ISSN 1725-2423

Official Journal

of the European Union

C 7

Volume 47

10 January 2004

English edition

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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 November 2003

in Case C-4/01 (Reference for a preliminary ruling from the Employment Tribunal at Croydon): Serene Martin, Rohit Daby, Brian Willis v South Bank University [1]

(Directive 77/187/EEC — Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses — Early retirement and associated benefits)

(2004/C 7/01)

(Language of the case: English)

In Case C-4/01: Reference to the Court under Article 234 EC by the Employment Tribunal, Croydon (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Serene Martin, Rohit Daby, Brian Willis and South Bank University, on the interpretation of Article 3 of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26), the Court (Sixth Chamber), composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, R. Schintgen, C. Gulmann, F. Macken and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 6 November 2003, in which it has ruled:

1. *Rights contingent upon dismissal or the grant of early retirement by agreement with the employer fall within the 'rights and obligations' referred to in Article 3(1) of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.*

2. *Early retirement benefits and benefits intended to enhance the conditions of such retirement, paid in the event of early retirement arising by agreement between the employer and the employee to employees who have reached a certain age, such as the benefits at issue in the main proceedings, are not old-age, invalidity or survivors' benefits under supplementary company or inter-company pension schemes within the meaning of Article 3(3) of Directive 77/187.*

Article 3 of that directive is to be interpreted as meaning that obligations arising upon the grant of such early retirement, arising from a contract of employment, an employment relationship or a collective agreement binding the transferor as regards the employees concerned, are transferred to the transferee subject to the conditions and limitations laid down by that article, regardless of the fact that those obligations derive from statutory instruments or are implemented by such instruments and regardless of the practical arrangements adopted for such implementation.

3. *Article 3 of Directive 77/187 precludes the transferee from offering the employees of a transferred entity terms less favourable than those offered to them by the transferor in respect of early retirement, and those employees from accepting those terms, where those terms are merely brought into line with the terms offered to the transferee's other employees at the time of the transfer, unless the more favourable terms previously offered by the transferor arose from a collective agreement which is no longer legally binding on the employees of the entity transferred, having regard to the conditions set out in Article 3(2).*

4. *Where, in breach of the public policy obligations imposed by Article 3 of Directive 77/187, the transferee offered employees of the entity transferred early retirement less favourable than that to which they were entitled under their employment relationship with the transferor and those employees accepted such early retirement, it is for the transferee to ensure that those employees are accorded early retirement on the terms to which they were entitled under their employment relationship with the transferor.*

([1]) OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 20 November 2003

in Case C-008/01 (Reference for a preliminary ruling from the Østre Landsret): Assurandør-Societetet, acting on behalf of Taksatorringen, v Skatteministeriet ([1])

(Sixth VAT Directive — Article 13A(1)(f) and 13B(a) — Exemption for services performed by independent groups not likely to give rise to distortions of competition — Exemption for insurance transactions and related services performed by insurance brokers and insurance agents — Assessments of damage caused to motor vehicles carried out by an association on behalf of insurance companies which are members of that association)

(2004/C 7/02)

(Language of the case: Danish)

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

In Case C-8/01: Reference to the Court under Article 234 EC by the Østre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between Assurandør-Societetet, acting on behalf of Taksatorringen, and Skatteministeriet, on the interpretation of Article 13A(1)(f) and 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr (Rapporteur), Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it has ruled:

1. *Article 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be construed as meaning that motor vehicle damage assessments carried out, on behalf of its members, by an association whose members are insurance companies are neither insurance transactions nor services related to insurance transactions that are performed by insurance brokers or insurance agents within the meaning of that provision.*

2. *Article 13A(1)(f) of Sixth Council Directive 77/388 must be construed as meaning that the grant of exemption from value added tax under that provision to an association such as that in issue in the main proceedings and which satisfies all of the other conditions of that provision must be refused if there is a genuine risk that the exemption may by itself, immediately or in the future, give rise to distortions of competition.*

3. *National legislation which allows a temporary exemption to be granted where doubt exists as to whether that exemption, such as that in the case in the main proceedings, is liable at a later date to give rise to distortions of competition is compatible with Article 13A(1)(f) of Sixth Directive 77/388, provided that the exemption is renewed only for as long as the person concerned satisfies the conditions of that provision.*

4. *The fact that large insurance companies have the assessments of damage to motor vehicles carried out by their own experts, thereby avoiding liability for value added tax in respect of the provision of such services, is not such as to have any bearing on the answers to be given to the first three questions.*

([1]) OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 November 2003

in Case C-45/01 (Reference for a preliminary ruling from the Bundesfinanzhof): Christoph-Dornier-Stiftung für Klinische Psychologie v Finanzamt Gießen [1]

(VAT — Article 13A(1)(b) and (c) of the Sixth Directive 77/388/EEC — Exemption — Psychotherapeutic treatment given in an out-patient facility provided by a foundation governed by private law (charitable establishment) employing qualified psychologists who are not doctors — Direct effect)

(2004/C 7/03)

(Language of the case: German)

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

In Case C-45/01: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Christoph-Dornier-Stiftung für Klinische Psychologie and Finanzamt Gießen, on the interpretation of Article 13A(1)(b) and (c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Fifth Chamber), composed of: D.A.O. Edward, acting as President of the Fifth Chamber, P. Jann and of A. Rosas (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 6 November 2003, in which it has ruled:

1. *Psychotherapeutic treatment given in an out-patient facility of a foundation governed by private law by qualified psychologists who are not doctors is not an activity 'closely related' to hospital or medical care within the meaning of Article 13A(1)(b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, except where such treatment is actually given as a service ancillary to the hospital or medical care received by the patients in question and constituting the principal service. However, the term 'medical care' in that provision must be interpreted as covering all provision of medical care envisaged in letter (c) of the same provision, including services provided by persons who are not doctors but who give paramedical services, such as psychotherapeutic treatment given by qualified psychologists.*

2. *Recognition of an establishment for the purposes of Article 13A(1)(b) of the Sixth Directive 77/388 does not presuppose a formal recognition procedure; nor must such recognition necessarily derive from national tax law provisions. Where the national rules pertaining to recognition contain restrictions which exceed the limits of the discretion allowed to Member States under that provision, it is for the national court to determine, in the light of all the relevant facts, whether a taxable person must none the less be regarded as an 'other duly recognised establishment of a similar nature' within the meaning of that provision.*

3. *Since the exemption envisaged in Article 13A(1)(c) of the Sixth Directive 77/388 is not dependent on the legal form of the taxable person providing the medical or paramedical services referred to in that provision, psychotherapeutic treatment provided by a foundation governed by private law and given by psychotherapists employed by the foundation may benefit from that exemption.*

4. *In circumstances such as those in the main proceedings, Article 13A(1)(b) and (c) of the Sixth Directive 77/388 may be relied on by a taxable person before a national court in order to contest the application of rules of national law which are incompatible with that provision.*

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[1] OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT

of 6 November 2003

in Case C-101/01 (Reference for a preliminary ruling from the Göta hovrätt): Bodil Lindqvist [1]

(Directive 95/46/EC — Scope — Publication of personal data on the internet — Place of publication — Definition of transfer of personal data to third countries — Freedom of expression — Compatibility with Directive 95/46 of greater protection for personal data under the national legislation of a Member State)

(2004/C 7/04)

(Language of the case: Swedish)

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

In Case C-101/01: Reference to the Court under Article 234 EC by the Göta hovrätt (Sweden) for a preliminary ruling in the criminal proceedings before that court against Bodil Lindqvist, on, inter alia, the interpretation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995

on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), the Court, composed of: P. Jann, President of the First Chamber, acting for the President, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas (Presidents of Chambers), D.A.O. Edward (Rapporteur), J.-P. Puissochet, F. Macken and S. von Bahr, Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 6 November 2003, in which it has ruled:

1. *The act of referring, on an internet page, to various persons and identifying them by name or by other means, for instance by giving their telephone number or information regarding their working conditions and hobbies, constitutes 'the processing of personal data wholly or partly by automatic means' within the meaning of Article 3(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.*

2. *Such processing of personal data is not covered by any of the exceptions in Article 3(2) of Directive 95/46.*

3. *Reference to the fact that an individual has injured her foot and is on half-time on medical grounds constitutes personal data concerning health within the meaning of Article 8(1) of Directive 95/46.*

4. *There is no 'transfer [of data] to a third country' within the meaning of Article 25 of Directive 95/46 where an individual in a Member State loads personal data onto an internet page which is stored on an internet site on which the page can be consulted and which is hosted by a natural or legal person who is established in that State or in another Member State, thereby making those data accessible to anyone who connects to the internet, including people in a third country.*

5. *The provisions of Directive 95/46 do not, in themselves, bring about a restriction which conflicts with the general principles of freedom of expression or other freedoms and rights, which are applicable within the European Union and are enshrined inter alia in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950. It is for the national authorities and courts responsible for applying the national legislation implementing Directive 95/46 to ensure a fair balance between the rights and interests in question, including the fundamental rights protected by the Community legal order.*

6. *Measures taken by the Member States to ensure the protection of personal data must be consistent both with the provisions of Directive 95/46 and with its objective of maintaining a balance between freedom of movement of personal data and the protection of private life. However, nothing prevents a Member State from extending the scope of the national legislation implementing the provisions of Directive 95/46 to areas not included in the scope thereof provided that no other provision of Community law precludes it.*

([1]) OJ C 118 of 21.4.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 20 November 2003

in Case C-126/01 (Reference for a preliminary ruling from the Cour administrative d'appel de Lyon): Ministre de l'économie, des finances et de l'industrie v GEMO SA ([1])

(State aid — System of financing a public carcass disposal service by a meat purchase tax — Interpretation of Article 92 of the EC Treaty (now, after amendment, Article 87 EC))

(2004/C 7/05)

(Language of the case: French)

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

In Case C-126/01: Reference to the Court under Article 234 EC by the Cour administrative d'appel de Lyon (France) for a preliminary ruling in the proceedings pending before that court between Ministre de l'économie, des finances et de l'industrie and GEMO SA, on the interpretation of Article 92 of the EC Treaty (now, after amendment, Article 87 EC), the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen, F. Macken and N. Colneric, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it has ruled:

Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC), must be interpreted as meaning that a system such as that at issue in the main proceedings, which provides farmers and slaughterhouses with the free collection and disposal of animal carcasses and slaughterhouse waste, must be classified as State aid.

([1]) OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 20 November 2003

in Case C-152/01 (Reference for a preliminary ruling from the Bundesfinanzhof): Kyocera Electronics Europe GmbH v Hauptzollamt Krefeld [1]

(Common Customs Tariff — Customs value — Determination of the transaction value — Interest payable under a financing arrangement — Exclusion — Conditions — Interest distinguished from the price actually paid or payable — Declaration not mentioning the interest due or paid)

(2004/C 7/06)

(Language of the case: German)

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

In Case C-152/01: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Kyocera Electronics Europe GmbH and Hauptzollamt Krefeld, on the interpretation of Article 3(2)(a) of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes (OJ 1980 L 154, p. 14), as amended by Commission Regulation (EEC) No 220/85 of 29 January 1985 (OJ 1985 L 25, p. 7), the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A. Timmermans (Rapporteur) and S. von Bahr, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 20 November 2003, in which it has ruled:

Article 3(2)(a) of Commission Regulation (EEC) No 1495/80 of 11 June 1980 implementing certain provisions of Council Regulation (EEC) No 1224/80 on the valuation of goods for customs purposes, as amended by Commission Regulation (EEC) No 220/85 of 29 January 1985, is to be interpreted as meaning that payments of interest are distinguished from the price of the goods even if, at the time when the customs declaration is accepted, the customs authorities are in possession only of the invoice for the net price of the goods and neither that invoice nor the declaration of customs value reveal expressly or by implication that the buyer paid or must pay interest to the seller in the context of the import transaction in question.

[1] OJ C 186 of 30.6.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 November 2003

in Case C-209/01 (Reference for a preliminary ruling from the Bundesfinanzhof): Theodor Schilling, Angelika Fleck-Schilling v Finanzamt Nürnberg-Süd [1]

(Free movement of workers — Officials and servants of the European Communities — Maintenance of domicile for tax purposes in the Member State of origin — Income tax — Deduction of expenditure in respect of a household assistant)

(2004/C 7/07)

(Language of the case: German)

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

In Case C-209/01: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Theodor Schilling, Angelika Fleck-Schilling and Finanzamt Nürnberg-Süd, on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and of the first paragraph of Article 14 of the Protocol on the Privileges and Immunities of the European Communities, the Court (Fifth Chamber), composed of: D.A.O. Edward, acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 13 November 2003, in which it has ruled:

Article 48 of the EC Treaty (now, after amendment, Article 39 EC), in conjunction with Article 14 of the Protocol on the Privileges and Immunities of the European Communities, precludes a situation in which officials of the European Communities who are of German origin and are resident in Luxembourg, where they work as officials, and who have incurred expenditure in respect of a household assistant in the latter Member State cannot deduct that expenditure from their taxable income in Germany by reason of the fact that the contributions paid for the household assistant were made to the Luxembourg statutory pension insurance scheme and not to the German scheme.

[1] OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 20 November 2003

in Case C-212/01 (Reference for a preliminary ruling from the Landesgericht Innsbruck): Margarete Unterpertinger v Pensionsversicherungsanstalt der Arbeiter [1]

(Sixth VAT Directive — Exemption for medical care provided in the exercise of the medical and paramedical professions — Expert medical report)

(2004/C 7/08)

(Language of the case: German)

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

In Case C-212/01: Reference to the Court under Article 234 EC by the Landesgericht Innsbruck (Austria) for a preliminary ruling in the proceedings pending before that court between Margarete Unterpertinger and Pensionsversicherungsanstalt der Arbeiter, on the interpretation of Article 13A(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and the Court's case-law resulting, in particular, from Case C-384/98 D. v W. [2000] ECR I-6795, the Court (Fifth Chamber), composed of: A. Rosas (Rapporteur), acting for the President of the Fifth Chamber, D.A.O. Edward and A. La Pergola, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it has ruled:

Article 13A(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, is to be interpreted as meaning that the exemption from value added tax under that provision does not apply to the services of a doctor consisting of making an expert report on a person's state of health in order to support or exclude a claim for payment of a disability pension. The fact that the medical expert was instructed by a court or pension insurance institution is irrelevant in that respect.

