of residence for students, ([4]) and under Article 2 of Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity ([5]), by providing for the possibility to give automatic notification of an order to leave the country to citizens of the Union who have not produced the documents necessary to obtain a residence permit within a prescribed period;

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

Pleas in law and main arguments

The Belgian legislation and administrative practice infringe Community law in that they lay down:

— the condition of possession of sufficient personal resources.

  Article 1 of Directive 90/364/EEC requires that the citizen of the Union proves that he has, for himself and the members of his family, sufficient resources, but does not require that the resources are his. The Directive introduces in respect of the host Member State a flexible system of guarantees which evolves over time, intended to allow the citizen of the Union to move easily within the territory of the Member States without having to prove that he has means of subsistence for the entire duration of his stay. However, the system of the Belgian authorities seeks to introduce additional guarantees in order to avoid *ab initio* the citizen of the Union becoming a burden on the social assistance system, which is inherently contrary to the spirit of Directive 90/364/EEC.

— the possibility of giving notification of an order to leave the territory to citizens of the Union who have not produced the documents necessary for the issue of a residence permit within the prescribed period.

A Member State may refuse or terminate the right of residence of a citizen of the Union only if the conditions of this right are not or are no longer fulfilled. By contrast, the fact that the administrative procedures for the grant of the residence permit evidencing the right have not been complied with may not lead to a penalty such as refusal to grant the right of residence or removal from the territory, which would effectively deny the actual right of residence conferred and guaranteed by the Treaty. The notification of an order to leave the territory may be based not on exclusively administrative grounds, but on facts leading to the conclusion that the person concerned does not fulfil the conditions set for his right of residence by one of the relevant directives.

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(1) OJ 1990 L 180, p. 26.
(2) OJ English Special Edition 1968 (II), p. 485.
(3) OJ 1973 L 172, p. 14.
(4) OJ 1993 L 317, p. 59.
(5) OJ 1990 L 180, p. 28.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that Court of 15 July 2003 in the proceedings between SEPA Société d'Exportation de Produits Agricoles S.A. and Hauptzollamt Hamburg-Jonas

(Case C-409/03)

(2003/C 275/57)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 15 July 2003, received at the Court Registry on 1 October 2003, for a preliminary ruling in the proceedings between SEPA Société d'Exportation de Produits Agricoles S.A. and Hauptzollamt Hamburg-Jonas on the following questions:

1. Does the concept of 'fair marketable quality' in Article 13 of Commission Regulation (EEC) No 3665/87 (1) of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products require that the manufacture and distribution of the products in question be subject only to generally valid legal conditions as they apply to any product of that type, and does it consequently disqualify from the grant of an export refund a product to which special restrictions apply, in particular as regards its production, treatment or distribution, such as, for example, the ordering of a specific inspection as to fitness for human consumption or a restriction to certain distribution channels?

2. Does the concept of 'fair marketable quality' in Article 13 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 require that the product to be exported be of average quality, and does it therefore disqualify from the grant of an export refund a product of inferior quality, which, however, usually appears under the description of the object of trade given in the refund application? Is that also the case where the inferior quality has in no way affected the completion of the commercial transaction?

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(1) OJ L 351, p. 1.

Action brought on 2 October 2003 by the Commission of the European Communities against Ireland

(Case C-413/03)

(2003/C 275/58)

An action against Ireland was brought before the Court of Justice of the European Communities on 2 October 2003 by the Commission of the European Communities, represented by Mr Xavier Lewis, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (1), or by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 34 of this Directive.

2) order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 17 October 2002.

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(1) OJ L 106, 17.4.2001, p. 1.

Action brought on 2 October 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case-414/03)

(2003/C 275/59)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 2 October 2003 by the Commission of the European Communities, represented by Klaus Wiedner, a member of the Legal Service of the Commission of the European Communities, with an address for service in Luxembourg.

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

— declare that by allowing a contract for the disposal of waste entered into by the local authority for Friesland to be awarded without the provisions relating to giving notice provided for in Article 8 of Directive 92/50 [1] in conjunction with Titles III to VI of that Directive being complied with, the Federal Republic of Germany has failed to fulfil its obligations under that Directive;

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

Pleas in law and main arguments

Although the defendant admitted to the alleged infringement and claimed that it intended to award the contract for the disposal of waste in a manner that complies with EU public procurement law in future, it took no steps to terminate the current contract which remains in force up to 13 December 2004.

Nor does it even claim that it is possible for the contract to be terminated under German law. It merely points to the fact that to terminate the contract early could lead to claims for damages. However, the effectiveness of Community public procurement law is greatly enhanced precisely where contracting authorities do in appropriate cases have to contend with the possibility of paying out damages.

