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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

Request for an Opinion submitted by the European Parliament under Article 300(6) of the EC Treaty

(Opinion 1/04)

(2004/C 118/01)

A request for an Opinion under Article 300(6) of the EC Treaty was made on 21 April 2004 by the European Parliament, represent by R. Passos, H. Duintjer Tebbens and N. Lorenz, acting as Agents, with an address for service in Luxembourg.

The European Parliament requests the Court of Justice for a reply to the following questions:

(a) Is the first sentence of the first subparagraph of Article 300(3) EC the appropriate legal basis for the Council Decision on the conclusion of the proposed agreement between the European Community and the United States of America on the processing and transfer of Passenger Name Record data by air carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection?

(b) Must the abovementioned proposed agreement be regarded as being compatible with the right to protection of personal data, as enshrined in particular in Article 8 of the European Convention on Human Rights (ECHR), which the Community is required to observe in the same way as the Treaty?

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-372/97: Italian Republic v Commission of the European Communities [1]

(State aid — Transport of goods by road — Effect on trade between Member States and distortion of competition — Conditions for exemption from the prohibition set out in Article 92(1) of the EC Treaty (now, following amendment, Article 87(1) EC) — Existing aid or new aid — Principles of reasonableness and of the protection of legitimate expectations — Mo)

(2004/C 118/02)

(Language of the case: Italian)

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

In Case C-372/97: Italian Republic (Agents: I. M. Braguglia, assisted by O. Fiumara), with an address for service in Luxembourg, v Commission of the European Communities (Agents: P. Nemitz and P. Stancanelli, assisted by M. Moretto), with an address for service in Luxembourg — application for annulment in part of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region (OJ 1998 L 66, p. 18) — the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; S. Alber, Advocate General; M.-F. Contet, Prinicple Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Held that there is no need to adjudicate on the form of order sought in the action for annulment of Articles 2 and 5 of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region, in so far as those articles declare that aid granted as from 1 July 1990 to undertakings carrying out exclusively local, regional or national haulage is illegal.*

2. *Dismissed the remainder of the action.*

3. *The Italian Republic and the Commission of the European Communities are to bear their own costs.*

([1]) OJ C 387, 20.12.1997.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-387/99: Commission of the European Communities v Federal Republic of Germany ([1])

(Failure of a Member State to fulfil obligations — Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — Directive 65/65/EEC — Food preparations containing three times more vitamins than the recommended daily amount — Preparations lawfully marketed as food supplements in the Member State of exportation — Preparations classified as medicinal products in the Member State of importation — 'Medicinal product' — Obstacle — Justification — Public health — Proportionality — Admissibility of the application)

(2004/C 118/03)

(Language of the case: German)

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

In Case C-387/99: Commission of the European Communities (Agent: C. Schmidt), with an address for service in Luxembourg, v Federal Republic of Germany (Agent: W.-D. Plessing, assisted by J. Sedemund), supported by Kingdom of Denmark (Agent: J. Molde), with an address for service in Luxembourg, and by Republic of Finland (Agents: T. Pynnä and E. Bygglin), with an address for service in Luxembourg - application for a declaration that, by classifying as medicinal products vitamin and mineral preparations which are lawfully produced or marketed as food supplements in the other Member States in the case where they contain three times more vitamins and mineral salts than the daily amount recommended by the Deutsche Gesellschaft für Ernährung, the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC) - the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, J. N. Cunha Rodrigues, R. Schintgen, F. Macken (Rapporteur) and N. Colneric, Judges; L. A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Declares that, by automatically classifying as medicinal products vitamin preparations lawfully manufactured or marketed as food supplements in the other Member States in the case where they contain three times more vitamins, other than vitamins A and D, than the daily amount recommended by the Deutsche Gesellschaft für Ernährung (German Food Association), the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC);*

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

3. *Orders the Kingdom of Denmark and the Republic of Finland to bear their own costs.*

([1]) OJ C 366 of 18.12.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-496/99 P: Commission of the European Communities v CAS Succhi di Frutta SpA ([1])

(Appeal — Common Agricultural Policy — Food aid — Commission decision amending conditions after the contracts awarded — Payment of tenderers in fruit other than those specified in the notice of invitation to tender)

(2004/C 118/04)

(Language of the case: Italian)

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

In Case C-496/99 P: appeal by the Commission of the European Communities (Agents: initially F. Ruggeri Laderchi, and subsequently T. van Rijn and L. Visaggio, assisted by A. Dal Ferro) against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 14 October 1999 in Joined Cases T-191/96 and T-106/97 CAS Succhi di Frutta SpA v Commission [1999] ECR II-3181, seeking to have that judgment set aside, the other party to the proceedings being: CAS Succhi di Frutta SpA, established in Castagnaro (Italy) (lawyers: initially A. Tizzano, G.M. Roberti and F. Sciaudone, and subsequently G.M. Roberti and F. Sciaudone): - the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen (Rapporteur), and F. Macken, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismisses the appeal;*

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

([1]) OJ C 79 of 18.3.2000

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-150/00: Commission of the European Communities v Republic of Austria ([1])

(Failure of a Member State to fulfil obligations — Articles 28 and 30 EC — Directive 65/65/EEC — Food preparations containing vitamins A, D or K or minerals in the chromate group or containing more than once the daily amount of other vitamins or minerals — Preparations lawfully marketed as food supplements in the Member State of exportation — Preparations classified as medicinal products in the Member State of importation — "Medicinal product" — Obstacle — Justification — Public health — Proportionality)