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[1] OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

of 18 November 2003

in Case C-216/01 (Reference for a preliminary ruling from the Handelsgericht Wien): Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH [1]

(Protection of geographical indications and designations of origin — Bilateral convention between a Member State and a non-member country protecting indications of geographical source from that non-member country — Articles 28 EC and 30 EC — Regulation (EEC) No 2081/92 — Article 307 EC — Succession of States in respect of treaties)

(2004/C 7/09)

(Language of the case: German)

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

In Case C-216/01: Reference to the Court under Article 234 EC by the Handelsgericht Wien (Austria) for a preliminary ruling in the proceedings pending before that court between Budějovický Budvar, národní podnik and Rudolf Ammersin GmbH on the interpretation of Articles 28 EC, 30 EC and 307 EC, and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3), the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans (Rapporteur), C. Gulmann and J.N. Cunha Rodrigues (Presidents of Chambers), D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, N. Colneric and S. von Bahr, Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 18 November 2003, in which it has ruled:

1. *Article 28 EC and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, as amended by Council Regulation (EC) No 535/97 of 17 March 1997, do not preclude the application of a provision of a bilateral agreement between a Member State and a non-member country under which a simple and indirect indication of geographical origin from that non-member country is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.*

2. *Article 28 EC precludes the application of a provision of a bilateral agreement between a Member State and a non-member country under which a name which in that country does not directly or indirectly refer to the geographical source of*

the product that it designates is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

3. *The first paragraph of Article 307 EC is to be interpreted as permitting a court of a Member State, subject to the findings to be made by that court having regard inter alia to the criteria set out in this judgment, to apply the provisions of bilateral agreements such as those at issue in the main proceedings, concluded between that State and a non-member country and according protection to a name from the non-member country, even where those provisions prove to be contrary to the EC Treaty rules, on the ground that they concern an obligation resulting from agreements concluded before the date of the accession of the Member State concerned to the European Union. Pending the success of one of the methods referred to in the second paragraph of Article 307 EC in eliminating any incompatibilities between an agreement predating that accession and the Treaty, the first paragraph of that article permits that State to continue to apply such an agreement in so far as it contains obligations which remain binding on that State under international law.*

([1]) OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT

of 6 November 2003

in Case C-243/01 (Reference for a preliminary ruling from the Tribunale di Ascoli Piceno): Piergiorgio Gambelli and Others ([1])

(Right of establishment — Freedom to provide services — Collection of bets on sporting events in one Member State and transmission by internet to another Member State — Prohibition enforced by criminal penalties — Legislation in a Member State which reserves the right to collect bets to certain bodies)

(2004/C 7/10)

(Language of the case: Italian)

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

In Case C-243/01: Reference to the Court under Article 234 EC by the Tribunale di Ascoli Piceno (Italy) for a preliminary ruling in the criminal proceedings before that court against Piergiorgio Gambelli and Others on the interpretation of Articles 43 EC and 49 EC, the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans and J.N. Cunha Rodrigues (Presidents of Chambers), D.A.O. Edward (Rapporteur), R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 6 November 2003, in which it has ruled:

National legislation which prohibits on pain of criminal penalties the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or authorisation from the Member State concerned constitutes a restriction on the freedom of establishment and the freedom to provide services provided for in Articles 43 and 49 EC respectively. It is for the national court to determine whether such legislation, taking account of the detailed rules for its application, actually serves the aims which might justify it, and whether the restrictions it imposes are disproportionate in the light of those objectives.

([1]) OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT

of 25 November 2003

in Case C-278/01: Commission of the European Communities v Kingdom of Spain ([1])

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing such failure — Non-compliance — Article 228 EC — Financial penalties — Penalty payment — Quality of bathing water — Directive 76/160/EEC)

(2004/C 7/11)

(Language of the case: Spanish)

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

In Case C-278/01, Commission of the European Communities (Agent: G. Valero Jordana) v Kingdom of Spain (Agent: S. Ortiz Vaamonde): Application, first, for a declaration that, by not

taking the necessary measures to ensure that the quality of inshore bathing water in Spanish territory conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1), notwithstanding its obligations under Article 4 of that directive, the Kingdom of Spain has not complied with the judgment of the Court of Justice in Case C-92/96 Commission v Spain [1998] ECR I-505, and has accordingly failed to fulfil its obligations under Article 228 EC and, second, for an order that the Kingdom of Spain be required to pay to the Commission, into the account 'European Community own resources', a penalty payment of EUR 45 600 per day of delay in adopting the measures necessary to comply with the said judgment in Commission v Spain, from the date on which judgment is delivered in this case until the date on which the said judgment in Commission v Spain is complied with, the Court, composed of: V. Skouris, President, C.W.A. Timmermans, C. Gulmann and J.N. Cunha Rodrigues (Rapporteur) (Presidents of Chambers), D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges; J. Mischo, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 25 November 2003, in which it:

1. *Declares that, by not taking the measures necessary to ensure that the quality of inshore bathing water in Spanish territory conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, notwithstanding its obligations under Article 4 of that directive, the Kingdom of Spain has not taken all the measures necessary to comply with the Court's judgment of 12 February 1998 in Case C-92/96 Commission v Spain and has accordingly failed to fulfil its obligations under Article 228 EC.*

2. *Orders the Kingdom of Spain to pay to the Commission of the European Communities, into the account 'European Community own resources', a penalty payment of EUR 624 150 per year and per 1 % of bathing areas in Spanish inshore waters which have been found not to conform to the limit values laid down under Directive 76/160 for the year in question, as from the time when the quality of bathing water achieved in the first bathing season following delivery of this judgment is ascertained until the year in which the judgment in Commission v Spain is fully complied with.*

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

(1) OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 November 2003

in Case C-293/00: Kingdom of the Netherlands v Commission of the European Communities (1)

(Annulment of Commission Decision 2000/362/EC of 25 May 2000 on the total amount of Community aid for the eradication of classical swine fever in the Netherlands in 1997)

(2004/C 7/12)

(Language of the case: Dutch)

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

In Case C-293/00, Kingdom of the Netherlands (Agents: A. Fierstra, C. Wissels and J. G. M. van Bakel) v Commission of the European Communities (Agent: T. van Rijn): Application for annulment of Commission Decision 2000/362/EC of 25 May 2000 on the total amount of Community aid for the eradication of classical swine fever in the Netherlands in 1997 (OJ 2000 L 129, p. 33), in so far as the financial aid granted to the Netherlands by the Community for the eradication of classical swine fever in 1997 is reduced by 25 % of the amounts paid to farmers by way of compensation, the Court (Fifth Chamber), composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 6 November 2003, in which it:

1. *Dismisses the application.*

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

(1) OJ C 335 of 25.11.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 November 2003

in Case C-294/01 (Reference for a preliminary ruling from the Tribunale civile di Bologna): Granarolo SpA v Comune di Bologna [1]

(Agriculture — Health rules for the production and placing on the market of heat-treated milk — Free movement of goods — National law imposing a use-by date for high-temperature pasteurised milk)

(2004/C 7/13)

(Language of the case: Italian)

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

In Case C-294/01: Reference to the Court under Article 234 EC by the Tribunale civile di Bologna (Italy) for a preliminary ruling in the proceedings pending before that court between Granarolo SpA and Comune di Bologna, on the interpretation of Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products (OJ 1992 L 268, p. 1), as amended by Council Directive 94/71/EC of 13 December 1994 (OJ 1994 L 368, p. 33), of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 1979 L 33, p. 1), as amended by Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997 (OJ 1997 L 43, p. 21), and of Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs (OJ 1989 L 186, p. 21), the Court (Fifth Chamber), composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting as President of the Fifth Chamber, P. Jann and S. von Bahr (Rapporteur), Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 13 November 2003, in which it has ruled:

Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products, as amended by Council Directive 94/71/EC of 13 December 1994, and Articles 28 EC And 30 EC preclude national legislation such as that at issue in the main proceedings, which requires a use-by date of four days after preparation for high-temperature pasteurised milk.

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[1] OJ C 275 of 29.9.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 20 November 2003

in Case C-296/01: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil obligations — Failure to transpose Directive 90/220/EEC — Genetically modified organisms)

(2004/C 7/14)

(Language of the case: French)

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

In Case C-296/01, Commission of the European Communities (Agent: G. zur Hausen, assisted by M. van der Woude and V. Landes) v French Republic (Agents: G. de Bergues and R. Loosli-Surrans): Application for a declaration that, by failing to transpose correctly and fully Articles 5(1) to (4), 6(2) and (5), 9(3), 11(1), (2), (3) and (6), 12(3) and (4) and 19(2), (3) and (4) of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (OJ 1990 L 117, p. 15), as amended by Commission Directive 97/35/EC of 18 June 1997 adapting to technical progress for the second time Directive 90/220 (OJ 1997 L 169, p. 72), the French Republic has failed to fulfil its obligations under that directive and Article 249 EC, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges; J. Mischo, Advocate General; R. Grass, Registrar, has given a judgment on 20 November 2003, in which it:

1. *Declares that, by failing to transpose Articles 5(1) to (4), 11(1), (2) and (3) and 19(2) and (3) of Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms, as amended by Commission Directive 97/35/EC of 18 June 1997 adapting to technical progress for the second time Directive 90/220, the French Republic has failed to fulfil its obligations under that directive.*

2. *Dismisses the remainder of the application.*

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

([1]) OJ C 259 of 15.9.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 20 November 2003

in Case C-307/01 (Reference for a preliminary ruling from the Duties Tribunal, London): Peter d'Ambrumenil, Dispute Resolution Services Ltd v Commissioners of Customs and Excise ([1])

(Sixth VAT Directive — Exemption for medical care provided in the exercise of the medical and paramedical professions)

(2004/C 7/15)

(Language of the case: English)

In Case C-307/01: Reference to the Court under Article 234 EC by the VAT and Duties Tribunal, London (United Kingdom), for a preliminary ruling in the proceedings pending before that tribunal between Peter d'Ambrumenil, Dispute Resolution Services Ltd and Commissioners of Customs and Excise, on the interpretation of Article 13A(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Fifth Chamber), composed of: A. Rosas (Rapporteur), acting for the President of the Fifth Chamber, D.A.O. Edward and A. La Pergola, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it has ruled:

1. *Article 13A(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, is to be interpreted as meaning that the exemption from VAT under that provision applies to medical services consisting of:*

   — *conducting medical examinations of individuals for employers or insurance companies,*

   — *the taking of blood or other bodily samples to test for the presence of viruses, infections or other diseases on behalf of employers or insurers, or*

   — *certification of medical fitness, for example, as to fitness to travel,*

   where those services are intended principally to protect the health of the person concerned.

2. *The said exemption does not apply to the following services, performed in the exercise of the medical profession:*

   — *giving certificates as to a person's medical condition for purposes such as entitlement to a war pension,*

   — *medical examinations conducted with a view to the preparation of an expert medical report regarding issues of liability and the quantification of damages for individuals contemplating personal injury litigation,*

   — *the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination,*

   — *medical examinations conducted with a view to the preparation of expert medical reports regarding professional medical negligence for individuals contemplating litigation,*

   — *the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination.*

([1]) OJ C 317 of 10.11.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 November 2003

in Case C-311/01: Commission of the European Communities v Kingdom of the Netherlands [1]

(Failure of a Member State to fulfil obligations — Social security — Articles 69 and 71 of Regulation (EEC) No 1408/71 — Unemployment benefit — Frontier workers — Retention of benefit entitlement when seeking employment in another Member State)

(2004/C 7/16)

(Language of the case: Dutch)

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

In Case C-311/01, Commission of the European Communities (Agents: H. Michard and H. van Vliet) v Kingdom of the Netherlands (Agents: H. G. Sevenster and I. van der Steen): Application for a declaration that, by refusing to allow wholly unemployed frontier workers to make use of the possibility under Article 69 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), of going, under the conditions laid down in that provision, to one or more Member States in order to seek employment there while retaining their entitlement to unemployment benefit, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 69 and 71 of the regulation, the Court (Fifth Chamber), composed of: A. La Pergola (Rapporteur), acting for the President of the Fifth Chamber, P. Jann and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 6 November 2003, in which it:

1. *Declares that, by refusing to allow wholly unemployed frontier workers to make use of the possibility under Article 69 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, of going, under the conditions laid down in that provision, to one or more Member States in order to seek employment there while retaining their entitlement to unemployment benefit, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 69 and 71 of the regulation;*

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

[1] OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 November 2003

in Case C-313/01 (Reference for a preliminary ruling from the Corte suprema di cassazione): Christine Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova [1]

(Freedom of establishment — Enrolment in the register of 'praticanti' — Recognition of diplomas — Access to regulated professions)

(2004/C 7/17)

(Language of the case: Italian)

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

In Case C-313/01: Reference to the Court under Article 234 EC by the Corte suprema di cassazione (Italy) for a preliminary ruling in the proceedings pending before that court between Christine Morgenbesser and Consiglio dell'Ordine degli avvocati di Genova, on the interpretation of Articles 10 EC, 12 EC, 14 EC, 39 EC, 43 EC and 149 EC, the Court (Fifth Chamber), composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 13 November 2003, in which it has ruled:

Community law precludes the authorities of a Member State from refusing to enrol the holder of a legal diploma obtained in another Member State in the register of persons undertaking the necessary period of practice for admission to the bar solely on the ground that it is not a legal diploma issued, confirmed or recognised as equivalent by a university of the first State.