Nor can the obligation to bring infringements of Community public procurement law to an end by terminating contracts already entered into be called in question by Article 2(6) of Directive 89/665 [2] which relates to reviews of possible infringements of Community public procurement law. An infringement of the Treaty can be regarded as having been brought to an end only where the Member State has acknowledged the wrongfulness of the conduct and the infringement has also been fully brought to an end.

[1] OJ L 209, p. 1.
[2] OJ L 395, p. 33.

Action brought on 3 October 2003 by the Commission of the European Communities against the Hellenic Republic

(Case C-416/03)

(2003/C 275/60)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by M. Konstantinidis, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC [1] of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, or in any event by failing to inform the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be implemented in the national legal order expired on 17 October 2002.

[1] OJ L 106 of 17.4.2001, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-417/03)

(2003/C 275/61)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by B. Stromsky, acting as Agent, with an address for service in Luxembourg.

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

1. declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [1] and, in any event, by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition of the directive expired on 17 October 2002.

[1] OJ 2001 L 106, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-418/03)

(2003/C 275/62)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by B. Stromsky, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [1] and, in any event, by not communicating them to the Commission, the French Republic has failed to fulfil its obligations under that directive;

2. order the French Republic to pay the costs.

Pleas in law and main arguments

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

[1] OJ L 106, 17.4.2001, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the French Republic

(Case C-419/03)

(2003/C 275/63)

An action against the French Republic was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by U. Wölker and F. Simonetti, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [1] and, in any event, by not communicating them to the Commission, the French Republic has failed to fulfil its obligations under that directive;

2. order the French Republic to pay the costs.

Pleas in law and main arguments

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

[1] OJ L 106, 17.4.2001, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-420/03)

(2003/C 275/64)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by Prof. Dr Ulrich Wölker, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [1], or at any rate by not informing the Commission thereof, 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

The period for transposition expired on 17 October 2002.

[1] OJ 2001 L 106, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-421/03)

(2003/C 275/65)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by Prof. Dr Ulrich Wölker, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [1], or at any rate by not informing the Commission thereof, 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 17 October 2002.

[1] OJ 2001 L 106, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-422/03)

(2003/C 275/66)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by Michel Van Beek.

The applicant claims that the Court should:

1. Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [1], or in any event by failing to inform the Commission thereof, 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 for transposition of the Directive expired on 17 October 2002.

[1] OJ 2001 L 106, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the Republic of Finland

(Case C-423/03)

(2003/C 275/67)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by U. Wölker and M. Huttunen, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that the Republic of Finland has failed to fulfil its obligations under Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC [1], since Finland has not brought into force the laws, regulations and administrative provisions necessary to comply with the directive, or at least has not informed the Commission thereof;

2. Order Finland to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 17 October 2002.

[1] OJ L 106 of 17.4.2001, p. 1.

Action brought on 3 October 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-424/03)

(2003/C 275/68)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 3 October 2003 by the Commission of the European Communities, represented by Gregorio Valero Jordana of the Commission's Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC [1] of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, or, in any event, by failing to notify the Commission thereof, the Kingdom of Spain has failed to comply with its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period for transposition into national law of the directive expired on 17 October 2002.

[1] OJ L 106 of 17.4.2001, p. 1.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 September 2003

in Case T-137/01: Stadtsportverband Neuss eV v Commission of the European Communities [1]

(Action for annulment — Eurathlon Programme — Community financial assistance — Partial repayment — Obligation to state reasons — Method of calculation — Limitation period — Ineligible expenditure)

(2003/C 275/69)

(Language of the case: German)

In Case T-137/01, Stadtsportverband Neuss eV, established in Neuss (Germany), represented by H.G. Hüsch and S. Schnelle, lawyers, v Commission of the European Communities (Agent: J. Sack): Application for annulment of the Commission's decision of 9 April 2001 ordering partial repayment of financial assistance granted to the applicant under the Eurathlon programme, the Court of First Instance (Fourth Chamber), composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 17 September 2003, in which it:

1. *Dismisses the application.*

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

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[1] OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 September 2003

in Joined Cases T-309/01 and T-239/02: Peter Biegi Nahrungsmittel GmbH and Commonfood Handelsgesellschaft für Agrar-Produkte mbH v Commission of the European Communities [1]

(Subsequent accounting for import duties — Conditions — Article 220(2)(b) of Regulation (EC) No 2193/92 — Detectable error — Duty of care — Regulation (EC) No 774/94 — Combined nomenclature — WTO tariff quotas)

(2003/C 275/70)

(Language of the case: German)