(2004/C 118/05)

(Language of the case: German)

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

In Case C-150/00: Commission of the European Communities (Agent: J. C. Schieferer), with an address for service in Luxembourg v Republic of Austria (Agents: initially H. Dossi and subsequently C. Pesendorfer), with an address for service in Luxembourg, supported by the Kingdom of Denmark (Agent: J. Molde), with an address for service in Luxembourg, and by the Republic of Finland (Agents: T. Pynnä and E. Bygglin), with an address for service in Luxembourg — application for a declaration that by classifying vitamin and mineral based preparations as medicinal products where the quantity of vitamin compound exceeds the simple daily amount, and, more generally, where those preparations contain vitamins A, D or K or minerals in the chromate group, without stating that the higher amount of vitamins or their vitamin or mineral content poses a serious health risk, the Republic of Austria has failed to fulfil its obligations under Article 28 EC — the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Chamber, C. Gulmann, J.N. Cunha Rodrigues, F. Macken (Rapporteur) and N. Colneric, Judges; L.A. Geelhoed, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Declares that, by automatically classifying as medicinal products vitamin preparations or preparations containing minerals lawfully manufactured or marketed as food supplements in the other Member States if they contain either more vitamins, other than vitamins A, C, D or K, or minerals, other than those in the chromate group, than the simple daily amount of those nutrients, or vitamins A, D or K, regardless of content, the Republic of Austria has failed to fulfil its obligations under Article 28 EC;*

2. *Dismisses the remainder of the action;*

3. *Orders the Republic of Austria to pay the costs;*

4. *Orders the Kingdom of Denmark and the Republic of Finland to bear their own costs.*

([1]) OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-277/00: Federal Republic of Germany v Commission of the European Communities ([1])

(Action for annulment — State aid — Decision 2000/567/EC — Aid granted by the Federal Republic of Germany to System Microelectronic Innovation GmbH of Frankfurt an der Oder (Brandenburg) — Article 88(2) EC — Right to be heard — Compatibility with the common market — Article 87(1) EC — Recovery of illegal aid — Recovery from undertakings other than the original beneficiary)

(2004/C 118/06)

(Language of the case: German)

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

In Case C-277/00: Federal Republic of Germany (Agents: W.-D. Plessing and M. Schütte) v Commission of the European Communities (Agents: K.-D. Borchardt and V. Di Bucci), with an address for service in Luxembourg, – application for annulment of Commission Decision 2000/567/EC of 11 April 2000 on State aid granted by Germany to System Microelectronic Innovation GmbH of Frankfurt an der Oder (Brandenburg) (OJ 2000 L 238, p. 50) – the Court (Sixth Chamber), composed of: V. Skouris (Rapporteur), acting as President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen and N. Colneric, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 29 April 2004, the operative part of which is as follows:

1. *Commission Decision 2000/567/EC of 11 April 2000 on State aid granted by Germany to System Microelectronic Innovation GmbH of Frankfurt an der Oder (Brandenburg) is annulled in so far as it orders the recovery of the aid granted to System Mikroelektronik Innovation GmbH from other undertakings and of the aid granted to Silicium Mikroelektronik Integration GmbH from other undertakings.*

2. *The remainder of the application is dismissed.*

3. *The Federal Republic of Germany and the Commission of the European Communities are each to bear their own costs.*

([1]) OJ C 273 of 23.9.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-278/00: Hellenic Republic v Commission of the European Communities ([1])

(State aid — Settlement by the State of debts incurred by agricultural cooperatives)

(2004/C 118/07)

(Language of the case: Greek)

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

In Case C-278/00: Hellenic Republic (Agents: I. Chalkias and C. Tsiavou), with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Flett and D. Triantafyllou), with an address for service in Luxembourg – action seeking the annulment of Commission Decision 2002/458/EC of 1 March 2002 on the aid schemes implemented by Greece in favour of the settlement of debts by the agricultural cooperatives in 1992 and 1994, including the aids for the reorganisation of the dairy cooperative AGNO (OJ 2002 L 159, p. 1), or in the alternative the annulment of Article 2 of that decision – the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A Timmermans and S. von Bahr (Rapporteur), Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-298/00 P: Italian Republic v Commission of the European Communities and Impresa Edo Collorigh and Others ([1])

(Appeal — State aid — Transport of goods by road — Effect on trade between Member States and distortion of competition — Existing aid or new aid — Principles of reasonableness and of the protection of legitimate expectations — Statement of reasons)

(2004/C 118/08)

(Language of the case: Italian)

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

In Case C-298/00 P: Italian Republic (Agents: I. Braguglia, assisted by G. Aiello), with an address for service in Luxembourg — appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 Alzetta and Others v Commission [2000] ECR II-2319, seeking to have that judgment set aside, the other parties to the proceedings being: Commission of the European Communities (Agent: V. Di Bucci), with an address for service in Luxembourg, Impresa Edo Collorigh and Others (Lawyer: V. Cinque), Mauro Alzetta and Others, Masotti Srl and Others, Impresa Anna Maria Baldo and Others, SUTES SpA and Others, Ditta Pietro Stagno and Others, Ditta Carlo Fabris & C. Snc, Ditta Franco D'Odorico, Ditta Fiorindo Birri, Ditta Maria Cecilia Framalicco, Autotrasporti Claudio Di Viola & C. Snc and Impresa Amedeo Musso — the Court (Sixth Chamber), composed of: V. Skouris acting for the President of the Sixth Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; S. Alber, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismissed the appeal and the interlocutory appeal.*