[1] OJ C 289 of 10.10.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 20 November 2003

in Case C-340/01 (Reference for a preliminary ruling from the Oberster Gerichtshof): Carlito Abler and Others v Sodexho MM Catering Gesellschaft mbH, intervener Sanrest Großküchen Betriebsgesellschaft mbH [1]

(Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of workers' rights — Directive 77/187/EEC — Scope — Definition of transfer)

(2004/C 7/18)

(Language of the case: German)

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

In Case C-340/01: 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 Carlito Abler and Others and Sodexho MM Catering Gesellschaft mbH, intervener Sanrest Großküchen Betriebsgesellschaft mbH, on the interpretation of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26), the Court (Sixth Chamber), composed of: C. Gulmann, acting as President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet (Rapporteur), F. Macken and N. Colneric, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it has ruled:

Article 1 of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses must be interpreted as applying to a situation in which a contracting authority which had awarded the contract for the management of the catering services in a hospital to one contractor terminates that contract and concludes a contract for the supply of the same services with a second contractor, where the second contractor uses substantial parts of the tangible assets previously used by the first contractor and subsequently made available to it by the contracting authority, even where the second contractor has expressed the intention not to take on the employees of the first contractor.

[1] OJ C 331 of 24.11.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 20 November 2003

in Case C-356/01: Republic of Austria v Commission of the European Communities [1]

(System of ecopoints for heavy goods vehicles transiting through Austria — Refusal by the Commission to reduce the number of ecopoints for 2001 — Legality)

(2004/C 7/19)

(Language of the case: German)

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

In Case C-356/01, Republic of Austria (Agent: H. Dossi) v Commission of the European Communities (Agents: C. Schmidt and M. Wolfcarius), supported by Federal Republic of Germany (Agents: W.-D. Plessing, acting as Agent, assisted by J. Sedemund, Rechtsanwalt): Application for annulment of the Commission's decision of 25 July 2001 refusing to submit a draft regulation reducing the number of ecopoints for 2001 and, in the alternative, of the Commission's decision of the same date to distribute all the remaining ecopoints for 2001, the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues (Rapporteur), J.-P. Puissochet, R. Schintgen and F. Macken, Judges; J. Mischo, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 20 November 2003, in which it:

1. *Dismisses the application.*

2. *Orders the Republic of Austria to pay the costs.*

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

[1] OJ C 317 of 10.10.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 November 2003

in Case C-358/01: Commission of the European Communities v Kingdom of Spain [1]

(Failure of a Member State to fulfil obligations — Article 28 EC — Prohibition on marketing under the name 'limpiador con lejía' ('cleaner with bleach') of goods lawfully manufactured and marketed in other Member States where their active chlorine content is less than 35 g/l)

(2004/C 7/20)

(Language of the case: Spanish)

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

In Case C-358/01, Commission of the European Communities (Agent: G. Valero Jordana) v Kingdom of Spain (Agent: N. Díaz Abad): Application for a declaration that, by refusing access to the Spanish market under the name of 'limpiador con lejía' ('cleaner with bleach') or similar to products lawfully manufactured and marketed in other Member States where their active chlorine content is less than 35 grams per litre, the Kingdom of Spain has failed to fulfil its obligations under Article 28 EC, the Court (Fifth Chamber), composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and P. Jann, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 6 November 2003, in which it:

1. *Declares that, by refusing access to the Spanish market under the name of 'limpiador con lejía' (cleaner with bleach) or similar to products lawfully manufactured and marketed in other Member States where their active chlorine content is less than 35 grams per litre, the Kingdom of Spain has failed to fulfil its obligations under Article 28 EC.*

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

[1] OJ C 303 of 27.10.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 October 2003

in Case C-363/01 (Reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main): Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa AG [1]

(Air transport — Access to the groundhandling market in Community airports — Directive 96/67/EC — Article 16 — Collection of a fee for access to airport installations — Conditions)

(2004/C 7/21)

(Language of the case: German)

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

In Case C-363/01: Reference to the Court under Article 234 EC by the Oberlandesgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court between Flughafen Hannover-Langenhagen GmbH and Deutsche Lufthansa AG on the interpretation of Article 16(3) of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, V. Skouris, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 16 October 2003, in which it has ruled:

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, in particular Article 16(3) thereof, precludes the managing body of an airport from making access to the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations. On the other hand, that body is entitled to collect a fee for the use of airport installations, of an amount, to be determined according to the criteria laid down in Article 16(3) of the Directive, which takes account of the interest of that body in making a profit.

[1] OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 November 2003

in Case C-413/01 (Reference for a preliminary ruling from the Verwaltungsgerichtshof): Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst [1]

(Freedom of movement for workers — Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — Concept of 'worker' — Contract of employment of a short term fixed in advance — Retention of the status of 'worker' after end of employment contract — Conditions for the grant of social advantages within the meaning of Article 7(2) of Regulation (EEC) No 1612/68 — Study finance)

(2004/C 7/22)

(Language of the case: German)

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

In Case C-413/01: Reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Franca Ninni-Orasche and Bundesminister für Wissenschaft, Verkehr und Kunst, on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, V. Skouris (Rapporteur), F. Macken and N. Colneric, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 6 November 2003, in which it has ruled:

1. *The fact that a national of a Member State has worked for a temporary period of two and a half months in the territory of another Member State, of which he is not a national, can confer on him the status of a worker within the meaning of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) provided that the activity performed as an employed person is not purely marginal and ancillary.*

   It is for the national court to carry out the examinations of fact necessary in order to determine whether that is so in the case before it. Circumstances preceding and subsequent to the period of employment, such as the fact that the person concerned:

   — *took up the job only some years after his entry into the host Member State,*

   — *shortly after the end of his short, fixed-term employment relationship, became eligible for entry to university in the host Member State by virtue of having completed his schooling in his country of origin, or*

   — *attempted to find a new job in the period between the end of the short, fixed-term employment relationship and the time when he took up his studies,*

   are not relevant in this connection.

2. *A Community national such as the appellant in the main proceedings, where he has the status of a migrant worker for the purposes of Article 48 of the Treaty, is not necessarily voluntarily unemployed, within the meaning established by the relevant case-law of the Court, solely because his contract of employment, from the outset concluded for a fixed term, has expired.*

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[1] OJ C 84 of 6.4.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 20 November 2003

in Case C-416/01 (Reference for a preliminary ruling from the Tribunal Supremo): Sociedad Cooperativa General Agropecuaria (ACOR) v Administración General del Estado, participant: Ebro Puleva SA, formerly Azucarera Ebro Agrícolas SA and Azucareras Reunidas de Jaén SA [1]

(Common organisation of the markets in the sugar sector — Reallocation or transfer of quotas — Interpretation of Council Regulations (EEC) No 1785/81, (EEC) No 193/82 and (EC) No 1260/2001 — Decision of competent authorities of a Member State, when approving a merger, to reallocate sugar production quotas — Sale by public auction — Transfer of quotas for consideration)

(2004/C 7/23)

(Language of the case: Spanish)

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

In Case C-416/01: 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 Sociedad Cooperativa General Agropecuaria (ACOR) and Administración General del Estado, participant: Ebro Puleva SA, formerly Azucarera Ebro Agrícolas SA and Azucareras Reunidas de Jaén SA, on the interpretation of Council Regulations (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector (OJ 1982 L 21, p. 3), and (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1), the Court (Sixth Chamber), composed of: V. Skouris (Rapporteur), acting for the President of the Sixth

Chamber, C. Gulmann, J.N. Cunha Rodrigues, J.-P. Puissochet and F. Macken, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 20 November 2003, in which it has ruled:

1. *If, in the exercise of its power of administrative review of a merger of undertakings, the competent authority of a Member State deems it necessary to redistribute sugar production quotas among undertakings situated in its territory in order to safeguard competition, the provisions of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector and Council Regulation (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector preclude that authority from stipulating that such a transfer or reallocation of quotas should be for value.*

2. *The entry into force of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector does not alter the interpretation of Community law.*

([1]) OJ C 84 of 6.4.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 November 2003

in Case C-434/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland ([1])

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora)

(2004/C 7/24)

(Language of the case: English)

In Case C-434/01, Commission of the European Communities (Agent: R. Wainwright) v United Kingdom of Great Britain and Northern Ireland (Agents: G. Amodeo and K. Manji, assisted by D. Anderson): Application for a declaration that, by not ensuring observance in its territory of Articles 12 and 16 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 6 November 2003, in which it:

1. *Dismisses the action.*

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

([1]) OJ C 31 of 2.2.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 November 2003

in Case C-501/01: Kingdom of the Netherlands v Commission of the European Communities ([1])

(Commission Decision 2001/739/EC of 17 October 2001 on the total amount of Community aid for the eradication of classical swine fever in the Netherlands in 1998)

(2004/C 7/25)

(Language of the case: Dutch)

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

In Case C-501/01, Kingdom of the Netherlands (Agents: H. G. Sevenster, C. Wissels and J. G. M. van Bakel) v Commission of the European Communities (Agent: T. van Rijn): Application for annulment of Commission Decision 2001/739/EC of 17 October 2001 on the total amount of Community aid for the eradication of classical swine fever in the Netherlands in 1998 (OJ 2001 L 277, p. 28), in so far as the determination of the total amount of Community financial aid for the eradication of classical swine fever in the Netherlands in 1998 provides for a reduction of 25 % of the compensation paid to farmers, the Court (Fifth Chamber), composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 6 November 2003, in which it:

1. *Dismisses the application.*

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

(1) OJ C 84 of 6.4.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 November 2003

in Case C-42/02 (Reference for a preliminary ruling from the Ålands förvaltningsdomstol): Diana Elisabeth Lindman (1)

(Freedom to provide services — Lottery tickets — Amount won in a game of chance held in another Member State — Income tax — Tax on games of chance — Special regime in the Åland Islands)

(2004/C 7/26)

(Language of the case: Swedish)

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

In Case C-42/02: Reference to the Court under Article 234 EC by the Ålands förvaltningsdomstolen (Finland) for a preliminary ruling in the proceedings brought before that court by Diana Elisabeth Lindman, on the interpretation of Article 49 EC, the Court (Fifth Chamber), composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and P. Jann, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 13 November 2003, in which it has ruled:

Article 49 EC prohibits a Member State's legislation under which winnings from games of chance organised in other Member States are treated as income of the winner chargeable to income tax, whereas winnings from games of chance conducted in the Member State in question are not taxable.

(1) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 6 November 2003

in Case C-78/02 (Reference for a preliminary ruling from the Dioikitiko Efeteio Athinon): Elliniko Dimosio v Maria Karageorgou (C-78/02), Katina Petrova (C-79/02), Loukas Vlachos (C-80/02) (1)

(Sixth VAT Directive — Article 21(1)(c) — Persons liable to tax — Person mentioning the tax on an invoice — Tax paid in error by a non-taxable person and included in the invoice established by that person)

(2004/C 7/27)

(Language of the case: Greek)

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

In Joined Cases C-78/02 to C-80/02: References to the Court under Article 234 EC by the Diikitiko Efetio Athinon (Greece) for a preliminary ruling in the proceedings pending before that court between Elliniko Dimosio and Maria Karageorgou (C-78/02), Katina Petrova (C-79/02), Loukas Vlachos (C-80/02), on the interpretation of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and in particular the rule in Article 21(1)(c) of that directive to the effect that VAT is payable by any person who mentions VAT on an invoice, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 6 November 2003, in which it has ruled:

1. *The amount mentioned as value added tax on the invoice drawn up by a person providing services to the State may not be classified as value added tax where that person erroneously believes that he is providing those services as a self-employed person whilst in reality there is an employer-employee relationship.*

2. *Article 21(1)(c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment does not preclude reimbursement of an amount mentioned in error by way of value added tax on an invoice or other document serving as invoice where the services at issue are not subject to value added tax and the amount invoiced cannot therefore be classified as value added tax.*

(1) OJ C 169 of 13.7.2002 and OJ C 144 du 15.6.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 13 November 2003

in Case C-153/02 (Reference for a preliminary ruling from the Giudice di pace di Genova): Valentina Neri v European School of Economics (ESE Insight World Education System Ltd) (1)

(Freedom of establishment — Recognition of diplomas — Degree issued by a university established in a Member State — Courses of study in preparation for a degree awarded in another Member State and by another educational establishment)

(2004/C 7/28)

(Language of the case: Italian)

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

In Case C-153/02: Reference to the Court under Article 234 EC by the Giudice di pace di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between Valentina Neri and European School of Economics (ESE Insight World Education System Ltd) on the interpretation of Articles 39 EC, 43 EC and 49 EC, of Council Decision 63/266/EEC of 2 April 1963 laying down general principles for implementing a common vocational training policy (OJ, English Special Edition 1963-1964 (I), p. 25) and Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), the Court (Fifth Chamber), composed of: D.A.O. Edward, acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr (Rapporteur), Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 13 November 2003, in which it has ruled:

An administrative practice such as the one at issue in the main proceedings, under which degrees awarded by a university of one Member State cannot be recognised in another Member State when the courses of preparation for those degrees were provided in the latter Member State by another educational establishment in accordance with an agreement made between the two establishments, is incompatible with Article 43 EC.

(1) OJ C 144 of 15.6.2002.

ORDER OF THE COURT

(Fourth Chamber)

of 17 October 2003

nella causa C-35/02 (Reference for a preliminary ruling from the Bundesverwaltungsgericht): Landeszahnärztekammer Hessen v Markus Vogel, Third parties: Landesärztekammer Hessen, Oberbundesanwalt beim Bundesverwaltungsgericht (1)

(Article 104(3) of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Directives 78/686/EEC and 78/687/EEC — The practice of dentistry by a doctor)

(2004/C 7/29)

(Language of the case: German)

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

In Case C-35/02: Reference to the Court under Article 234 EC by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Landeszahnärztekammer Hessen and Markus Vogel; Third parties: Landesärztekammer Hessen, Oberbundesanwalt beim Bundesverwaltungsgericht, on the the interpretation of Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners (OJ 1978 L 233, p. 10), 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 (Fourth Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, A. La Pergola and S. von Bahr, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has made an order on 17 October 2003, the operative part of which is as follows:

Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners, 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, properly construed, precludes a national rule containing a general authorisation for doctors who have not completed the training required by Article 1 of that directive to carry out the activities of a dental practitioner, irrespective of the title under which those activities are carried out.

([1]) OJ C 109 of 4.5.2002.