In Joined Cases T-309/01 and T-239/02, Peter Biegi Nahrungsmittel GmbH, established in Frankfurt am Main (Germany), Commonfood Handelsgesellschaft für Agrar-Produkte mbH, established in Langen (Germany), represented by K. Landry and L. Harings, lawyers, v Commission of the European Communities (Agents: J.-C. Schieferer, R. Tricot, X. Lewis and M. Núñez-Müller): Application for, first, partial annulment of Commission Decision C (2001) 2533 of 14 August 2001 (REC 4/00), finding it appropriate to effect post-clearance recovery of import duties not charged to Peter Biegi Nahrungsmittel GmbH in respect of the importation of poultry meat from Thailand during the period from 13 to 18 July 1995 and from 4 to 22 September 1995 (Case T-309/01), and, second, annulment of Commission Decision C (2002) 857 of 5 March 2002 (REC 4/01), finding it appropriate to effect post-clearance recovery of import duties not charged to Commonfood Handelsgesellschaft für Agrar-Produkte mbH in respect of the importation of poultry meat from Thailand on 24 July 1995 (Case T-239/02), the Court of First Instance (Fourth Chamber), composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges; I. Natsinas, Administrator, for the Registrar, has given a judgment on 17 September 2003, in which it:

1. *Dismisses the applications.*

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

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[1] OJ C 56 of 2.3.2002 and C 247 of 12.10.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 18 September 2003

in Case T-321/01: Internationaler Hilfsfonds eV v Commission of the European Communities [1]

(Development cooperation — Community co-financing of projects by NGOs — Ineligibility of an NGO — Rejection of co-financing applications)

(2003/C 275/71)

(Language of the case: French)

In Case T-321/01, Internationaler Hilfsfonds eV, established in Rosbach (Germany), represented by H. Kaltenecker, lawyer, v Commission of the European Communities (Agents: M.-J. Jonczy and S. Fries): Application for annulment of the Commission's decision of 16 October 2001 refusing applications for the co-financing of two projects submitted by the

applicant in December 1996 and September 1997, the Court of First Instance (Third Chamber), composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 18 September 2003, in which it:

1. *Annuls the Commission's decision of 16 October 2001 refusing the applications for co-financing made by the applicant in December 1996 and September 1997.*

2. *Orders the Commission to pay the costs of the applicant in addition to its own costs.*

([1]) OJ C 56 of 2.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 September 2003

in Case T-71/02: Classen Holding KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Admissibility of appeal before the Board of Appeal — Formal requirements — Filing of a written statement setting out the grounds of appeal — Time-limit for applying for restitutio in integrum — Articles 59 and 78 of Regulation No 40/94)

(2003/C 275/72)

(Language of the case: English)

In Case T-71/02, Classen Holding KG, established in Essen (Germany), represented by S. von Petersdorff-Campen, lawyer, with an address for service in Luxembourg, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: S. Laitinen), the intervener before the Court of First Instance being International Paper Co., established in New York, New York (United States of America), represented by E. Armijo Chávarri, lawyer: Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 December 2001 (Case R 810/1999-2) declaring inadmissible, following rejection of the application for restitutio in integrum, the appeal brought against the decision of the Opposition Division in opposition proceedings between Classen Holding KG and International Paper Co., the Court of First Instance (Fourth Chamber), composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 17 September 2003, in which it:

1. *Dismisses the application.*

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

([1]) OJ C 156 of 29.6.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 September 2003

in Case T-76/02: Mara Messina v Commission of the European Communities ([1])

(Regulation (EC) No 1049/2001 — Access to documents — Non-disclosure of a document originating from a Member State without the prior agreement of that State)

(2003/C 275/73)

(Language of the case: Italian)

In Case T-76/02, Mara Messina, residing at Naples (Italy), represented by M. Calabrese, lawyer, v Commission of the European Communities (Agents: U. Wölker, V. Di Bucci and P. Aalto): Application for annulment of the Commission's decision refusing the applicant access to certain documents relating to the State aid scheme which was the subject of the Commission's Decision of 2 August 2000 (State Aid N 715/99 — Italy (SG 2000 D/10574), the Court of First Instance (Fourth Chamber, Extended Composition), composed of: V. Tiili, President, J. Pirrung, P. Mengozzi, A.W.H. Meij and M. Vilaras, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 17 September 2003, in which it:

1. *Dismisses the action.*

2. *Orders the applicant to bear half her own costs. Orders the Commission to bear its own costs and to pay half of the applicant's costs.*

([1]) OJ C 109 of 4.5.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 25 June 2003

in Case T-41/01: Rafael Pérez Escolar v Commission of the European Communities [1]

(State aid — Complaint — Action for failure to act — Standing — Admissibility)

(2003/C 275/74)

(Language of the case: Spanish)