2. *Ordered the Italian Republic, Impresa Edo Collorigh and Others and the Commission of the European Communities to pay their own costs.*

([1]) OJ C 285, 7.10.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-470/00 P: European Parliament v Carlo Ripa di Meana ([1])

(Appeal — Members of the European Parliament — Provisional retirement pension scheme — Time-limit for submission of applications to join that scheme — Knowledge acquired — Cross-appeal — Liability for costs — Inadmissibility)

(2004/C 118/09)

(Language of the case: Italian)

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

In Case C-470/00 P: European Parliament (Agents: A. Caiola and G. Ricci and subsequently with the assistance of F. Capelli, avvocato) with an address for service in Luxembourg, APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 26 October 2000 in Joined Cases T-83/99 to T-85/99 Ripa di Meana and Others v Parliament [2000] ECR II-3493, seeking to have that judgment set aside in part, the other parties to the proceedings being: Carlo Ripa di Meana, former Member of the European Parliament, residing in Montecastello di Vibio (Italy), Leoluca Orlando, former Member of the European Parliament, residing in Palermo (Italy), and Gastone Parigi, former Member of the European Parliament, residing in Pordenone (Italy), represented by W. Viscardini and G. Donà, avvocati, with an address for service in Luxembourg, applicants at first instance – the Court (Fifth Chamber), composed of: C. W. A. Timmermans (Rapporteur), acting for the President of the Fifth Chamber, A. Rosas and A. La Pergola Judges; J. Mischo Advocate General; L. Hewlett, for the Registrar, gave a judgment on 29 April 2004, in which it:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 26 October 2000 in Joined Cases T-83/99to T-85/99Ripa di Meana and Others v Parliament in so far as it upholds, in CasesT-83/99 and T-84/99, the actions brought by Mr Ripa di Meana and Mr Orlando;*

2. *Dismisses the actions brought by Mr Ripa di Meana and Mr Orlando for annulment of the decisions contained in letters Nos 300762 and 300763 from the College of Quaestors of 4 February 1999, respectively rejecting their requests for the provisional pension scheme referred to in Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament to apply with retroactive effect;*

3. *Dismisses the cross-appeal brought by Mr Parigi as inadmissible;*

4. *Orders Mr Ripa di Meana and Mr Orlando to pay not only their own costs but also those incurred by the European Parliament both at first instance and in the present appeal;*

5. *Orders Mr Parigi to bear his own costs and to pay those incurred by the European Parliament in respect of the cross-appeal.*

([1]) OJ C 79 of 10.3.2001

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-17/01 (reference for a preliminary ruling from the Bundesfinanzhof): Finanzamt Sulingen v Walter Sudholz ([1])

(Sixth VAT Directive — Articles 2 and 3 of Decision 2000/186/EC — Flat-rate limit on the right to deduct VAT on vehicles not used solely for business purposes — Retroactive authorisation of a national tax measure)

(2004/C 118/10)

(Language of the case: German)

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

In Case C-17/01: reference to the Court under Article 234 EC from the Bundesfinanzhof (Federal Finance Court) (Germany) for a preliminary ruling in the proceedings pending before that court between Finanzamt Sulingen and Walter Sudholz — on the validity of Articles 2 and 3 of Council Decision 2000/186/EC of 28 February 2000 authorising the Federal Republic of Germany to apply measures derogating from Articles 6 and 17 of the Sixth Directive 77/388/EEC 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 2000 L 59, p. 12) — the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A. Timmermans and S. von Bahr (Rapporteur), Judges; L.A. Geelhoed, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1. *Examination of the procedure leading to the adoption of Council Decision 2000/186/EC of 28 February 2000 authorising the Federal Republic of Germany to apply measures derogating from Articles 6 and 17 of the Sixth 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 has disclosed no irregularity such as to affect the validity of that decision.*

2. *Article 3 of Decision 2000/186/EC is invalid in that it provides for the authorisation granted by the Council of the European Union to the Federal Republic of Germany to have retroactive effect from 1 April 1999.*

3. *Article 2 of Decision 2000/186 meets the substantive requirements of Article 27(1) 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, as amended by Council Directive 95/7/EC of 10 April 1995, and is not invalid.*

([1]) OJ C 79, 10.3.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-77/01 (Reference for a preliminary ruling from the Tribunal Central Administrativo): Empresa de Desenvolvimento Mineiro SGPS SA (EDM) v Fazenda Pública ([1])

(Sixth VAT Directive — Articles 2, 4(2), 13B(d) and 19(2) — Meaning of 'economic activities' — Meaning of 'incidental financial transactions' — Services effected for consideration)

(2004/C 118/11)

(Language of the case: Portuguese)