ORDER OF THE COURT OF THE JUSTICE

of 11 July 2003

in Case C-161/03 (reference for a preliminary ruling by the Commission de conciliation et d'expertise douanière): Administration des douanes v Centrale d'achat française pour l'outre-mer SA (CAFOM), Samsung Electronics France ([1])

(Reference for a preliminary ruling — Court's lack of jurisdiction)

(2004/C 7/30)

(Language of the case: French)

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

In Case C-161/03: reference to the Court under Article 234 EC by the Commission de conciliation et d'expertise douanière (France) for a preliminary ruling in the proceedings between Administration des douanes and Centrale d'achat française pour l'outre-mer SA (CAFOM), Samsung Electronics France — on the interpretation of Article 27 of Protocol No 4 annexed to the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, concluded and approved in the name of the European Communities by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1) — 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 (Rapporteur), 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; R. Grass, Registrar, made an order on 11 July 2003 of which the operative part is as follows:

The Court of Justice of the European Communities clearly has no jurisdiction to reply to the questions referred by the Commission de conciliation et d'expertise douanière in its decision of 18 March 2003.

([1]) OJ C 135 of 7.6.2003.

Appeal brought on 20 October 2003 by P&O European Ferries (Vizcaya) SA against the judgment delivered on 5 August 2003 by the First Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-116/01 between P&O European Ferries (Vizcaya) SA, supported by Diputación Foral de Vizcaya, and the Commission of the European Communities and T-118/01 between Diputación Foral de Vizcaya, supported by P&O European Ferries (Vizcaya) SA, and the Commission of the European Communities

(Case C-442/03 P)

(2004/C 7/31)

An appeal against the judgment delivered on 5 August 2003 by the First Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined cases T-116/01 ([1]) between P&O European Ferries (Vizcaya) SA, supported by Diputación Foral de Vizcaya, and the Commission of the European Communities and T-118/01 ([2]) between Diputación Foral de Vizcaya, supported by P&O European Ferries (Vizcaya) SA, and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 20 October 2003 by P&O European Ferries (Vizcaya) SA, established in Bilbao (Spain), represented by Sir Jeremy Lever QC and M. Pickford, Barristers, and J. Ellison, Solicitor.

The Appellant claims that the Court should:

1. make an order setting aside the Court of First Instance's judgment of 5 August 2003 and remitting the questions set out at paragraph 13 of the appeal for determination by the Court of First Instance;

2. make an order that the Commission pay the Appellant's costs of this appeal; and

3. make an order setting aside the order of the Court of First Instance of 5 August 2003 that the Appellant pay the Commission's costs, and reserving reconsideration of those costs for the Court of First Instance when the case is remitted to it.

Pleas in law and main arguments

The Appellant's application to the Court of First Instance was dismissed on the basis that aid granted to the Appellant in 1995 was a continuation of aid which had previously been granted to the Appellant in 1992 unlawfully (without prior notification to the Commission); that the 1995 aid was effectively tainted by the unlawfulness of the earlier aid; and that the unlawfulness was not cured by the provision in 1995 of the information about the 1995 agreement The Appellant submits that the Court of First Instance was wrong in law to dismiss its application for the following reasons:

The Court of First Instance misconstrued Article 88(3) EC, failing to give effect to the principle that the obligation to inform the Commission of plans to alter aid is a discrete obligation no less than is the obligation to inform the Commission of plans to grant (new) aid. Even where aid was originally granted unlawfully, altered aid granted under an agreement that replaces the original agreement will be granted lawfully if the Commission is informed of the plans to grant the altered aid and takes a favourable decision with regard to it before the altered aid is granted.

The Court of First Instance erroneously supported its conclusion summarised at paragraph 1 above by finding that the substance of the aid did not differ between the 1992 and 1995 agreements, and that the 1995 aid was therefore tainted by the unlawfulness of the 1992 aid.

The Court of First Instance failed to recognise that the letter of 27 March 1995 providing information to the Commission about the 1995 agreement was capable in law of having, and did have, a two-fold character: it disposed of the 1992 agreement as having been replaced and it informed the Commission of the finalised plan to grant new aid by way of replacement of the 1992 aid; the Court of First Instance erred in law in supposing that the first aspect of the letter excluded the second.

The Court of First Instance relied on alleged procedural failings in the provision of information by way of the letter of 27 March 1995. The Court of First Instance erred in so doing since: (a) contrary to the Court of First Instance's judgment, there is no requirement laid down by Article 88(3), and there was none in law at the time of the notification, that the relevant information must be supplied by the Member State in question; (b) the Court of First Instance relied on the fact that the form and content of the notification did not satisfy the formal criteria laid down by the Commission in communications to Member States, overlooking the fact that communications from the Commission to Member States cannot create legal requirements that are binding on individuals; and, in any event, (c) in the circumstances, the Commission was stopped from denying that the notification was lawful by reason of some formal defect and the Court of First Instance erred in law in failing to hold that that was so.

The Court of First Instance erroneously relied on (a) the reference ('NN') used by the Commission in relation to the 1995 aid and (b) the fact that the Commission did not reject the letter of 27 March 1995 (which, by circular reasoning, the Court of First Instance said that it would have done, if it had understood the letter to be a notification) as showing that the 1995 aid had not been duly notified to the Commission. Neither of those facts was capable in law of depriving the letter of 27 March 1995 of its character as a notification of the plan to grant the 1995 aid.

([1]) OJ C 212, 28.07.2001, p. 26.
([2]) OJ C 227, 11.08.2001, p. 29.

Action brought on 22 October 2003 by the Commission of the European Communities against the Italian Republic

(Case C-447/03)

(2004/C 7/32)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 22 October 2003 by the Commission of the European Communities, represented by Minas Kostantinidis and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— declare that, by failing to bring into force the necessary measures to ensure that waste, stored and deposited in dumps on Enichem's former Manfredonia site (province of Foggia) and in the Pariti I dump (province of Manfredonia) is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and by failing to bring into force the necessary measures to ensure that the holder of the waste stored and deposited in dumps on Enichem's Manfredonia site and the holder of urban waste in the Pariti I and Conte di Troia dumps has it handled by a private or public waste collector or by an undertaking

which carries out the operations listed in Annex II A or B or recovers or disposes of it himself, the Italian Republic has failed to fulfil its obligations under Article 4 and Article 8 of Directive 75/442/EEC [1], as amended by Directive 91/156/EEC [2].

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

— As regards the site of the former Enichem industrial plant, in view of the information provided by the Italian authorities and the subsequent prolonged silence maintained by them, it must be considered that the removal operations of the waste deposited on Island 5 were not completed as planned by December 2002; that Enichem has not submitted, by December 2002, a project for the decontamination of the waste deposited on Islands 12, 14 and 17 and that it is therefore lying in the same place, even though it is beyond doubt that it needs to be removed; that regarding the waste on Island 16 there is at present only an outline plan still a long way from being implemented.

— As for the Pariti I and Conte di Troia dumps, the technical preliminary investigations conducted by the Ministry of the Environment concerning the plan for the identification of the sites in question has not been completed for October 2002 as planned, and therefore the situation has remained completely unchanged since the reasoned opinion was delivered.

— In the light of the foregoing, notwithstanding that the Conte di Troia dump does not constitute an immediate risk to the environment, the fact remains that the Italian Republic has not brought into force any measures to ensure that the waste lying in the Pariti I dump since 1989 and Enichem's Manfredonia site since 1993 is recovered and disposed of without using processes or methods which could harm the environment. It has therefore failed to fulfil its obligations under Article 4 of the directive.

— The Italian Republic has failed to bring into force the necessary measures to ensure that the holder of the waste on Enichem's Manfredonia site and in the Pariti I and Conte di Troia dumps has it handled by a public or private waste collector or by an undertaking which carries out the operations listed in Annex II A or B of the directive. It has therefore also failed to fulfil its obligations under Article 8 of that directive.

[1] OJ 1975 L 194, p. 39.
[2] OJ 1991 L 78, p. 32.

Reference for a preliminary ruling by the Corte d'Appello di Milano — Sezione Prima Civile by order of that Court of 15 October 2003 in the case of Servizi Ausiliari Dottori Commercialisti s.r.l. against Notaio Giuseppe Calafiori; intervener: The Public Prosecutor, in the person of the Attorney General at the Court of Appeal, Milan

(Case C-451/03)

(2004/C 7/33)

Reference has been made to the Court of Justice of the European Communities by order of the Corte d'Appello di Milano — Sezione Prima Civile (Court of Appeal, Milan — Civil Section I) of 15 October 2003, received at the Court Registry on 27 October 2003, for a preliminary ruling in the case of Servizi Ausiliari Dottori Commercialisti s.r.l. against Notaio Giuseppe Calafiori; intervener: The Public Prosecutor, in the person of the Attorney General at the Court of Appeal, Milan on the following questions:

1. Must Articles 4, 10, 82, 86 and 98 of the EC Treaty be interpreted as precluding national rules such as those laid down in Legislative Decree No 241 of 9 July 1997, as amended by Legislative Decree No 490 of 28 December 1998, read together with the consolidated law on income tax (Decree of the President of the Republic No 917 of 22 December 1986) and Law No 413 of 30 December 1991, which exclusively reserves the right to provide certain types of tax advice to a single category of operators, namely the Centri di Assistenza Fiscale (or CAFs), and denies other economic operators in the sector who are nevertheless professionally qualified to provide tax and accounting advice (doctors, commercial accountants, lawyers and work consultants) the opportunity of providing, on the same terms and conditions, the type of advice reserved to the CAFs?

2. Must Articles 43, 48 and 49 of the EC Treaty be interpreted as precluding national rules such as those laid down in Legislative Decree No 241 of 9 July 1997, as amended by Legislative Decree No 490 of 28 December 1998, read together with the consolidated law on income tax (Decree of the President of the Republic No 917 of 22 December 1986) and Law No 413 of 30 December 1991, which exclusively reserves the right to provide certain types of tax advice to a single category of operators, namely the Centri di Assistenza Fiscale (or CAFs), and denies other economic operators in the sector who are nevertheless professionally qualified to provide tax and accounting advice (doctors, commercial accountants, lawyers and work consultants) the opportunity of providing, on the same terms and conditions, the type of advice reserved to the CAFs?

3. Must Article 87 of the EC Treaty be interpreted as meaning that a measure such as that arising from the rules laid down in Legislative Decree No 241 of 9 July 1997, and in particular Article 38 thereof, which provides for payment to be made to CAFs from State funds in respect of the activities referred to in Articles 34(4) and 37(2) of that legislative decree, constitute State aid?

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Chancery Division, by order of that court dated 17 October 2003, in the case of 1) RAL (Channel Islands) Ltd, 2) RAL Ltd, 3) RAL Services Ltd, 4) RAL Machines Ltd against Commissioners of Customs and Excise

(Case C-452/03)

(2004/C 7/34)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Chancery Division, dated 17 October 2003, which was received at the Court Registry on 27 October 2003, for a preliminary ruling in the case of 1) RAL (Channel Islands) Ltd, 2) RAL Ltd, 3) RAL Services Ltd, 4) RAL Machines Ltd and Commissioners of Customs and Excise on the following questions:

(1) In the circumstances of the present case and

(2) having regard to the Sixth Council Directive (77/388/EEC) [1] of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment, in particular Articles 2, 4, and 9, the Thirteenth Council Directive (86/560/EEC) [2] of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — arrangements for the refund of value added tax to taxable persons not established in Community territory, in particular Articles 1 and 2, and the general principles of Community law:

1. How is the expression 'fixed establishment' in Article 9 of the Sixth Directive to be interpreted?

2. What are the factors to be considered in determining whether the supply of slot gaming services is from the business establishment of a company such as Cl or from any fixed establishments that a company such as Cl might possess?

3. In particular:

   a) Where the business of a company ('A') is structured in circumstances such as those of the present case so that a connected company ('B'), whose business establishment lies outside the territory of the Community, supplies slot gaming services and the sole purpose of the structure is to eliminate A's liability to pay VAT in the State in which it is established:

      (i) can the slot gaming services be regarded as supplied from a fixed establishment in that Member State; and, if so,

      (ii) are the slot gaming services to be deemed to be supplied from the fixed establishment or are they deemed to be supplied from the place where B has established its business?

   b) Where the business of a company ('A') is structured so that, for the purposes of the place of supply rules, a connected company ('B'), in circumstances such as those of the present case, purports to supply slot gaming services from a business establishment outside the territory of the Community and has no fixed establishment, from which those services are provided, in the Member State in which A is established and the sole purpose of the structure is to eliminate A's liability to pay VAT in that State on those services:

(i) do the transactions between B and connected companies within the Member State ('A', 'C' and 'D') qualify for VAT purposes as supplies made by or to those companies in the course of their economic activities; if not,

(ii) what factors should be considered in determining the identity of the supplier of the slot gaming services?

4. a) Is there a principle of abuse of right which (independently of the interpretation given to the VAT Directives) is capable of precluding the advantage sought in a case such as the present?

b) If so, how does it operate in the circumstances such as the present?

5. a) What significance, if any, should be attached to the fact that A, C and D are not subsidiaries of B and that B does not control A, C and D either legally or economically?

b) Would it make a difference to any of the answers given above if the type of management undertaken by B at its business establishment outside the territory of the Community were necessary for the provision of slot gaming services to customers and neither A, C nor D performs those activities?

(1) OJ L 145, 13.06.77, p. 1.
(2) OJ L 326, 21.11.1986, p. 40.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), by order of that court dated 23 October 2003, in the case of The Queen on the application of 1) ABNA Ltd, 2) Denis Brinicombe (a partnership), 3) BOCM Pauls Ltd, 4) Devenish Nutrition Ltd, 5) Nutrition Services (International) Ltd, 6) Primary Diets Ltd against 1) Secretary of State for Health, 2) Food Standards Agency

(Case C-453/03)

(2004/C 7/35)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) dated 23 October 2003, which was received at the Court Registry on 27 October 2003, for a preliminary ruling in the case of The Queen on the application of 1) ABNA Ltd, 2) Denis Brinicombe (a partnership), 3) BOCM Pauls Ltd, 4) Devenish Nutrition Ltd, 5) Nutrition Services (International) Ltd, 6) Primary Diets Ltd and 1) Secretary of State for Health, 2) Food Standards Agency on the following question:

Are Article 1(1)(b) of Directive 2002/02 (1) and/or Article 1(4) of Directive 2002/02, to the extent that it amends Article 5c(2)(a) of Directive 79/373 (2) by requiring percentages to be listed, invalid by reason of

a. the absence of a legal basis in Article 152(4)(b) EC;

b. infringement of the fundamental right to property;

c. infringement of the principle of proportionality?