In Case T-41/01: Rafael Pérez Escolar, residing in Madrid, represented by F. Moreno Pardo, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: I. Martínez del Peral and J. Flett) — application under Article 232 EC for a declaration that the Commission has failed to fulfil its obligations under the EC Treaty by failing to adopt any decision whatever regarding the complaint made by the applicant against the Kingdom of Spain for infringement of Article 87 EC and by failing to initiate the procedure provided for by Article 88(2) EC with regard to the State aid allegedly granted by the Spanish authorities to Banco Español de Crédito SA — the Court of First Instance (Fourth Chamber, Extended Composition), composed of V. Tiili, President of the Chamber, J. Pirrung, P. Mengozzi, A.W.H. Meij and M. Vilaras, Judges; H. Jung, Registrar, made an order on 25 June 2003, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

2. *The applicant is ordered to pay the costs.*

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[1] OJ C 134 of 5.5.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 15 July 2003

in Case T-371/02: Bernard Barbé v European Parliament

(Attachment of earnings procedure — Failure to pay to the attaching creditor deductions from salary made prior to termination of attachment of earnings — Manifest inadmissibility)

(2003/C 275/75)

(Language of the case: French)

In Case T-371/02: Bernard Barbé, official of the European Parliament, residing in Luxembourg (Luxembourg), represented by A. Lorang, lawyer, with an address for service in Luxembourg, against European Parliament (Agents: H. von Hertzen and L. Knudsen) — application for annulment of the decision of the Parliament not to pay to the applicant the sum corresponding to the deductions made from the salary of his ex-wife between March and November 1998 — the Court of First Instance (Third Chamber), composed of K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; H. Jung, Registrar, has given a judgment on 15 July 2003, in which it:

1. *Dismisses the application as manifestly inadmissible.*

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

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 5 August 2003

in Case T-79/03 R: Industrie riunite odolesi SpA (IRO) v Commission of the European Communities

(Procedure for interim relief — Competition — Payment of a fine — Bank guarantee — Urgency — None)

(2003/C 275/76)

(Language of the case: Italian)

In Case T-79/03 R, Industrie riunite odolesi SpA (IRO), established in Odolo (Italy), (lawyer: A. Giardina), supported by the Italian Republic (Agent: I.M. Braguglia) v Commission of the European Communities (Agents: L. Pignataro and A. Whelan) — application to suspend operation of the Commission Decision of 17 December 2002 relating to a proceeding under Article 65 CS (COMP/37.956 — Reinforcing bars), in so far as it imposes a fine of EUR 3,58 million on the applicant, — the President of the Court of First Instance made an order on 5 August 2003, the operative part of which is as follows:

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

2. *The costs are reserved.*

Action brought on 29 August 2003 by Canali Ireland Limited against the Office for Harmonisation in the Internal Market

(Case T-301/03)

(2003/C 275/77)

(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 29 August 2003 by Canali Ireland Limited, Dublin, (Ireland), represented by C. Gielen and O. Schmutzer, lawyers. Canali S.p.A. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of 17 June 2003;

— declare that the opposition filed against the application by the applicant for the mark CANAL JEAN CO succeeds and to refuse the application for this mark in its entirety and/or to give any order that the Court deems fit;

— order for payment of all cost of the proceedings against the applicant.

Pleas in law and main arguments

Applicant for Community trade mark:	Canal Jean Co., Inc.
Community trade mark sought:	Figurative trade mark 'CANAL — JEAN CO.' Application No 425363, relating to goods in Class 25 (Articles of clothing, footwear, head gear).
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	Italian trade mark registration No 513948 for the word mark 'CANALI' for goods and services in Classes 3, 6, 9, 14, 16, 18, 20, 25, 34 and 42
Decision of the Opposition Division:	Admission of the opposition
Decision of the Board of Appeal:	Annulent of the Decision of the Opposition Division and rejection of the opposition
Pleas in Law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 (risk of confusion).

Action brought on 4 September 2003 by Lidl Stiftung & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-303/03)

(2003/C 275/78)

(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 Lidl Stiftung & Co. KG, Neckarsulm (Germany), represented by P. Groß, lawyer. REWE-Zentral AG, Cologne (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— declare void and annul the decision of 30 June 2003 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) on the appeal in Case R 408/2002-1 concerning registration of the Community trade mark 'Salvita' under Application No 609339;

— order the defendant to reimburse the applicant the costs of these proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	REWE-Zentral AG
Community trade mark sought:	The word mark 'Salvita' for goods in Classes 5, 29, 30 and 32 — Application No 609339

Proprietor of mark or sign cited in the opposition proceedings:	The applicant in this case
Mark or sign cited in opposition:	The German word mark 'SOLEVITA' for goods in Class 32
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Pleas in law:	The applicant has submitted adequate evidence of genuine use of the opposing mark; — Infringement of the maxim of party disposition laid down in the second sentence of Article 74(1) of Regulation 40/94; — Failure to respect the right to be heard.