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

In Case C-77/01: Reference to the Court under Article 234 EC from the Tribunal Central Administrativo (Portugal) for a preliminary ruling in the proceedings pending before that court between Empresa de Desenvolvimento Mineiro SGPS SA (EDM), formerly Empresa de Desenvolvimento Mineiro SA (EDM), and Fazenda Pública, intervener: Ministério Público, on the interpretation of Articles 2, 4(2), 13B(d) and 19(2) 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, C.W.A. Timmermans and S. von Bahr (Rapporteur), Judges; P. Léger, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1. *In a situation such as that in the main proceedings:*

— *activities which consist in the simple sale of shares and other securities, such as holdings in investment funds, do not constitute economic activities within the meaning of Article 4(2) 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, and therefore do not come within the scope of that directive;*

placements in investment funds do not constitute supplies of services 'effected for consideration' within the meaning of Article 2(1) of Sixth Directive 77/388 and therefore likewise do not come within the scope thereof;

the amount of turnover relating to those transactions must consequently be excluded from the calculation of the deductible proportion referred to in Articles 17 and 19 of that directive;

— *by contrast the annual granting by a holding company of interest-bearing loans to companies in which it has a shareholding and placements by that holding company in bank deposits or in securities, such as Treasury notes or certificates of deposit, constitute economic activities carried out by a taxable person acting as such within the meaning of Articles 2(1) and 4(2) of Sixth Directive 77/388;*

however, the said transactions are exempted from value added tax under points 1 and 5 of Article 13B(d) of that directive;

in calculating the deductible proportion referred to in Articles 17 and 19 of Sixth Directive 77/388, those transactions are to be regarded as incidental transactions within the meaning of the second sentence of Article 19(2) thereof in so far as they involve only very limited use of assets or services subject to value added tax; although the scale of the income generated by financial transactions within the scope of Sixth Directive 77/388 may be an indication that those transactions should not be regarded as incidental within the meaning of that provision, the fact that income greater than that produced by the activity stated by the undertaking concerned to be its main activity is generated by such transactions does not suffice to preclude their classification as 'incidental transactions';

it is for the national court to establish whether the transactions concerned in the main proceedings involve only very limited use of assets or services subject to value added tax and, if so, to exclude interest generated by those transactions from the denominator of the fraction used to calculate the deductible proportion.

2. *Operations such as those at issue in the main proceedings, carried out by the members of a consortium in accordance with the provisions of a consortium contract and corresponding to the share assigned to each of them in that contract, do not constitute supplies of goods or services 'effected for consideration' within the meaning of Article 2(1) of Sixth Directive 77/388, nor, consequently, a taxable transaction under that directive. The fact that such operations are carried out by the member of the consortium which manages it is irrelevant in that respect. On the other hand, where the performance of more of the operations than the share thereof fixed by the said contract for a consortium member involves payment by the other members against the operations exceeding that share, those operations constitute a supply of goods or services 'effected for consideration' within the meaning of that provision.*

([1]) OJ C 118, 21.4.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-91/01: Italian Republic v Commission of the European Communities ([1])

(State aid — Recommendation concerning the definition of small and medium-sized enterprises — Guidelines for State aid to small and medium-sized enterprises — Independence criterion — Protection of legitimate expectations — Legal certainty)

(2004/C 118/12)

(Language of the case: Italian)

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

In Case C-91/01: Italian Republic (Agent: I. Braguglia, assisted by D. Del Gaizo), with an address for service in Luxembourg v Commission of the European Communities (Agents: V. Di Bucci and J. M. Flett), with an address for service in Luxembourg — application for annulment of Commission Decision 2001/779/EC of 15 November 2000 on the State aid which Italy is planning to grant to Solar Tech Srl (OJ 2001 L 292, p. 45), in so far as it did not allow the application to that aid of the bonus of 15 % gross grant equivalent provided for for small and medium-sized enterprises — the Court (Fifth Chamber), composed of: C. W. A. Timmermans, acting for the President of the Fifth Chamber, A. Rosas and S. von Bahr (Rapporteur), Judges; Advocate General: F. G. Jacobs; Registrar: M. Múgica Arzamendi, Principal Administrator, has given a judgment on 29 April 2004, in which it:

1) *Dismisses the action;*

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

([1]) OJ C 118, 21.4.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-106/01 (reference for a preliminary ruling from the Court of Appeal (Civil Division) (England and Wales)): The Queen, on the application of Novartis Pharmaceuticals UK Ltd v The Licensing Authority established by the Medicines Act 1968 (acting by the Medicines Control Agency), and SangStat UK Ltd, and Imtix-SangStat UK Ltd ([1])

(Medicinal products — Marketing authorisation — Procedure relating to essentially similar products)

(2004/C 118/13)

(Language of the case: English)

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

In Case C-106/01: reference to the Court under Article 234 EC from the Court of Appeal (Civil Division) (England and Wales) for a preliminary ruling in the proceedings pending before that court between The Queen on the application of Novartis Pharmaceuticals UK Ltd andThe Licensing Authority established by the Medicines Act 1968 (acting by the Medicines Control Agency), and SangStat UK Ltd, and Imtix-SangStat UK Ltd — on the interpretation of Article 4.8(a) of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (OJ, English Special Edition 1965-1966, p. 20), as amended by Council Directives 87/21/EEC of 22 December 1986 (OJ 1987 L 15, p. 36), 89/341/EEC of 3 May 1989 (OJ 1989 L 142, p. 11) and 93/39/EEC of 14 June 1993 (OJ 1993 L 214, p. 22) — the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann (Rapporteur), J.-N. Cunha Rodrigues, J.-P. Puissochet and R. Schintgen, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1. *Products cannot be regarded as essentially similar for the purposes of the application of Article 4.8(a)(i) or (iii) of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products, as amended by Council Directives 87/21/EEC of 22 December 1986, 89/341/EEC of 3 May 1989, and 93/39/EEC of 14 June 1993, where they are not bioequivalent.*