(1) Directive 2002/02/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 (OJ L 63, 06.03.2002, p. 23).
(2) Directive 79/373/EEC of the Council of 2 April 1979 on the marketing of compound feedingstuffs (OJ L 86, 06.04.1979, p. 30).

Action brought on 27 October 2003 by the Commission of the European Communities against the Italian Republic

(Case C-456/03)

(2004/C 7/36)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 27 October 2003 by the Commission of the European Communities, represented by Karen Banks, acting as Agent.

The applicant claims that the Court should:

— declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 1998/44/EC (1) of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, the Italian Republic has failed to fulfil its obligations under Article 15 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 30 July 2002.

(1) OJ 1998 L 213, p. 13.

Reference for a preliminary ruling by the Tribunale di Bergamo by order of that Court of 3 August 2003 in the case brought by Azienda agricola Albergati Giovanni Angelo against Agenzia Erogazioni in agricoltura 'AGEA' and Coop. Latte 2005 S.C.A.R.L.

(Case C-457/03)

(2004/C 7/37)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Bergamo (Bergamo District Court) of 3 August 2003, received at the Court Registry on 29 October 2003, for a preliminary ruling in the case brought by Azienda agricola Albergati Giovanni Angelo against Agenzia Erogazioni in agricoltura 'AGEA' and Coop. Latte 2005 S.C.A.R.L. on the following question:

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

(1) OJ L 90 of 01.04.1984, p. 10.
(2) OJ L 405 of 31.12.1992, p. 1.

Reference for a preliminary ruling by the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen by order of that Court of 27 September 2003 in the case of Parking Brixen G.m.b.H against Municipality of Brixen/Bressanone and Stadtwerke Brixen A.G.

(Case C-458/03)

(2004/C 7/38)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen (Administrative Court, Autonomous Division for the Province of Bolzano) of 27 September 2003, received at the Court Registry on 30 October 2003, for a preliminary ruling in the case of Parking Brixen G.m.b.H against Municipality of Brixen/Bressanone and Stadtwerke Brixen A.G. on the following questions:

1. Does the award of the management of the public pay car parks in question concern a public service contract within the meaning of Directive 92/50/EEC (1) or a public service concession contract to which the competition rules of the EC, in particular the obligation to ensure equal treatment and transparency, must be applied?

2. If that award does concern a service concession contract relating to the management of a local public service, is the award of the management of public pay car parks which, under Article 44(6)(b) of Regional Law No 1 of 4 January 1993, as amended by Article 10 of Regional Law No 10 of 23 January 1998 and under Article 88(6)(a) and (b) of the consolidated text of the provisions concerning local government, can be effected without a public invitation to tender, compatible with Community law, in particular with the principles of freedom to provide services and freedom of competition, the prohibition of discrimination, and the resultant obligations to ensure equal treatment, transparency and proportionality, where a public limited company is involved which was set up pursuant to Article 115 of Legislative Decree No 267/2000 by the conversion of a special undertaking of a municipality, whose share capital at the time of the award was held 100 % by the municipality itself but whose administrative board enjoys all extensive powers of routine administration up to a value of EURO 5 000 000,00 per transaction?

(1) OJ L 209 [1992], p. 1.

Action brought on 30 October 2003 by the Commission of the European Communities against Ireland

(Case C-459/03)

(2004/C 7/39)

An action against Ireland was brought before the Court of Justice of the European Communities on 30 October 2003 by the Commission of the European Communities, represented by P.J. Kuijper and B. Martenczuk, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

— declare that, by instituting dispute settlement proceedings against the United Kingdom under the UN Convention for the Law of the Sea concerning the MOX Plant located at Sellafield, Ireland has failed to fulfil its obligations under Article 10 and 292 EC and Article 192 and 193 Euratom;

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission submits that Ireland has instituted the proceedings against the United Kingdom without taking due account of the fact that the European Community is a party to the UN Convention for the Law of the Sea (UNCLOS). It has further failed to appreciate that the provisions of UNCLOS invoked by it, as well as a number of other Community acts invoked by Ireland, are provisions of Community law. By submitting the dispute to a Tribunal outside the Community legal order, Ireland has violated the exclusive jurisdiction of the Court of Justice enshrined in Articles 292 EC and 193 Euratom. Furthermore, Ireland has also violated the duty of cooperation incumbent on it under Articles 10 EC and 192 Euratom.

Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by order of that Court of 24 October 2003 in the case of Gaston Schul Douane-Expediteur B.V. against the Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-461/03)

(2004/C 7/40)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) of 24 October 2003, received at the Court Registry on 4 November 2003, for a preliminary ruling in the case of Gaston Schul Douane-Expediteur B.V. against the Minister van Landbouw, Natuur en Voedselkwaliteit on the following questions:

1. Is a court or tribunal as referred to in the third paragraph of Article 234 EC also required under that provision to submit to the Court of Justice a question such as that set out below, concerning the validity of provisions of a regulation where the Court of Justice has ruled that analogous provisions of another, comparable regulation are invalid, or may it refrain from applying the first-mentioned provisions in view of the clear analogies between them and the provisions declared invalid?

2. Are Article 4(1) and (2) of Commission Regulation (EC) No 1423/95 [1] of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses invalid inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price referred to in Article 1(2) of Regulation (EC) No 1423/95 and that that duty is established on the basis of the cif import price of the shipment concerned only if the importer so requests?

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[1] Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses (OJ L 141 of 24.06.1995, p. 16).

Action brought on 4 November 2003 by Kingdom of Spain against the Commission of the European Communities

(Case C-464/03)

(2004/C 7/41)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 4 November 2003 by the Kingdom of Spain, represented by Nuria Díaz Abad, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Commission Regulation (EC) No 1438/2003 [1] of 12 August 2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) No 2371/2002; and

— order the defendant institution to pay the costs.

Pleas in law and main arguments

1. Breach of essential procedural requirements as a result of infringement of the Council's language rules: the Spanish delegation did not receive an invitation in Spanish to the meeting of the Management Committee for Fisheries and Aquaculture at which the proposed regulation was discussed. Furthermore, during that meeting the Commission put forward a substantive amendment to its proposal but only in English.

2. Breach of the hierarchy of norms: Article 7(1) of Regulation No 1438/2003 infringes the provisions of:

— Article 13 of Regulation No 2371/2002 which does not require the Member State to guarantee that the tonnage capacity does not exceed certain limits; and

— Article 11 of Regulation No 2371/2002 which requires that, when establishing the balance of entries and exits the corresponding capacity of the fleet is not to be taken into account.

3. Breach of the principle of legitimate expectations: the retrospective nature of the provision could be detrimental to the interested of the persons concerned.

4. Arbitrariness: the provision lays down as the period for exits the range of 2000 to 2002 for no technical reason whatever.

([1]) OJ L 204 of 13.08.2003, p. 21.

Reference for a preliminary ruling by the VAT and Duties Tribunals, London Tribunal Centre, by direction of that court dated 29 October 2003, in the case of Overland Footwear Ltd against Commissioners of Customs and Excise

(Case C-468/03)

(2004/C 7/42)

Reference has been made to the Court of Justice of the European Communities by a direction of the VAT and Duties Tribunals, London Tribunal Centre, dated 29 October 2003, which was received at the Court Registry on 6 November 2003, for a preliminary ruling in the case of Overland Footwear Ltd and Commissioners of Customs and Excise on the following questions:

On the basis of the Council Regulation 2913/92 ('the Customs Code'), in particular Articles 29, 32 and 33 thereof, and the case law of the Court, where, at the time of customs clearance, an importer inadvertently declares as the price paid or payable for the goods an amount inclusive of buying commission and inadvertently fails to show the buying commission separately on the import declaration from the price actually paid or payable but, after the goods have been released into free circulation, shows to the satisfaction of the Customs authorities that the declared price paid or payable for the goods included bona fide buying commission, which could have been properly deducted at importation, and makes a claim for repayment of the duty paid on the buying commission within three years of the date on which amount of customs duty was communicated:

1. Could the bona fide buying commission be dutiable as part of the price actually paid or payable for the goods under Article 29 of the Customs Code?

2. If the answer to question 1 is negative, could the bona fide buying commission be deductible from the declared transaction value bearing in mind the provisions of Articles 32.3 and 33 of the Customs Code?

3. In such circumstances are the customs authorities obliged under the Customs Code, and in particular Article 78.3 thereof, to accept the amendment to the price paid or payable for the imported goods and thereby reduced customs value?

4. Is the importer therefore entitled under the Customs Code, and in particular Article 236 thereof, to a refund of the duty paid on the buying commission?

Action brought on 17 November 2003 by the Commission of the European Communities against the Hellenic Republic

(Case C-474/03)

(2004/C 7/43)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 17 November 2003 by the Commission of the European Communities, represented by Maria Patakia, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt or, in any event, to notify to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2000/9/EC [1] of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons, 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 time-limit for transposition of the directive into national law expired on 3 May 2002.

[1] OJ L 106, 3.5.2000, p. 21.

Action brought on 18 November 2003 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-479/03)

(2004/C 7/44)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 18 November 2003 by the Commission of the European Communities, represented by M. Patakia, 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 adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions [1] and, in any event, by failing to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition of the directive expired on 8 August 2002.

[1] OJ 2000 L 200, p. 35.

Action brought on 19 November 2003 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-481/03)

(2004/C 7/45)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 19 November 2003 by the Commission of the European Communities, represented by W. Wils, 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 adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways [1] and Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings [2] and, in any event, by failing to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under those directives;

2. order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and principal arguments

The period prescribed for the transposition of those directives expired on 15 March 2003.

[1] OJ L 75, 15.3.2001, p. 1.
[2] OJ L 75, 15.3.2001, p. 26.

Action brought on 19 November 2003 by the Commission of the European Communities against Ireland

(Case C-482/03)

(2004/C 7/46)

An action against Ireland was brought before the Court of Justice of the European Communities on 19 November 2003 by the Commission of the European Communities, represented by W. Wils, 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 Directives 2001/12/EC amending Council Directive 91/440/EEC on the development of the Community's railways ([1]), 2001/13/EC amending Council Directive 95/18/C on the licensing of railway undertakings ([2]) and 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ([3]), of the European Parliament and of the Council of 26 February 2001, or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under these Directives;

2. order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the Directives had to be transposed expired on 15 March 2003.

([1]) OJ L 75, 15.3.2001, p. 1.
([2]) OJ L 75, 15.3.2001, p. 26.
([3]) OJ L 75, 15.3.2001, p. 29.

Action brought on 19 November 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-483/03)

(2004/C 7/47)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 19 November 2003 by the Commission of the European Communities, represented by W. Wils, 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 Directives 2001/12/EC amending Council Directive 91/440/EEC on the development of the Community's railways ([1]), 2001/13/EC amending Council Directive 95/18/C on the licensing of railway undertakings ([2]) and 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ([3]), of the European Parliament and of the Council of 26 February 2001, or in any event by failing to notify those provisions to it, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under these Directives;

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

Pleas in law and main arguments

The period within which the Directives had to be transposed expired on 15 March 2003.

([1]) OJ L 75, 15.3.2001, p. 1.
([2]) OJ L 75, 15.3.2001, p. 26.
([3]) OJ L 75, 15.3.2001, p. 29.

Removal from the register of Case C-62/02 ([1])

(2004/C 7/48)

By order of 8 September 2003 the President of the Second Chamber of the Court of Justice of the European Communities ordered the removal from the register of Case C-62/02: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.

([1]) OJ C 109 of 4.5.2002.

Removal from the register of Case C-163/02 [1]

(2004/C 7/49)

By order of 14 August 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-163/02: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 156 of 29.6.2002.

Removal from the register of Case C-326/02 [1]

(2004/C 7/50)

By order of 30 July 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-326/02: Commission of the European Communities v Kingdom of Spain.