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

(Case T-305/03)

(2003/C 275/79)

(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 OpusDent GmbH, Freising (Germany), represented by P. Munzinger, lawyer. Dornier Medizintechnik GmbH, Weßling (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of 23 June 2003 of the Second Board of Appeal of the defendant in Case R 579/2002-2;

— 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 case
Community trade mark sought:	The word/figurative mark 'Opus-Dent' for goods and services in Classes 9, 10 and 42 (inter alia, lasers, not for medical purposes; medical, dental and aesthetic lasers; medical and dental treatment) — Application No 1331230
Proprietor of mark or sign cited in the opposition proceedings:	Dornier Medizintechnik GmbH
Mark or sign cited in opposition:	The Community trade mark 'Opus' for goods in Class 10 (inter alia, medical tables for examinations and treatment, X-ray apparatus and X-ray work stations)
Decision of the Opposition Division:	The opposition was upheld in respect of the goods 'medical, dental and aesthetic lasers' and rejected in respect of the remaining goods and services
Decision of the Board of Appeal:	Dismissal of the appeal
Pleas in law:	No likelihood of confusion

Action brought on 8 September 2003 by Manel Camós Grau against Commission of the European Communities

(Case T-309/03)

(2003/C 275/80)

(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 Manel Grau, residing in Brussels, represented by M.-A. Lucas, lawyer.

The applicant claims that the Court should:

— annul the decision of 17 May 2002 of OLAF or its Director removing one of the investigators from the Office's investigation into the IRELA owing to a conflict of interests on his part, in that it left standing measures adopted by that investigator to which he contributed;

— annul the decision of 29 November 2002 of OLAF or its Director rejecting by implication the applicant's administrative complaint of 29 July 2002 against that decision;

— annul the report of 17 October 2002 closing the investigation in to IRELA or the decision of its Director adopting that report or its conclusions;

— annul the decision of 28 May 2003 of the Director of OLAF rejecting the applicant's administrative complaint of 4 February 2003 against that report;

— order the Commission to pay the applicant compensation, evaluated provisionally and ex aequo et bono at EUR 10 000, for the non-pecuniary harm sustained;

— order the Commission to pay the applicant a provisional sum of EUR 1 by way of compensation for the harm to his career;

— order the Commission to reimburse the fees which he has incurred in his defence in the investigation and the administrative complaints against the contested decision and report;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, an official with the defendant, has already brought an action before the Court (T-96/03) [1] also seeking annulment of the OLAF's decision of 12 May 2002 and claiming damages. By the present action, the applicant repeats the forms of order already submitted in his first action, but also attacks the report closing the inquiry. In support of the present action, he relies first of all on the pleas already raised in Case T-96/03.

He then relies on two further pleas. The first alleges breach of the principles of the rights of the defence, legitimate expectations and proper administration, and also of Commission Decision 396/96 on the terms and conditions for internal investigations. The second plea alleges breach of Articles 6 and 9 of Regulation No 1073/1999 [2], and also the principle of the objectivity of OLAF investigations, in that the contested report was drawn up without the assistance of the sole investigator who remained authorised.

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[1] Communicated in OJ C 112, 10.5.2003, p. 44.

[2] 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), published in OJ L 136 of 31.05.1999, pp. 1-7.

Action brought on 12 September 2003 by Nürburgring GmbH against the European Parliament and the Council of the European Union

(Case T-311/03)

(2003/C 275/81)

(Language of the case: German)

An action against the European Parliament and the Council of the European Union was brought before the Court of Justice of the European Communities on 12 September 2003 by Nürburgring GmbH, represented by Dr H.-J. Rabe, and Dr M.A. Dauses.

The applicant claims that the Court should:

— declare Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, and Article 5(1) thereof in particular, void;

— order the defendant to bear the costs.

Pleas in law and main arguments

The applicant organises Formula 1 car racing at the Nürburgring. Tobacco companies make substantial contributions to support such racing events. The applicant submits that, because of the prohibition in Article 5(1) of the directive, there is a danger that Formula 1 racing will no longer be held at the Nürburgring.

The applicant claims that there was a procedural defect in the adoption of the directive. The version of the directive adopted by the Council differs on several points from the version adopted by the European Parliament. That constitutes a breach of Article 251 EC. Furthermore, it submits that Article 95 EC does not constitute a sufficient legal basis. Despite its apparent limitation to cross-border sponsorship, Article 5(1) entails a general prohibition on sponsoring for tobacco products. However, according to the judgment of the Court of Justice in Case C-376/98 [1] Article 95 EC does not justify a general ban on sponsoring.