2. *For the purposes of the procedure laid down by Article 4.8(a)(i) and (iii) of Directive 65/65, as amended, in determining the pharmaceutical form of a medicinal product, account must be taken of the form in which it is presented and the form in which it is administered, including the physical form. In that context, medicinal products such as those at issue in the main proceedings, which are presented in the form of a solution to be mixed in a drink for administration to the patient and which, after mixing, form, respectively, a macroemulsion, a microemulsion and a nanodispersion, are to be treated as having the same pharmaceutical form, provided that the differences in the form of administration are not significant in scientific terms.*

3. *The proviso, that is, the hybrid abridged procedure laid down by the final subparagraph of Article 4.8(a) of Directive 65/65, as amended, applies to applications for marketing authorisation based on Article 4.8(a)(i) or (iii).*

   An application for marketing authorisation for a medicinal product may be made under the proviso, that is, by the abridged hybrid procedure provided for in the final subparagraph of Article 4.8(a) of Directive 65/65, as amended, with reference to an authorised medicinal product provided that the medicinal product in respect of which marketing authorisation is sought is essentially similar to the authorised medicinal product, unless one or more of the differences set out in the proviso apply, as the case may be.

4. *In considering an application for marketing authorisation for a new product C under Article 4.8(a)(iii) of Directive 65/65, as amended, with reference to a product A authorised for more than six or 10 years, the competent authority of a Member State is entitled, with a view to granting marketing authorisation, to refer without the consent of the person responsible for marketing to data submitted in support of a product B which was authorised within the previous six or 10 years under the hybrid abridged procedure laid down by Article 4.8(a) of Directive 65/65, as amended, with reference to product A, where those data consist of clinical trials provided in order to demonstrate that product B, though suprabioavailable to product A when administered in the same dose, is safe.*

5. *In considering two hybrid applications for marketing authorisation for products B and C brought under the final subparagraph of Article 4.8(a) of Directive 65/65, as amended, and referring to product A, the competent authority of a Member State does not infringe the principle of non-discrimination where, as a precondition for the grant of marketing authorisation, it requires full clinical data on the bioavailability of product B, but, having examined the data filed in support of product B, does not require the same data for product C.*

([1]) OJ C 173, 16.6.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-159/01: Kingdom of the Netherlands v Commission of the European Communities ([1])

(State aid — Partial exemption from mineral levies for crops grown under glass or on substrate)

(2004/C 118/14)

(Language of the case: Dutch)

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

In Case C-159/01: Kingdom of the Netherlands (Agent: J. van Bakel) with an address for service in Luxembourg v Commission of the European Communities (Agents: D. Triantafyllou and H. van Vliet) with an address for service in Luxembourg — application for the partial annulment of Commission Decision 2001/371/EC of 21 December 2000 on the exemption from mineral levies under the manure law which the Netherlands intends to grant (OJ 2001 L 130, p. 42), — the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, A. Rosas and S. von Bahr (Rapporteur), Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004 in which it:

1) *Dismisses the application;*

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

([1]) OJ C 212, 28.7.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Joined Cases C–162/01 P and C–163/01 P: Edouard Bouma and Bernard M.J.B. Beusmans v Council of the European Union and Commission of the European Communities [1]

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producers having entered into a non-marketing undertaking — SLOM 1983 producers — Non-resumption of production on expiry of the undertaking)

(2004/C 118/15)

(Language of the cases: Dutch)

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

In Joined Cases C–162/01 P and C–163/01 P: Edouard Bouma, residing in Rutten (Netherlands), Bernard M.J.B. Beusmans, residing in Noorbeek (Netherlands), (legal representative: E.H. Pijnacker Hordijk) – two appeals lodged against the judgments of the Court of First Instance of the European Communities (Fourth Chamber) of 31 January 2001 in Case T–533/93 Bouma v Council and Commission [2001] ECR II–203 and Case T–73/94 Beusmans v Council and Commission [2001] ECR II–223 and seeking to have those judgments set aside; the other parties to the proceedings being: Council of the European Union (Agent: A.–M. Colaert) and Commission of the European Communities (Agent: T. van Rijn) – the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and N. Colneric (Rapporteur), Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, delivered a judgment on 29 April 2004, the operative part of which is as follows:

(1) *The appeals are dismissed.*

(2) *Mr Bouma and Mr Beusmans are ordered to pay the respective costs.*

[1] OJ C 227, 11.8.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-194/01: Commission of the European Communities v Republic of Austria [1]

(Failure of a Member State to fulfil its obligations — Directive 75/442/EEC — Concept of waste — European Waste Catalogue — Directive 91/689/EEC — List of hazardous waste)

(2004/C 118/16)

(Language of the case: German)

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

In Case C-194/01: Commission of the European Communities (Agent: G. zur Hausen), with an address for service in Luxembourg, v Republic of Austria (Agent: H. Dossi), with an address for service in Luxembourg — application for a declaration that the Republic of Austria has failed to fulfil its obligations under Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), and under Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), as amended by Council Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28) — the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1) *Dismisses the application;*