[1] OJ C 274 of 9.11.2002.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2003

in Case T-65/98: Van den Bergh Foods Ltd v Commission of the European Communities [1]

(Action for annulment — Competition — Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC) — Ice creams intended for immediate consumption — Supply of freezer cabinets to retailers — Exclusivity clause — Barriers to entry to the market — Property rights — Article 222 of the EC Treaty (now Article 295 EC))

(2004/C 7/51)

(Language of the case: English)

In Case T-65/98, Van den Bergh Foods Ltd, formerly HB Ice Cream Ltd, established in Dublin (Ireland), represented by M. Nicholson and M. Rowe, solicitors, with an address for service in Luxembourg, v Commission of the European Communities (Agents: W. Wils and A. Whelan), supported by Masterfoods Ltd, established in Dublin represented by P.G.H. Collins, solicitor, and by Richmond Frozen Confectionery Ltd, formerly Treats Frozen Confectionery Ltd, established in Northallerton (United Kingdom), represented by I.S. Forrester, QC, with an address for service in Luxembourg: Application for annulment of Commission Decision 98/531/EC of 11 March 1998 relating to a proceeding under Articles 85 and 86 of the EC Treaty (Case Nos IV/34.073, IV/34.395 and IV/35.436 — Van den Bergh Foods Limited) (OJ 1989 L 246, p. 1), the Court of First Instance (Fifth Chamber), composed of: R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 23 October 2003, in which it:

1. *Dismisses the application as unfounded.*

2. *Orders Van den Bergh Foods Ltd to bear its own costs and to pay those of the Commission, including the costs of the interim proceedings.*

3. *Orders Masterfoods Ltd and Richmond Frozen Confectionery Ltd to bear their own costs.*

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[1] OJ C 234 of 25.07.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 September 2003

in Joined Cases T-191/98 and T-212/98 to T-214/98: Atlantic Container Line AB and Others v Commission of the European Communities [1]

(Competition — Liner conferences — Regulation (EEC) No 4056/86 — Block exemption — Individual exemption — Collective dominant position — Abuse — Service contracts — Accession to the conference — Alteration of the competition structure — Withdrawal of block exemption — Fines — Rights of the defence)

(2004/C 7/52)

(Language of the case: English)

In Joined Cases T-191/98 and T-212/98 to T-214/98: Atlantic Container Line AB, established in Gothenburg (Sweden), Cho Yang Shipping Co. Ltd, established in Seoul (South Korea), DSR-Senator Lines GmbH, established in Bremen (Germany), Hanjin Shipping Co. Ltd, established in Seoul (South Korea), Hapag-Lloyd AG, established in Hamburg (Germany), Hyundai Merchant Marine Co. Ltd, established in Seoul (South Korea), A.P. Møller-Mærsk Line, established in Copenhagen (Denmark), Mediterranean Shipping Co. SA, established in Geneva (Switzerland), Orient Overseas Container Line (UK) Ltd, established in London (United Kingdom), Polish Ocean Lines (POL), established in Gdynia (Poland), P & O Nedlloyd BV, established in London (United Kingdom), Sea-Land Service Inc., established in Jersey City, New Jersey (United States of America), Neptune Orient Lines Ltd, established in Singapore (Singapore), Nippon Yusen Kaisha, established in Tokyo (Japan), Transportación Marítima Mexicana SA de CV, established in Mexico City (Mexico), Tecomar SA de CV, established in Mexico City (Mexico), represented by J. Pheasant, N. Bromfield, M. Levitt, D. Waelbroeck, U. Zinsmeister, A. Bentley, C. Thomas, A. Nourry, M. Van Kerckhove, P. Ruttley and A. Merckx, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: R. Lyal and J. Flynn), supported by European Council of Transport Users ASBL, represented by M. Clough QC, with an address for service in Luxembourg: Application for the annulment of Commission Decision 1999/243/EC of 16 September 1998 relating to a proceeding pursuant to Articles 85 and 86 of the EC Treaty (Case No IV/35.134 — Trans-Atlantic Conference Agreement) (OJ 1999 L 95, p. 1), the Court of First Instance (Fourth Chamber), composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 30 September 2003, in which it:

1. *Annuls Article 5 of Commission Decision 1999/243/EC of 16 September 1998 relating to a proceeding pursuant to Articles 85 and 86 of the EC Treaty (Case No IV/35.134 — Trans-Atlantic Conference Agreement).*

2. *Annuls Article 6 of Decision 1999/243 in so far as it applies to mutual disclosure by the applicants of the availability and content of their individual service contracts.*

3. *Annuls Article 7 of Decision 1999/243 to the extent required by the annulment of Articles 5 and 6.*

4. *Annuls Article 8 of Decision 1999/243.*

5. *Dismisses the remainder of the applications.*

6. *Orders the applicants and the Commission each to bear their own costs.*

7. *Orders the European Council of Transport Users ASBL to bear its own costs.*

([1]) OJ C 71 of 27.03.1999 and OJ C 86 of 13.03.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 October 2003

in Case T-148/00: The Panhellenic Union of Cotton Ginners and Exporters v Commission of the European Communities ([1])

(State aid — Compensatory levy — Method of financing aid — Community aid scheme for cotton — Action for annulment — Admissibility — Acts which may be challenged — Commission's refusal to continue infringement proceedings — Principle of independent legal remedies)

(2004/C 7/53)

(Language of the case: English)

In Case T-148/00, The Panhellenic Union of Cotton Ginners and Exporters, established in Thessaloniki (Greece), represented by K. Adamantopoulos, V. Akritidis and J. Gutiérrez Gisbert, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: M. Condou and D. Triantafyllou), supported by Hellenic Republic (Agents: I. Chalkias and C. Tsiavou): Application for the partial annulment of Commission Decision 2000/206/EC of 20 July 1999 on an aid scheme applied in Greece to cotton by the Greek Cotton Board (OJ 2000 L 63, p. 27), the Court of First Instance (Fifth Chamber, Extended Composition), composed of: R. García-Valdecasas, President, P. Lindh, J.D. Cooke, P. Mengozzi and H. Legal, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 16 October 2003, in which it:

1. *Dismisses the application as inadmissible.*

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

3. *Orders the Hellenic Republic to bear its own costs.*

([1]) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 October 2003

in Case T-368/00: General Motors Nederland BV and Opel Nederland BV v Commission of the European Communities ([1])

(Competition — Distribution of motor vehicles — Article 81 EC — Regulations (EEC) No 123/85 and (EC) No 1475/95 — Partitioning of the market — General strategy aimed at restricting exports — Restriction of supply — Restrictive bonus policy — Ban on exports — Fine — Gravity and duration of the infringement — Proportionality — Guidelines for the calculation of fines)

(2004/C 7/54)

(Language of the case: English)

In Case T-368/00, General Motors Nederland BV, established in Sliedrecht (Netherlands), Opel Nederland BV, established in Sliedrecht, represented by D. Vandermeersch, R. Snelders and S. Allcock, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: W. Mölls and A. Whelan): Application for, as the principal claim, annulment of the Commission's decision 2001/146/EC of 20 September 2000 relating to a proceeding under Article 81 EC (Case COMP/36.653 — Opel) (OJ 2001 L 59, p. 1) or, in the alternative, cancellation or reduction of the fine imposed on the applicants by that decision., the Court of First Instance (Second Chamber), composed of: N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges; H. Jung, Registrar, has given a judgment on 21 October 2003, in which it has ruled:

1. *The contested decision of the Commission 2001/146/EC of 20 September 2000 relating to a proceeding under Article 81 of the EC Treaty (COMP/36.653 — Opel) is annulled in so far as it establishes the existence of a restrictive supply measure contrary to Article 81(1) EC.*

2. *The amount of the fine imposed on the applicants by Article 3 of the contested decision is reduced to EUR 35 475 000.*

3. *The application is dismissed as to the remainder.*

4. *The applicants are ordered to bear four fifths of their own costs and four fifths of the Commission's costs; the Commission is ordered to bear one fifth of its own costs and one fifth of the applicants' costs.*

([1]) OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 October 2003

in Case T-47/01: Co-Frutta Soc. coop. rl v Commission of the European Communities ([1])

(Action for annulment — Access to documents — Decision 94/90/ECSC, EC, Euratom — Refusal — Authorship rule — Misuse of powers)

(2004/C 7/55)

(Language of the case: Italian)

In Case T-47/01, Co-Frutta Soc. coop. rl, established in Padua (Italy), represented by W. Viscardini, M. Paolin and S. Donà, lawyers, v Commission of the European Communities (Agents: P. Stancanelli, P. Aalto and P. Wölker): Application for annulment of the Commission's decision contained in the letters of 31 July 2000 from the Directorate-General for Agriculture and 5 December 2000 from the Secretary-General of the Commission, by which access to the documents sought by the applicant in connection with the arrangements for importing bananas was partly refused, the Court of First Instance (Fifth Chamber), composed of: R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 16 October 2003, in which it:

1. *Dismisses the application for annulment of the decision contained in the letter from DG Agriculture of 31 July 2000 as inadmissible.*

2. *Dismisses the rest of the action as unfounded.*

3. *Orders the applicant to bear its own costs, as well as those of the Commission.*

([1]) OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2003

in Case T-255/01: Changzhou Hailong Electronics & Light Fixtures Co. Ltd and Zhejiang Yankon Group Co. Ltd v Council of the European Union ([1])

(Anti-dumping — Determination of normal value — Market-economy treatment — Analogue country — Article 2(7) of Regulation (EC) No 384/96)

(2004/C 7/56)

(Language of the case: English)

In Case T-255/01, Changzhou Hailong Electronics & Light Fixtures Co. Ltd, established at Changzhou (China), Zhejiang Yankon Group Co. Ltd, formerly Zheijang Sunlight Group Co. Ltd, established at Shangyu (China), represented by P. Bentley QC, and F. Ragolle, lawyer, v Council of the European Union (Agents: S. Marquardt, and G. M. Berrisch), supported by Commission of the European Communities (Agents: V. Kreuschitz, T. Scharf and S. Meany): Application for annulment of Council Regulation (EC) No 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China (OJ 2001 L 195, p. 8), the Court of First Instance (Fifth Chamber, Extended Composition), composed of: R. García-Valdecasas, President, P. Lindh, J.D. Cooke, J. Pirrung and H. Legal, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 23 October 2003, in which it:

1. *Dismisses the action.*

2. *Orders the applicants to bear their own costs and to pay the costs incurred by the Council.*

3. *Orders the Commission to bear its own costs.*

(1) OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2003

in Case T-279/01: Giorgio Lebedef v Commission of the European Communities (1)

(Officials — Staff report — Late preparation — Action for compensation)

(2004/C 7/57)

(Language of the case: French)

In Case T-279/01: Giorgio Lebedef, an official of the Commission of the European Communities, residing in Senningerberg (Luxembourg), represented by G. Bouneou and F. Frabetti, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall) — application, first, for annulment of the Commission's decisions partially rejecting the applicant's complaints seeking damages to compensate him for the non-material damage caused by the delay in the preparation of the staff reports concerning him for the periods 1995/1997 and 1997/1999 and, secondly, for damages to compensate him for that non-material damage — the Court of First Instance (Single Judge: V. Tiili); I. Natsinas, Administrator, for the Registrar, has given a judgment on 23 October 2002, in which it:

1. *Orders the Commission to pay the applicant the sum of EUR 1 500, in addition to the sum of EUR 619,73 already awarded by the Appointing Authority.*

2. *Dismisses the remainder of the action.*

3. *Orders the Commission to pay the costs.*

(1) OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 October 2003

in Case T-302/01: Gerhard Birkhoff v Commission of the European Communities (1)

(Officials — Article 2(5) of Annex VII to the Staff Regulations — Cancellation of an allowance for dependent child who has reached majority — Legitimate expectations)

(2004/C 7/58)

(Language of the case: Italian)

In Case T-302/01: Gerhard Birkhoff, former official of the Commission of the European Communities, now retired, residing in Weitnau (Germany), represented by V. Salvatore, lawyer, against Commission of the European Communities (Agents: J. Currall and A. Dal Ferro) — first, an application for annulment of the decision of the appointing authority of 26 September 2001 rejecting the complaint brought by the applicant against the decision of the Commission of 4 July 2001 by which it cancelled payment to the applicant of the dependent child allowance in respect of his daughter and of the decision of 4 July 2001 and, secondly, a claim for compensation for material and non-material damage — the Court of First Instance (Second Chamber), composed of N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges; H. Jung, Registrar, gave a judgment on 21 October 2003, in which it:

1. *Annuls the decision of the Commission of 4 July 2001 cancelling, with effect from 1 July 2001, payment of the dependent child allowance in respect of the applicant's daughter who has reached majority.*

2. *Finds that there is no need to adjudicate on the claim for compensation for the damage arising from the loss of cover in respect of the applicant's daughter by the EC Sickness Insurance Fund, nor on the part of the claim seeking compensation for the tax consequences of the contested decision.*

3. *Dismisses the remainder of the claim for compensation.*

4. *Orders the Commission to pay two-thirds of the applicant's costs, including those incurred in the proceedings for interim relief in the present case.*

(1) OJ C 44 of 16.2.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 October 2003

in Case T-311/01: Les Éditions Albert René v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Earlier Community trade mark ASTERIX — Application for a Community figurative mark containing the word 'starix' — Relative grounds for refusal — Article 8(1)(b) and 8(5) of Regulation (EC) No 40/94)

(2004/C 7/59)

(Language of the case: German)

In Case T-311/01, Les Éditions Albert René, established in Paris (France), represented by J. Pagenberg, avocat, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl and G. Schneider), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being: Trucco sistemi di telecomunicazione SpA, established in Milan (Italy), APPEAL against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 2 October 2001 (Case R 1030/2000-1), 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 22 October 2003, in which it:

1. *Dismisses the action.*

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

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[1] OJ C 56 of 2.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2003

in Case T-24/02: Maddalena Lebedef-Caponi v Commission of the European Communities [1]

(Officials — Staff report — Late preparation — Action for compensation)

(2004/C 7/60)

(Language of the case: French)

In Case T-24/02: Maddalena Lebedef-Caponi, an official of the Commission of the European Communities, residing in Senningerberg (Luxembourg), represented by G. Bouneou and F. Frabetti, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agent: D. Martin) — application, first, for annulment of the Commission's decisions partially rejecting the applicant's complaints seeking damages to compensate her for the non-material damage caused by the delay in the preparation of the Staff Reports concerning her for the periods 1993/1995, 1995/1997 and 1997/1999 and, secondly, for damages to compensate her for that non-material damage — the Court of First Instance (Single Judge: V. Tiili); I. Natsinas, Administrator, for the Registrar, has given a judgment on 23 October 2003, in which it:

1. *Orders the Commission to pay the applicant the sum of EUR 2 500, in addition to the sum of EUR 1 500 already awarded by the Appointing Authority.*

2. *Dismisses the remainder of the action.*

3. *Orders the Commission to pay the costs.*

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[1] OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2003

in Case T-25/02: Michel Sautelet v Commission of the European Communities [1]

(Officials — Staff report — Late preparation — Action for compensation)

(2004/C 7/61)

(Language of the case: French)

In Case T-25/02: Michel Sautelet, an official of the Commission of the European Communities, residing in Luxembourg (Luxembourg), represented by G. Bouneou and F. Frabetti, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall and C. Berardis-Kayser) — application, first, for annulment of the Commission's decisions partially rejecting the applicant's complaints seeking damages to compensate him for the non-material damage caused by the delay in the preparation of the staff reports concerning him for the periods 1993/1995, 1995/1997 and 1997/1999 and, secondly, for damages to compensate him for that non-material damage — the Court of First Instance (Single Judge: V. Tiili); I. Natsinas, Administrator, for the Registrar, has given a judgment on 23 October 2002, in which it:

1. *Orders the Commission to pay the applicant the sum of EUR 3 000, in addition to the sum of EUR 1 500 already awarded by the Appointing Authority.*

2. *Dismisses the remainder of the action.*

3. *Orders the Commission to pay the costs.*

([1]) OJ C 118 of 18.5.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 October 2003

in Case T-392/02: Solvay Pharmaceuticals BV v Council of the European Union ([1])