The applicant argues further that the selection of Article 95 EC as the legal basis allowed the prohibition on harmonisation in Article 152(4) to be circumvented. The applicant also claims that the vague wording of the sponsorship ban breaches the requirement of clarity which is the expression of the principle of legal certainty fundamental to Community law.

Finally, the applicant points out that Article 5(1) of the directive is a disproportionate measure, in view both of the purported internal market objectives of the Community legislature and of the health protection aims actually pursued and thus breaches a founding principle of the European Union. Moreover, the ban infringes the fundamental property rights of the applicant.

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[1] Case C-376/98 Germany v Parliament and Council [2000] ECR I-8419.

Action brought on 11 September 2003 by Annelies Keyman against the Commission of the European Communities

(Case T-313/03)

(2003/C 275/82)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 September 2003 by Annelies Keyman, residing in Overijse (Belgium), represented by Carlos Mourato, avocat.

The applicant claims that the Court should:

— Annul the decisions of 11 December 2002 and 11 June 2003 approving the applicant's staff report for 1999-2001;

— Order the defendant to pay the costs of the proceedings, pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance, together with the expenses necessarily incurred for the purpose of the proceedings and, in particular, the expenses relating to the address for service, travel and subsistence expenses and the remuneration of lawyers, pursuant to Article 91(b) of those rules.

Pleas in law and main arguments

In support of her application the applicant alleges breach of Article 43 of the Staff Regulations and a manifest error of assessment. The applicant further alleges abuse of power.

Action brought on 15 September 2003 by Société Musée Grévin against the Commission of the European Communities

(Case T-314/03)

(2003/C 275/83)

(Language of the Case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 September 2003 by Société Musée Grévin, having its registered office in Paris, represented by Bernard Geneste and Olivia Davidson, avocats.

The applicant claims that the Court should:

— annul the Commission's decision of 8 July 2003 requiring Société Musée Grévin to reimburse the amounts allegedly overpaid to it;

— order the Commission to pay all of the costs.

Pleas in law and main arguments

The applicant received a grant from the Commission in 1996 within the framework of a project to create a joint venture with a Polish undertaking. The request for a grant was based on application of a regional development plan entitled 'Joint Venture PHARE TACIS Program'. Following an investigation carried out in 2002 at the applicant's premises and an exchange of correspondence between the applicant and the Commission, the latter, by a missive of 8 July 2003, instructed the bank acting as financial intermediary for the development plan to effect full recovery of the funds paid to the applicant. It is this notification which constitutes the decision under challenge by the applicant.

In support of its action, the applicant first invokes an alleged breach of the provisions of Regulation No 1 ([1]) inasmuch as the contested decision was drafted in English and not in French, even though it was addressed to the applicant, which is a French company. The applicant also pleads an alleged failure to comply with the four-year limitation period laid down in Article 3 of Council Regulation No 2988/95 ([2]). The applicant further submits that the contested decision, which was not signed by the competent Commissioner but by a Head of Unit and an administrator, infringes the principle of collegiate responsibility and originates from an authority lacking competence.

The applicant contends further that the contested decision is vitiated by a substantive inaccuracy as to the facts, lacks any legal basis, fails to satisfy the obligation to state reasons, and infringes the principles of proportionality and *audi alteram partem* and the right to due process.

([1]) Regulation No 1 of the Council determining the languages to be used by the European Economic Community (OJ English Special Edition 1952-1958, p. 59).

([2]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312 of 23.12.1995, pp. 1 to 4).

Action brought on 15 September 2003 by Citicorp against the Office for Harmonisation in the Internal Market

(Case T-320/03)

(2003/C 275/84)

(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 15 September 2003 by Citicorp, New York (USA), represented by Dr V. von Bomhard, Dr A. Pohlmann and Dr. A. Renck, lawyers.

The applicant claims that the Court should:

— annul the Decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 June 2003 (Case R 85/2002-3);

— order that the costs of the proceedings be borne by the Office.

Pleas in law and main arguments

Trade mark concerned:	'LIVE RICHLY' (word) — Application No. 2112647.
Products or services:	'Financial and monetary services and real estate affairs; in particular: banking; credit card; commercial and consumer lending and financing; real estate and mortgage brokerage; trust, estate and fiduciary management, planning and consulting; investment and investment advisory and consulting; securities brokerage and trading services facilitating secure financial transactions, insurance services; in particular, underwriting and sales of property, casualty and life insurance policies and annuity contracts' (Class 36)
Challenged Decision before the Board of Appeal:	Refusal of registration by the examiner
Pleas in law:	Violation of Articles 7(1)(b) and 73, first and second sentences, of Regulation (EC) No 40/94.