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

[1] OJ C 200, 14.7.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-199/01 P: IPK-München GmbH against Commission of the European Communities [1]

(Appeals — Commission decision refusing to pay the balance of financial aid)

(2004/C 118/17)

(Language of the case: German)

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

In Case C-:199/01 P IPK-München GmbH, established in Munich (Germany) (Avocat: H.-J. Prieß) against Commission of the European Communities (Agents: J. Grunwald) — two appeals against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 6 March 2001 in Case T-331/94 IPK-München v Commission [2001] ECR II-779, seeking the partial annulment of that judgment — the Court (Sixth Chamber), composed of: V. Skouris acting for the President of the Sixth Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; J. Mischo, Advocate General; R. Grass, Registrar, gave a judgment on 29 April 2004, in which it:

1. *Dismisses the appeals.*

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

[1] OJ C 212, 28.7.2001.
OJ C 289, 13.10.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-222/01 (reference for a preliminary ruling from the Bundesfinanzhof): British American Tobacco Manufacturing BV v Hauptzollamt Krefeld [1]

(Free movement of goods — External Community transit — Temporary removal of transit and transport documents — Breaking of seals and partial unloading of goods — Removal of goods from customs supervision — Incurring of a customs debt on importation — Unsuspected presence of undercover customs agents — Special circumstances justifying remission or repayment of import duties — Liability of the principal in the case of deception or obvious negligence on the part of persons engaged by him)

(2004/C 118/18)

(Language of the case: German)

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

In Case C-222/01: reference to the Court under Article 234 EC from the Bundesfinanzhof (Federal Finance Court) (Germany) for a preliminary ruling in the proceedings pending before that court between British American Tobacco Manufacturing BV and Hauptzollamt Krefeld — on the interpretation of the Community rules concerning the incurring, remission and repayment of a customs debt — the Court (Fifth Chamber), composed of: C.W.A. Timmermans (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1) *In so far as the temporary removal of the T 1 transit document from the goods to which it relates prevents the presentation of that document at any possible requisition by the customs service, such a removal constitutes a removal of those goods from customs supervision within the meaning of Article 2(1)(c) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt even if the customs authorities have not demanded presentation of that document or established that it could not have been presented to them without considerable delay.*

2) *The fact that infringements of the Community transit system originate in the conduct of an undercover agent belonging to the customs services constitutes a special situation within the meaning of Article 13(1) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties, as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986, which may, in appropriate cases, justify the remission or repayment of duties paid by the principal, on condition that no deception or obvious negligence may be attributed to him.*

3) *Deception or obvious negligence on the part of persons whom the principal has engaged to carry out obligations contracted under the Community external transit system does not, in itself, exclude repayment to the principal of duties incurred as a result of the removal of goods placed under that system from customs supervision, on condition that no deception or obvious negligence is attributable to the principal.*

([1]) OJ C 245, 1.9.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-240/01: Commission of the European Communities v Federal Republic of Germany ([1])

(Failure of a Member State to fulfil obligations — Excise duties on mineral oils — Directive 92/81/EEC — Mineral oils used as heating fuel)

(2004/C 118/19)

(Language of the case: German)

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

In Case C-240/01: Commission of the European Communities (Agents: E. Traversa and K. Gross), with an address for service in Luxembourg, v Federal Republic of Germany (Agents: W.-D. Plessing and M. Lumma) — application for a declaration that, by applying Paragraph 4(1)(2)(b) of the Mineralölsteuergesetz (Law on the taxation of mineral oils) of 21 December 1992 (BGBl. I, p. 2185, corrigendum in 1993 I, p. 169), the Federal Republic of Germany has failed to fulfil its obligations under Article 2(2) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12), as amended by Council Directive 94/74/EC of 22 December 1994 (OJ 1994 L 365, p. 46), in so far as that Member State has not made all mineral oils intended for use as heating fuel subject to excise duties — the Court (Sixth Chamber), composed of: V. Skouris (Rapporteur), acting as President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken, Judges; L.A. Geelhoed, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1) *Declares that, by applying Paragraph 4(1)(2)(b) of the Mineralölsteuergesetz (Law on the taxation of mineral oils) of 21 December 1992, the Federal Republic of Germany has failed to fulfil its obligations under the first sentence of Article 2(2) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, as amended by Council Directive 94/74/EC of 22 December 1994, inasmuch as it has not made all mineral oils intended for use as heating fuel subject to excise duties;*

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

([1]) OJ C 245, 1.9.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-308/01 (reference for a preliminary ruling from the VAT and Duties Tribunal, London): GIL Insurance Ltd and Others v Commissioners of Customs and Excise ([1])

(Sixth VAT Directive — Tax on insurance premiums — Higher rate applicable to certain insurance contracts — Insurance connected with the rental or sale of domestic appliances — State aid)

(2004/C 118/20)

(Language of the case: English)

In Case C-308/01: reference to the Court under Article 234 EC from the VAT and Duties Tribunal, London (United Kingdom) for a preliminary ruling in the proceedings pending before that court between GIL Insurance Ltd, UK Consumer Electronics Ltd, Consumer Electronics Insurance Co. Ltd, Direct Vision Rentals Ltd, Homecare Insurance Ltd, Pinnacle Insurance plc and Commissioners of Customs and Excise — on the interpretation 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 of Articles 87 EC and 88 EC — the Court (Fifth Chamber), composed of: C.W.A. Timmermans, acting for the President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1. *A tax on insurance premiums such as that at issue in the main proceedings is compatible with Article 33 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.*