(Directive 70/524/EEC — Community authorisation, linked to the person responsible for putting into circulation, of an additive in animal feedingstuff — Transitional rules — Withdrawal of the authorisation — Action for annulment — Admissibility — Conditions for withdrawal — Precautionary principle — Principles of equal treatment, legal certainty, sound administration and good faith)

(2004/C 7/62)

(Language of the case: French)

In Case T-392/02: Solvay Pharmaceuticals BV, established in Weesp (Netherlands), represented by C. Meijer, F. Herbert and M. L. Struys, lawyers, with an address for service in Luxembourg, against Council of the European Union (Agents: M. Balta and M. Ruggery Laderchi), supported by Commission of the European Communities (Agent: A. Bordes), application for the annulment of Council Regulation (EC) No 1756/2002 of 23 September 2002 amending Directive 70/524/EEC concerning additives in feedingstuffs as regards withdrawal of the authorisation of an additive and amending Commission Regulation (EC) No 2430/1999 (OJ 2002 L 265, p. 1) — the Court of First Instance (Second Chamber), composed of N. J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges; H. Jung, Registrar, gave a judgment on 21 October 2003, in which it:

1. *Dismisses the application.*

2. *Orders the applicant to bear his own costs and pay those incurred by the Council, including those incurred in the interlocutory proceedings.*

3. *Orders the Commission to bear its own costs, including those incurred in the interlocutory proceedings.*

([1]) OJ C 55 of 8.3.2003.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 9 July 2003

in Case T-288/02 R: Asian Institute of Technology (AIT) v Commission of the European Communities

(Procedure for interim relief — Urgency — None)

(2004/C 7/63)

(Language of the case: French)

In Case T-288/02 R: Asian Institute of Technology (AIT), established in Pathumthani (Thailand), represented by H. Teissiers du Cros, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: P.-J. Kuijper and B. Schöfer) — application for suspension of operation of the decision of the Commission of 22 February 2002 to conclude a research contract with the Center for Energy-Environment Research and Development — the President of the Court of First Instance made an order on 9 July 2002, the operative part of which is as follows:

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

2. *Costs are reserved.*

Action brought on 8 October 2003 by Deutsche Post AG and Securicor Omega Express Limited against the Commission of the European Communities

(Case T-343/03)

(2004/C 7/64)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 October 2003 by Deutsche Post AG, Bonn (Germany) and Securicor Omega Express Limited, Sutton (United Kingdom), represented by T. Lübbig, lawyer.

The applicants claim that the Court should:

— annul the Decision of the Commission of the European Communities of 27 May 2003 on State aid N 784/2002 — United Kingdom, 'Government rural network support funding, debt payment funding and rolling working capital loan to Post Office Limited', document number C(2003) 1652 final, in so far as it terminates the State aid complaint procedure initiated by the first applicant's letter of 3 December 2002;

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

Pleas in law and main arguments

By letter of 3 December 2002, the applicants requested the Commission to investigate the costs and earnings structures of the postal undertaking Consignia plc (Royal Mail Group plc) as regards parcels and express parcel service as to the existence of a cross-subsidy.

The applicants object to the termination by means of the contested decision of the State aid complaint procedure which they initiated. In particular, the applicants complain that, by that contested approval decision, the Commission terminated its State aid investigation in respect of the subject of the complaint while it was still at a preliminary stage.

The applicants take the view that if there had been an appropriate and comprehensive examination of the observations which the applicants submitted under the complaint procedure, the Commission would have encountered serious problems and doubts as to the compatibility with the common market of the facts put forward in the complaint and would have had to initiate a full assessment. In effect, the applicants' complaint demonstrates in detail that the parcel service of the United Kingdom's Post is not achieving the coverage of costs required under the Commission's Decision of 19 June 2002 on measures implemented by the Federal Republic of Germany for Deutsche Post AG ([1]) and that therefore the suspicion of a cross-subsidy — described in the Deutsche Post Decision as inadmissible State aid — is founded as regards parcel services.

The applicants maintain that the parcel services which form the subject-matter of the applicants' complaint are mentioned in the Commission's Decision only in passing and without separate consideration of individual spheres of activity. The Commission did not examine whether 'Parcel Services' constitute the provision of a universal parcel service or, for example, the handling of express parcels and, accordingly, an area of competition which has long since been liberalised. In the light of the allegations made by the applicants of cross-subsidies for parcels and express parcel operations, the Decision is therefore vitiated by a failure to state reasons (infringement of Article 253 EC).

([1]) OJ L 247, p. 27.

Action brought on 9 October 2003 by Eugénio Branco, Lda, in liquidation, against the Commission of the European Communities

(Case T-347/03)

(2004/C 7/65)

(Language of the case: French)

An action was brought before the Court of First Instance of the European Communities on 9 October 2003 against the Commission of the European Communities by Eugénio Branco, Lda, in liquidation, of Lisbon, Portugal, represented by Bolota Belchior, lawyer.

The applicants claim that Court of First Instance should:

— annul in its entirety Commission Decision C(87) 0860 of 23 October 2002 which reduced the European Social Fund (EFS) contribution for training actions approved by the Commission (File 870302P3) and required the applicant to repay the sum of EUR 13 929,7, and

— order the defendant to pay the costs

Pleas in law and main arguments

The applicant maintains that the contested reduction and obligation to make a refund derive from the fact that the Commission failed to approve the request for payment of the balance under the EFS financing procedure and did not select certain expenses submitted by it.

The applicant submitted to the Portuguese European Social Fund Department (DAFSE) its application for EFS funding for a vocational training action on 29 June 1986, and the Commission declared its application successful.

Subsequently, the applicant submitted to the DAFSE an application for payment of the balance of PTE 991 009 by the EFS and of the balance of PTE 810 226 by the Portuguese State. The DAFSE certified that request, which the Commission approved by document No 4242 of 13 March 1989, although it considered the sum of 1 192 162 to be ineligible. On 17 February 1998 the Commission decided, however, to suspend the contribution.

The Portuguese judicial authorities decided to discontinue the legal actions pending against the applicant, thereby eliminating in the applicant's view the presumption that it had acted irregularly. Nevertheless, the Commission adopted the decision at issue in these proceedings.

The contested decision, in the applicant's view, infringes Regulation (EEC) No 2950/83 and Council Decision 83/516/EEC since the applicant complied strictly with the conditions laid down for approval of the EFS contribution, thereby acquiring 'subjective rights attaching specifically to it'.

The decision also breaches the principle of the protection of legitimate expectations in so far as the Commission's approval decision vested in the applicant an entitlement to the contributions and gave rise to an expectation on its part that it would receive them if it carried out the action on the agreed basis and also because the measure contested herein could have been put into effect as early as 1989.

Finally, the contested decision constitutes a serious breach of the principle of proportionality since the applicant incurred expenses on the assumption that the Commission would fulfil its commitments.

Action brought on 13 October 2003 by Corsica Ferries France against the Commission of the European Communities

(Case T-349/03)

(2004/C 7/66)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 October 2003 by Corsica Ferries France, established in Bastia (France), represented by S. Rodrigues and C. Scapel, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision of 9 July 2003 concerning the restructuring aid which France plans to put into effect in favour of the Société Nationale Maritime Corse-Méditerranée;

— order the defendant to pay all the costs.

Pleas in law and main arguments

By the contested decision, the Commission decided that the restructuring aid which France was planning to put into effect in favour of the Société Nationale Maritime Corse-Méditerranée was, under certain conditions, compatible with the common market. The applicant challenges that decision, asserting that it has a direct and individual interest in obtaining its annulment, having regard to its active participation in the formal investigation procedure in respect of the aid and its competitive position in the reference market.

In support of its action it relies, first, on alleged failure to state the reasons on which the contested decision is based and, secondly, on alleged manifest errors of fact and assessment.

Action brought on 13 October 2003 by Wirtschaftskammer Kärnten and best connect Ampere Strompool GmbH against the Commission of the European Communities

(Case T-350/03)

(2004/C 7/67)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 October 2003 by Wirtschaftskammer Kärnten and best connect Ampere Strompool GmbH, Klagenfurt (Austria), represented by M. Angerer, lawyer.

The applicants claim that the Court should:

— annul Commission Decision COMP/M.2947 — Verbund/EnergieAllianz of 11 June 2003 on the compatibility of a concentration with the common market and the Agreement on the European Economic Area (EEA Agreement) and order the defendant to pay the costs.

Pleas in law and main arguments

The contested decision by the Commission approves the concentration of several Austrian undertakings with the undertakings E&S GmbH and Verbund Austrian Power Trading AG, subject to conditions.

The applicants claim that E&S GmbH and Verbund Austrian Power Trading AG are not a full-function joint venture for the purpose of Article 3 of the Merger Regulation ([1]) in conjunction with the Notice on the concept of full-function joint ventures ([2]). In particular, there is a lack of joint control, sufficient independent resources, independent staff management and the power to procure a substantial proportion of electrical current from outside the parent company's sphere of influence and to be allowed to sell it freely on the market. Concerted practices directly related to that merger also invalidate the proposal under Article 2(4) of the Regulation in conjunction with Article 81(1) and (2) EC. The Commission should have come to that conclusion when it examined the proposal.

The applicants also claim that, in addition to that merger, a likely 'group effect' can be expected to result in further concerted practices, which would also be invalid under Article 81(2) EC.

Moreover, the applicants maintain that the planned project would greatly restrict free competition in the Austrian electricity market and further seal off the Austrian electricity market from that of the European Community, since it would further raise the threshold for access to the Austrian electricity market. The conditions laid down by the Commission will not alter that result.

([1]) Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ 1990 L 257, p. 13).
([2]) OJ 1998 C 66, p. 1.

Action brought on 10 October 2003 by Schneider Electric S.A. against the Commission of the European Communities

(Case T-351/03)

(2004/C 7/68)

(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 10 October 2003 by Schneider Electric S.A., established in Rueil-Malmaison (France), represented by M. Pittie and A. Winckler, lawyers.

The applicant claims that the Court should:

— order the Community to pay it the sum of EUR 1 663 734 716,76;

— such sum to be reduced, if appropriate, by an amount not exceeding EUR 1 663 595,74, depending on the outcome of the applications for taxation of the costs in Cases T-310/01, T-77/02 and T-77/02 R;

— such sum to be increased by interest accrued since 4 December 2002 until full payment thereof, at the rate of 4 % per year;

— such sum to be increased by the amount of tax for which Schneider will be liable on its receipt;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant company in this case seeks to obtain compensation for the loss which it suffered as a result of the Commission's conduct in dealing with Case COMP/M.2283 — Schneider Electric/Legrand, which gave rise to the judgments in Case T-310/01 ([1]) and Case T-77/02 ([2]).

It claims in that regard that the Commission, in the course of the proceeding which led to the prohibition decision of 10 October 2001, made numerous errors most of which were found established by the Court of First Instance. It also claims that, during the proceeding after that prohibition decision, the Commission made errors, not yet established by the Court, which have increased the damage suffered. In its view, such conduct by the Commission should be regarded as manifestly and seriously exceeding the limits of its discretion to assess the compatibility of a concentration (with the common market).

It is a question, in particular, of a lack of fairness by the Commission in the proceeding which led to the decision of 10 October 2001, of infringement of the applicant's defence rights, of orchestration of the relations between the parties to the concentration, of infringement of the right to be heard by an impartial authority, of its intransigence concerning the detailed rules of the separation imposed on 30 January 2002, of serious and manifest failure to take into account its exclusive jurisdiction and of the erroneous analysis of the corrective measures proposed in November 2002.

([1]) Schneider v Commission [2002] ECR II-4071.
([2]) Schneider v Commission [2002] ECR II-4201.

Action brought on 15 October 2003 by Giorgio Lebedef against the Commission of the European Communities

(Case T-352/03)

(2004/C 7/69)

(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 October 2003 by Giorgio Lebedef, residing in Senningerberg (Luxembourg), represented by Gilles Bounéou and Frédéric Frabetti, lawyers.

The applicant claims that the Court should:

— award damages of 5 000 euros to the applicant as compensation for the non-material damage suffered by him as a result of the delay in drawing up the final staff report (delay in placing a document in his personal file) in respect of the period 1999-2001;

— make an order as to costs, expenses and fees and order the Commission of the European Communities to pay them.

Pleas in law and main arguments

In support of his application, the applicant alleges infringement of the general instructions implementing Article 43 of the Staff Regulations, breach of the principle of sound administration and failure to fulfil the duty to have regard to the welfare of officials. The applicant also claims to have suffered non-material damage as a result and that, moreover, he was the victim of harassment aimed at curtailing his freedom of association.

Action brought on 14 October 2003 by Inge-Lise Nielsen against the Council of the European Union

(Case T-353/03)

(2004/C 7/70)

(Language of the case: French)

An action against Council of the European Union was brought before the Court of First Instance of the European Communities on 14 October 2003 by Inge-Lise Nielsen, residing in Villers-la-Ville (Belgium), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the Deputy Secretary General of the Council of 29 November 2002 not to include her name on the list of officials promoted to Grade C 2 in the 2002 promotions procedure;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of her application, the applicant relies on a plea of breach of Article 45 of the Staff Regulations in that the defendant committed a manifest error of assessment by considering comparative merits without taking account of the differences in marking between the different departments of the institution.

Action brought on 20 October 2003 by Gemma Reggimenti against the European Parliament

(Case T-354/03)

(2004/C 7/71)

(Language of the case: French)

An action was brought before the Court of First Instance of the European Communities on 20 October 2003 against the European Parliament by Gemma Reggimenti, residing in Woluwé-Saint-Lambert (Belgium), represented by Claudine Junion, lawyer, with an address for service in Luxembourg.

The applicant claims that Court of First Instance should:

— annul the decision of the European Parliament of 17 July 2003 in so far as it denies the applicant payment of travel expenses as from 6 August 1999;

— order the European Parliament to pay the applicant travel expenses for her daughter as from 6 August 1999;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

The applicant, an official of the European Parliament, obtained a court decision on 6 August 1999 to the effect that her daughter should reside mainly with her. The applicant and her husband, also an official, were divorced by decree of 31 October 2001, which became final on 12 January 2002. The Parliament decided to pay the applicant only half the travel expenses for her daughter, and to do so as from 2002, the year in which the divorce took place.