Action brought on 8 September 2003 by Juckem GmbH and Others against European Parliament and Council of the European Union

(Case T-321/03)

(2003/C 275/85)

(Language of the case: French)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance on 8 September 2003 by Juckem GmbH and 244 other companies, represented by D. Waalbroeck and N. Rampal, avocats.

The applicants claim that the Court should:

— declare that the Community has, through the European Parliament and the Council, incurred non-contractual liability, and order the defendants to make good all loss suffered by the applicants on account of the directive in question;

— declare that interest at the annual rate of 8 % (or at an appropriate rate to be fixed by the Court) is payable from the date of the Court's decision finding the Community liable until the time of payment;

— order the defendants to pay the costs.

Pleas in law and main arguments

This application claims compensation for the damage supposedly caused by Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC ([1]).

The abovementioned directive introduces a requirement that manufacturers of compound feedingstuffs should indicate on their labels the precise quantities (in percentages) of all feed materials included in each feedingstuff. By so doing it establishes quite new labelling rules for compound feedingstuffs which, according to the applicants, will result in the compulsory divulgence of the know-how and fundamental commercial secrets of the compound feedingstuff manufacturers. The introduction of those rules will enable the compound feedingstuff manufacturers' customers to know not only the formula but also the exact cost of the feed materials, so that the applicants will, they argue, lose their greatest vehicle of competition and their very existence could be jeopardised.

In support of their claims the applicants maintain that the contested directive:

— infringes their know-how and commercial secrets which are protected in the Community legal order;

— fails to have regard to protection of undistorted competition, to reinforcement of the competitiveness of the Community industry and encouragement of technological R. & D.;

— infringes the right to property and the right to carry on economic activity freely;

— militates against improvement of agricultural products and protection of the environment;

— violates the principle of proportionality;

— treats the applicants unequally in comparison with traders active in the sphere of foodstuffs for human beings;

— was adopted on the wrong legal basis. The directive at issue ought to have been based on Article 37 of the EC Treaty and not on Article 152(4)(b) of the EC Treaty, since it has nothing to do with the veterinary and phytosanitary field.

([1]) OJ L 63 of 6 June 2002, p. 23.

Action brought on 12 September 2003 by La Baronia de Turis against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-323/03)

(2003/C 275/86)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 12 September 2003 by La Baronia de Turis, Cooperativa Valenciana, established in Turis, Valencia (Spain), represented by Juan José Carreño Moreno, lawyer.

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) (OHIM) of 9 July 2003 in Case R 57/2003-2;

— order that registration be refused in respect of Community trade mark No 2 057 487 'LA BARONNIE', owned by the undertaking Baron Philippe de Rothschild SA, to designate products within Class 33 of the Nice Classification.

Pleas in law and main arguments

Applicant for Community trade mark: Baron Philippe de Rothschild SA.

Community trade mark sought:	Word mark 'LA BARONNIE' — Application No. 2 057 487 for products in Class 33 (alcoholic beverages, except beers).
Proprietor of mark or sign cited in the opposition proceedings:	The applicant.
Mark or sign cited in opposition:	National word mark 'BARONIA' for products covered by Class 33 ('wines of all types').
Decision of the Opposition Division:	Opposition refused.
Decision of the Board of Appeal:	Appeal dismissed.
Pleas in law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

Action brought on 15 September 2003 by Heinrich Winter against Commission of the European Communities

(Case T-324/03)

(2003/C 275/87)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 September 2003 by Heinrich Winter, residing in Overijse (Belgium), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission not to include his name on the list of officials deemed to be most deserving of promotion to Grade A 4 for the 2002 promotions procedure published in Administrative Notices (AN) No 2002-68 of 12 August 2002;

— annul the decision of the Commission not to include his name on the list of promoted officials published in AN No 2002-69 of 14 August 2002;

— order the Commission to pay him token damages of EUR 1 for the damage suffered by him as a result of the failure to draw up the staff report for the period 1997 to 1999;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant alleges infringement of Article 45 of the Staff Regulations, breach of the principle of equal treatment and non-discrimination and manifest error of assessment.

Action brought on 25 September 2003 by O_2 (Germany) GmbH & Co. OHG against Commission of the European Communities

(Case T-328/03)

(2003/C 275/88)

(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 25 September 2003 by O_2 (Germany) GmbH & Co. OHG, Munich, Germany, represented by Mr N. Green QC, Mr K. Bacon, Barrister, Mr B. Amory, lawyer and Ms Francesca Marchini Camia, lawyer.