2. *Article 13(B)(a) of the Sixth Directive 77/388, under which insurance transactions are exempt from value added tax, does not preclude, in the case of a tax on insurance premiums such as that at issue in the main proceedings, the introduction of a special rate which is identical to the standard rate of value added tax, since that tax is compatible with Article 33 of the Sixth Directive 77/388, so that the procedure provided for in Article 27 of that directive, which obliges any Member State wishing to introduce special measures for derogation from that directive to seek prior authorisation from the Council of the European Union, does not have to be complied with before the introduction of that rate.*

([1]) OJ C 303, 27.10.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-338/01: Commission of the European Communities v Council of the European Union ([1])

(Directive 2001/44/EC — Choice of legal basis)

(2004/C 118/21)

(Language of the case: English)

In Case C-338/01: Commission of the European Communities (Agent: R. Lyal), with an address for service in Luxembourg, supported by European Parliament (Agents: R. Passos and A. Baas), with an address for service in Luxembourg, v Council of the European Union (Agents: M. Sims-Robertson and F. Florindo Gijón), supported by Ireland (Agents: D. O'Hagan, assisted by E. Fitzsimons SC, K. Maguire BL and D. Moloney BL), with an address for service in Luxembourg, the Grand Duchy of Luxembourg (Agent: J. Faltz), the Portuguese Republic (Agents: L. Fernandes, V. Guimarães and Â. Seiça Neves), with an address for service in Luxembourg, and by the United Kingdom of Great Britain and Northern Ireland (Agent: J.E. Collins, assisted by D. Wyatt QC), with an address for service in Luxembourg — application for the annulment of Council Directive 2001/44/EC of 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties (OJ 2001 L 175, p. 17) and for the maintenance of the effects of that directive until the entry into force of a directive adopted on the correct legal basis — the Court (Sixth Chamber), composed of: C. Gulmann, acting as President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen (Rapporteur) and F. Macken, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 29 April 2004, in which it:

1) *Dismisses the application;*

2) *Orders the Commission of the European Communities to pay the costs;*

3) *Orders Ireland, the Grand Duchy of Luxembourg, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to pay their own costs.*

([1]) OJ C 303, 27.10.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-341/01 (reference for a preliminary ruling from the Landesgericht Korneuburg): Plato Plastik Robert Frank GmbH v Caropack Handelsgesellschaft mbH ([1])

(Directive 94/62/EC — Packaging and waste packaging — Plastic carrier bags — National legislation on the collection and recovery of used packaging and waste packaging — Collection and recovery of used packaging and waste packaging — Obligation to have recourse to an approved undertaking or to organise a collection system — Admissibility)

(2004/C 118/22)

(Language of the case: German)

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

In Case C-341/01: reference to the Court under Article 234 EC from the Landesgericht (Regional Court) Korneuburg (Austria) for a preliminary ruling in the proceedings pending before that court between Plato Plastik Robert Frank GmbH and Caropack Handelsgesellschaft mbH — on the interpretation of Article 3(1) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10) and other Community provisions — the Court (Fifth Chamber), composed of: C. W. A. Timmermans, acting for the President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1. *Article 3(1) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste must be construed as meaning that plastic carrier bags given to customers in a shop, whether free of charge or not, are packaging within the meaning of that directive.*

2. *The concept of 'producer' in the context of the first subparagraph of Article 3(1) of Directive 94/62 refers to the producer of the goods, not the manufacturer of the packaging produced.*

([1]) OJ C 331, 24.11.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-359/01 P: British Sugar plc v Tate & Lyle plc, Napier Brown & Co. Ltd and Commission of the European Communities ([1])

(Appeal — Competition — Sugar market — Article 85(1) of the EC Treaty (now Article 81(1) EC) — Agreement — Effect on trade between Member States — Fine — Proportionality)

(2004/C 118/23)

(Language of the case: English)

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

In Case C-359/01 P: appeal by British Sugar plc, established in Peterborough (United Kingdom), (Lawyers: T. Sharpe QC and D. Jowell, barrister, and A. Nourry, solicitor) against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 12 July 2001 in Joined Cases T-202/98, T-204/98 and T-207/98 Tate & Lyle and Others v Commission [2001] ECR II-2035, seeking the annulment of that judgment, the other parties to the proceedings being: Tate & Lyle plc, established in London (United Kingdom), Napier Brown & Co. Ltd, established in London (United Kingdom), applicants at first instance, Commission of the European Communities (Agents: K. Wiedner, assisted by N. Khan, barrister) — the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A Timmermans and S. von Bahr (Rapporteur), Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1) *Dismisses the appeal;*

2) *Orders British Sugar plc to pay the costs.*

([1]) OJ C 317, 10.11.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-387/01 (reference for a preliminary ruling by the Verwaltungsgerichtshof): Harald Weigel and Ingrid Weigel v Finanzlandesdirektion für Vorarlberg ([1])

(Free movement of workers — Importation of a car — Duty payable on standard consumption ('Normverbrauchsabgabe') — Customs duties and duties having equivalent effect — Discriminatory taxation — Sixth VAT Directive — Turnover tax)