By this application the applicant contests that decision, on the basis of Article 8 of Annex VII to the Staff Regulations. The applicant submits that, in view of the decision granting her primary custody of her daughter, the latter should be regarded as being her dependent child and therefore that the travel expenses should be paid to her at the full rate.

Action brought on 23 October 2003 by Bruno Gollnisch and Others against the European Parliament

(Case T-357/03)

(2004/C 7/72)

(Language of the case: French)

An action was brought before the Court of First Instance of the European Communities on 23 October 2003 against the European Parliament by Bruno Gollnisch, of Limonest (France), Marie-France Stirbois, of Villeneuve-Loubey (France), Carl Lang, of Boulogne-Billancourt (France), Jean-Claude Martinez, of Montpellier (France), Philip Claeys, of Overijse (Belgium) and Koen Dillon, of Antwerp (Belgium), represented by Wallerand de Saint Just, lawyer.

The applicants claim that Court of First Instance should:

— annul the decision of the Bureau of the European Parliament of 2 July 2003 and more particularly the provisions thereof adopting a proposal by Mr Poettering concerning the report of Mr Van Hulten, which amends the rules on the use of budgetary heading 3701;

— order the European Parliament to pay the costs and lawyer's fees amounting to EUR 10 000.

Pleas in law and main arguments

Following the entry into force on 1 January 2001 of the new financial regulation applicable to the general budget of the European Communities [1], the Parliament commenced a procedure for amendment of the rules concerning budgetary heading 3701, the credits of which are intended to cover administrative and operational expenses of the political groups and of the secretariat for non-attached Members. On 2 July 2003 the Bureau of the Parliament decided to adopt the revised version of the latter rules, subject to amendment of the Parliament's Rules of Procedure and other changes which might prove necessary following further consultations.

In support of their application for annulment of the decision adopting the new rules, the applicant invoke first the alleged failure to comply with formal requirements laid down for the adoption of such rules. They contend that the new rules were notified to them in the form of a proposal which did not purport to be the final version of an official document. They also submit that the contested measure was adopted without the budgetary control committee, from which an opinion had been sought, having issued its report and that therefore an essential procedural requirement had been disregarded. In addition to matters of form, the applicants also claim that the new rules infringe the principle of equal treatment by prohibiting new categories of expenses or employment of staff under budgetary heading 3701 only as far as non-attached Members are concerned.

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[1] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002, p. 1).

Action brought on 17 October 2003 by Siegfried Krahl against the Commission of the European Communities

(Case T-358/03)

(2004/C 7/73)

(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 17 October 2003 by Siegfried Krahl, residing in Zagreb (Croatia), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision not to reimburse to the applicant his accommodation expenses of EUR 4 200 per month in full;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant submits that the defendant infringed Articles 5 and 23 of Annex X to the Staff Regulations, in so far as it may not refuse to reimburse his accommodation expenses when it did not provide any accommodation and offered no alternative.

Action brought on 27 October 2003 by GRAFTECH INTERNATIONAL LTD. against the Commission of the European Communities

(Case T-359/03)

(2004/C 7/74)

(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 27 October 2003 by GRAFTECH INTERNATIONAL LTD., Wilmington, Delaware, USA, represented by K.P.E. Lasok QC and Brian Hartnett, Barristers with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the contested Commission Decisions dated 18 July 2001, 23 July 2001, 9 August 2001, 18 August 2003, 11 September 2003 and 18 September 2003 requiring GTI to perform its obligations under the Decision of 18 July 2001 or post a bank guarantee or face imminent enforcement of the Decision of 18 July 2001 as of September 2003;

— annul the contested Commission Decisions specifically to the extent that they apply interest at a rate of 6,04 % when current market interest rates are significantly lower;

— annul the contested Commission Decisions specifically to the extent that they apply interest at a default rate of 8,04 %;

— order the Commission to pay its own costs and those incurred by the applicant.

Pleas in law and main arguments

By the Decision made on 18 July 2001 the Commission found that the applicant and seven other undertakings had infringed Article 81 of the EC treaty by participating in a complex of agreements and concerted practices in the graphite electrodes sector. The same Decision imposed a fine on the applicant and required that it be paid within 3 months of notification with interest of 8,04 % payable if the fine was not paid by the stated date. This Decision was notified to the applicant under cover of a letter dated 23 July 2003 which also indicated that if the applicant brought proceedings before the Court of First Instance against the imposition of the fine, no enforcement proceedings would be taken as long as the case was pending before the court, on condition that the applicant paid interest on the amount of the fine at a rate of 6,04 % and provided a bank guarantee for the amount of the fine. The applicant made representations to the Commission proposing different payment terms, which were rejected by a letter of the Commission dated 9 August 2001. The applicant also introduced proceedings against the Decision of 18 July 2001 imposing the fine [1]. Further proposals by the applicant on payment facilities were rejected by the Commission by letters dated 18 August 2003, 11 September 2003 and 18 September 2003.

By the present action the applicant attacks all the Decisions concerning payment terms. It submits that it is an error of law, on the part of the Commission, to consider that no security other than a bank guarantee could be accepted by the Commission. It also submits that the Decision of 18 August 2003 infringes the principle of proportionality by failing to achieve a fair balance between the interest of the parties and in particular the applicant's interest in granting a lien over its unencumbered assets instead of the bank guarantee requested by the Commission . The applicant also invokes alleged manifest errors of fact relating to the Commission's finding that the applicant has not shown that it cannot comply with the Commission's Decision and the Commission's assessment of its financial position and the value of the lien it had offered. The applicant further submits that the Commission's Decisions on the applicable interest rates are manifestly erroneous and that the Commission has breached essential procedural requirements in that it failed to afford the applicant an opportunity to be heard before adopting a decision to enforce its first Decision of 18 July 2001.

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[1] Case T-246/01 notified in OJ C 17, 19.01.2002, p. 16.

Action brought on 27 October 2003 by Philippe Vanlangendonck against the Commission of the European Communities

(Case T-361/03)

(2004/C 7/75)

(Language of the case: French)

An action was brought before the Court of First Instance of the European Communities on 27 October 2003 against the Commission of the European Communities by Philippe Vanlangendonck, residing in Overijse (Belgium), represented by Bernard Laurent, Lawyer.

The applicant claims that Court of First Instance should:

— verify the legality of the rejection of complaints Nos R/134/03 and R/139/03 registered by ADMIN. B2 — Appeals Unit, on 27 March 2003, adopted by the acting Director of EPSO in his capacity of appointing authority on 17 July 2002, notified by letter sent on 25 July 2003 and received on 28 July 2003 in relation to a refusal to annul or amend a published list of successful candidates in competition COM/A/10/01 which was manifestly vitiated by errors or irregularities;

— verify the legality of the refusal by the Chairman of the selection board in competition COM/A/10/01 and the appointing authority to explain and disclose objective and relevant information;

— order the defendant to pay the sum of EUR 400 000 to the applicant by way of damages for the loss suffered (subject to increase or decrease of that sum in the course of the proceedings).

Pleas in law and main arguments

The applicant takes exception to the administration's refusal to annul or amend a published list of successful candidates in competition COM/A/10/01 which was manifestly vitiated by errors or irregularities and the refusal to provide information as asked for by the applicant to enable him to consider whether or not he has been the subject of discrimination on grounds of his nationality in the course of the procedure and the compilation of results of the oral test in the abovementioned competition.

In support of his claims, the applicant alleges:

— a manifest error of law or of fact in that the selection board placed 156 people on the list of successful candidates rather than the 150 prescribed by the competition notice;

— breach of the principle of the rule of law and of the EC Treaty since, contrary to the opinion of the chairman of the selection board, the Director of EPSO stated that the competition notice does not allow for the possibility of an oral test on an *ex aequo* basis, even though it is settled case-law that the selection board is bound by the terms of the competition notice;

— breach of the principle of equal treatment of candidates. The applicant asks in that connection why the selection board, which performed its duties perfectly well in selecting and comparing the merits of candidates ranging from best to 149th in order of merit, suddenly proved incapable of comparing and making a selection among seven candidates on an *ex aequo* basis.

Action brought on 4 November 2003 by Rafael de Bustamante Tello against the Council of the European Union

(Case T-368/03)

(2004/C 7/76)

(Language of the case: Spanish)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 4 November 2003 by Rafael de Bustamante Tello, residing in Brussels (Belgium), represented by D. Ramón García-Gallardo and M. Dolores Domínguez Pérez, lawyers.

The applicant claims that the Court should:

— annul the Council decision of 28 July 2003 which dismisses the claim of 14 April 2003 in that it does not recognise the right to receive an expatriation allowance and, accordingly, other related allowances;

— order the defendant to pay the full costs.

Pleas in law and main arguments

The applicant in the present case challenges the failure of the appointing authority to recognise the right to an expatriation allowance and other related allowances (Article 4 of Annex VII to the Staff Regulations).

In support of his claims, the applicant alleges:

— a combination of an error in law and a manifest error of assessment of the facts, inasmuch as the contested decision does not consider the work carried out by him for the Delegation of the Autonomous Community of Murcia in Brussels 'work done for [a] State', in the sense recognised in the Staff Regulations as an exception to the reference period. In the alternative, he claims that the Council wrongly concluded in the contested decision that the applicant's centre of interest and habitual residence were in Brussels and not in Murcia;

— infringement of the principle of equal treatment, in that the appointing authority discriminated between essentially identical personal situations.

Action brought on 29 October 2003 by Arizona Chemical B.V., Eastman Belguim B.V.B.A., Resinall Europe B.V.B.A. and Cray Valley Iberica S.A. against the Commission of the European Communities

(Case T-369/03)

(2004/C 7/77)

(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 29 October 2003 by Arizona Chemical B.V., Almere, the Netherlands, Eastman Belguim B.V.B.A., Kallo, Belguim, Resinall Europe B.V.B.A., Brugge, Belguim and Cray Valley Iberica S.A., Madrid, Spain , represented by Claudio Mereu and Koen Van Maldegem, lawyers.

The applicant claims that the Court should:

— annul Commission Decision D(2003)430245 of 20 August 2003;

— declare that the rosin entry in Annex I of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, is unlawful;

— in the alternative, declare that the rosin Annex I entry is inapplicable to the Applicants under Article 241 EC Treaty;

— compensate Applicants for damages suffered as a result of the adoption of the contested Decision, in the provisional amount of EUR 1; or, in the alternative declare the Commission liable for imminent damage foreseeable with sufficient certainty, even if the damage cannot be precisely assessed;

— order the Commission to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The Contested Decision in this case rejected the applicants request to declassify rosin as a dangerous substance listed in Annex I of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ([1]).

In support of their application the applicants submit that the Contested Decision is unlawful on the grounds that the classification of rosin was decided on the basis of test results relating to a different substance, namely oxidised rosin. They further submit that the classification in question is not supported by the conclusion of the scientific assessment conducted under Directive 67/548 and was decided on the wrong premise that rosin always produces oxidised rosin and that the latter causes skin sensitisation under normal handling and use. The applicants also contend that the Contested Decision is unlawful because it is based on the 'precautionary principle', which does not apply to hazard-based decisions, that the Contested Decision violates the EC Treaty as it fails to consider new, state-of-the-art scientific evidence on oxidised rosin and that, finally, the Contested Decision also violates fundamental principles of Community law, more especially the principles of legal certainty, legitimate expectations and proportionality.

([1]) OJ P 196 , 16.08.1967, p. 1-98, English special edition: Series I Chapter 1967, p. 234.

Action brought on 10 November 2003 by Yves Mahieu against the Commission of the European Communities

(Case T-372/03)

(2004/C 7/78)

(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 10 November 2003 by Yves Mahieu, residing in Brussels, represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

— annul the implied decision which the appointing authority might be deemed to have taken, rejecting the complaint made by the applicant on 29 October 2002, by which it requested the annulment of a decision dated 6 August 2002, refusing to grant a request for assistance and compensation made on 24 January 2002 on the basis of Article 24 and Article 90(1) of the Staff Regulations;

— so far as necessary also annul that decision of 6 August 2002, against which the complaint of 29 October 2002 was made;

— order the defendant to pay compensation of EUR 50 000, without prejudice to subsequent increase, reduction or alteration;

— order the defendant to pay the costs and the expenses necessarily incurred for the purposes of the proceedings, inter alia, accommodation, travel and subsistence expenses, and lawyers fees.

Pleas in law and main arguments

The applicant made a request for assistance to the Commission seeking the opening of an investigation and payment of compensation following psychological harassment to which he was allegedly subjected in Eurostat.

In support of his application, the applicant alleges a manifest error of assessment in the decision rejecting his request, a breach of the principle of legitimate expectations and of the duty to have regard for the welfare of officials and, finally, a breach of the principle of equal treatment and the right to reasonable career expectations.

Removal from the register of Case T-68/02 [1]

(2004/C 7/79)

(Language of the Case: English)

By order of 15 September 2003 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-68/02: Masdar (U.K.) Ltd v Commission of the European Communities.

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[1] OJ C 131 of 1.06.2002.

Removal from the register of Case T-131/02 [1]

(2004/C 7/80)

(Language of the Case: English)

By order of 2 October 2003 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-131/02: Travelex Global and Financial Services Limited and Interpayment Services Limited v Commission of the European Communities.

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[1] OJ C 169 of 13.07.2002.

Removal from the register of Case T-159/02 [1]

(2004/C 7/81)

(Language of the Case: English)

By order of 15 September 2003 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-159/02: Masdar (U.K.) Ltd v Commission of the European Communities.

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[1] OJ C 202 of 24.08.2002.

Removal from the register of Case T-162/03 [1]

(2004/C 7/82)

(Language of the Case: French)

By order of 30 September 2003 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-162/03: Pascal Millot v Commission of the European Communities.

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[1] OJ C 171 of 19.07.2003.

III

(Notices)

(2004/C 7/83)

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

OJ C 304, 13.12.2003

Past publications

OJ C 289, 29.11.2003

OJ C 275, 15.11.2003

OJ C 264, 1.11.2003

OJ C 251, 18.10.2003

OJ C 239, 4.10.2003

OJ C 226, 20.9.2003

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