The applicant claims that the Court should:

— annul articles 2 and 3(a) of the Commission Decision of 16 July 2003 in case COMP/38.369;

— order the Commission to pay the applicant's costs;

— make any such further order as the Court deems appropriate.

Pleas in law and main arguments

The contested decision concerns an agreement between the applicant, O_2, and T-Mobile Deutschland GmbH. The agreement provides for infrastructure sharing and national roaming for the third generation of mobile telecommunications in the German market.

The agreement was notified to the Commission and O_2 and T-Mobile requested negative clearance under Article 81(1) EC and Article 53(1) EEA, or in the alternative for an exemption under Article 81(3) EC and Article 53(3) EEA. Negative clearance was granted in respect of the infrastructure sharing provisions. The Commission found however that the national roaming provisions restricted competition, but granted individual exemptions for these provisions under Article 81(3) Ec and Article 53(3) EEA for specified periods of time.

The applicant seeks the annulment of the specific provisions of the decision that address the restrictions of competition alleged to flow from national roaming, namely article 2 and 3(a) of the contested decision. The applicant submits that the Commission's reasoning errs in law and is insufficient.

Firstly, the applicant claims that there is no restriction on competition within the meaning of Article 81(1) EC or Article 53(1) EEA. According to the applicant, the decision does not rest on an analysis of the actual effects of the agreement on competition. The Commission would simply rely on the assumption that the purchase by one network operator of network services from another operator will restrict competition between the two on coverage, quality, transmission rates or wholesale prices. The applicant submits furthermore that this assumption is contradicted by the Commission's own factual findings and by the case-law of the Court and the practice of the Commission.

The applicant claims secondly that the alleged restrictions of competition do not flow from an agreement within the meaning of Article 81(1) EC or Article 53(1) EEA, but rather result from the unilateral actions of the applicant. According to the applicant, the agreement does not contain any provision restricting the competition by the applicant on coverage, quality, transmission rates and wholesale prices, and any restriction that could arise from the agreement, would be the result of the unilateral commercial decisions of the applicant. The applicant therefore submits that the agreement is not the cause of the alleged restriction on competition.

Action brought on 25 September 2003 by Ricci Fabio Andrés against the Commission of the European Communities

(Case T-329/03)

(2003/C 275/89)

(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 25 September 2003 by Ricci Fabio Andrés, represented by Massimo Condinanzi, avvocato.

The applicant claims that the Court should:

1. Annul the decision rejecting the applicant's candidature in the competition COMR/B/04/2000 — Radiation protection, notified to the applicant by letter of 28 November 2002, no. B01-HR/RRA/BDU/D (2002) 14307, from the Director of DG JRC, Mr Jean-Pierre Vandersteen;

2. Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the decision contained in the letter of 28 November 2002 of the Director of JRC Resources in Ispra by which the applicant, who was none the less on the reserve list for the selection procedure COMR/B/04/2000, was notified that he did not satisfy all the necessary requirements for recruitment, thereby excluding him from the recruitment procedure.

In support of his pleas the applicant alleges:

— Breach of the independence and powers of the selection board for the competition in question.

— Breach of the vacancy notice by failing to consider that it allowed access to a Category C post. It is stated in this regard that the vacancy notice was drawn up with reference to access to Category C3-B5/B3 in the scientific service. The defendant erred in stating, after the competition, that the selection procedure was for access exclusively to a Category B post.

— Breach of the vacancy notice in that the Commission, in disregard of the decision made by the selection board, erred in its assessment of the applicant's professional qualifications, which perfectly matched the requirements set out in the vacancy notice and qualified him for admission also to a Category B post.

— Breach of the principle of legitimate expectations and of the principles of sound administration.

Removal from the register of Case T-33/01 [1]

(2003/C 275/90)

(Language of the Case: English)

By order of 24 June 2003 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal of the name of Kirch Media GmbH & Co KgaA from the register of Case T-33/01: Kirch Media GmbH & Co KgaA and Kirchmedia WM AG v Commission of the European Communities.

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[1] OJ C 134 of 5.5.2001.

Removal from the register of Case T-58/02 [1]

(2003/C 275/91)

(Language of the Case: English)

By order of 15 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-58/02: Kabushiki Kaisha Kenwood v Office for Harmonisation in the Internal Market.

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[1] OJ C 131 of 1.6.2002.

Removal from the register of Case T-143/03 R [1]

(2003/C 275/92)

(Language of the Case: Dutch)

By order of 17 July 2003 the President of the Court of First Instance of the European Communities ordered the removal from the register of Case T-143/03: Elisabeth Saskia Smit v Europol.

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[1] OJ C 63 of 4.3.2000.

III

(Notices)

(2003/C 275/93)

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

OJ C 264, 1.11.2003

Past publications

OJ C 251, 18.10.2003

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

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