(2004/C 118/24)

(Language of the case: German)

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

In Case C-387/01: reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Federal Administrative Court) (Austria) for a preliminary ruling in the proceedings pending before that court between Harald Weigel and Ingrid Weigel, on the one hand, and Finanzlandesdirektion für Vorarlberg, on the other, concerning the interpretation of Articles 12 EC, 23 EC, 25 EC, 39 EC and 90 EC, and 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), as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1) – the Court (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen and N. Colneric (Rapporteur), Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has delivered a judgment on 29 April 2004, the operative part of which is as follows:

(1) *Articles 39 EC and 12 EC do not preclude a case in which an individual who, moving from one Member State, becomes established in another Member State by reason of a change in his place of work and, on that occasion, imports his car into the latter State is made liable to a duty on consumption such as the basic 'Normverbrauchsabgabe' in issue in the main proceedings.*

(2) *A duty on consumption such as the basic 'Normverbrauchsabgabe' in issue in the main proceedings constitutes internal taxation, the compatibility of which with Community law must be examined in the light of Article 90 EC and not in that of Articles 23 EC and 25 EC.*

(3) *Article 90 EC must be construed as not precluding a duty on consumption such as the basic 'Normverbrauchsabgabe' in issue in the main proceedings in so far as the amounts of that duty accurately reflect the depreciation in real terms in the value of second-hand motor vehicles imported by an individual and permit attainment of the objective of taxation of such vehicles which is in no case greater than the amount of the residual duty included in the value of similar second-hand vehicles already registered within the national territory.*

(4) *Article 90 EC must be construed as precluding the levying, in the event of importation by an individual of a second-hand car from another Member State, of a 20 % surcharge on a duty having the characteristics of the basic 'Normverbrauchsabgabe' in issue in the main proceedings.*

([1]) OJ C 369 of 22.12.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

29 April 2004

in Case C-418/01 (reference for a preliminary ruling from the the Landgericht Frankfurt am Main): IMS Health GmbH & Co. OHG v NDC Health GmbH & Co. KG ([1])

(Competition — Article 82 EC — Abuse of a dominant position — Brick structure used to supply regional sales data for pharmaceutical products in a Member State — Copyright — Refusal to grant a licence)

(2004/C 118/25)

(Language of the case: German)

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

In Case C-418/01: reference to the Court under Article 234 EC by the Landgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court between IMS Health GmbH & Co. OHG and NDC Health GmbH & Co. KG - on the interpretation of Article 82 EC - the Court, composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, C. W. A. Timmermans and S. von Bahr, Judges; A. Tizzano, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it ruled:

1) *For the purposes of examining whether the refusal by an undertaking in a dominant position to grant a licence for a brick structure protected by copyright which it owns is abusive, the degree of participation by users in the development of that structure and the outlay, particularly in terms of cost, on the part of potential users in order to purchase studies on regional sales of pharmaceutical products presented on the basis of an alternative structure are factors which must be taken into consideration in order to determine whether the protected structure is indispensable to the marketing of studies of that kind.*

2) *The refusal by an undertaking which holds a dominant position and owns a copyright of a brick structure indispensable to the presentation of regional sales data on pharmaceutical products in a Member State to grant a licence to use that structure to another undertaking which also wishes to provide such data in the same Member State, constitutes an abuse of a dominant position within the meaning of Article 82 EC where the following conditions are fulfilled:*

— *the undertaking which requested the licence intends to offer, on the market for the supply of the data in question, new products or services not offered by the copyright owner and for which there is a potential consumer demand;*

— *the refusal is not justified by objective considerations;*

— *the refusal is such as to reserve to the copyright owner the market for the supply of data on sales of pharmaceutical products in the Member State concerned by eliminating all competition on that market.*

([1]) OJ C 3 of 5.1.2002

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Joined Case C-456/01 P and C-457/01P: Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Appeal — Community trade mark — Article 7(1)(b) of Regulation (EC) No 40/94 — Three-dimensional tablets for washing machines or dishwashers — Absolute ground for refusal to register — Distinctive character)

(2004/C 118/26)

(Language of the case: German)

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

In Joined Cases C-456/01 P and C-457/01 P: two appeals by Henkel KGaA, established in Düsseldorf (Germany), (Lawyer: C. Osterrieth) – against the judgments of the Court of First Instance of the European Communities (Second Chamber) of 19 September 2001 in Case T-335/99 Henkel v OHIM (rectangular tablet, red and white) [2001] ECR II-2581 and Case T-336/99 Henkel v OHIM (rectangular tablet, green and white) [2001] ECR II-2589, seeking to have those judgments set aside, the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: D. Schennen and S. Laitinen) Ä the Court (Sixth Chamber), composed of: V. Skouris, acting as the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismisses the appeals;*

2. *Orders Henkel KGaA to pay the costs*

[1] OJ C 84 of 6.4.2002

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Joined Cases C-468/01 P to C-472/01 P: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Appeal — Community trade mark — Article 7(1)(b) of Regulation (EC) No 40/94 — Three-dimensional tablets for washing machines or dishwashers — Absolute ground for refusal to register — Distinctive character)

(2004/C 118/27)

(Language of the case: English)

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

In Joined Cases C-468/01 P to C-472/01 P: five appeals by Procter & Gamble Company, established in Cincinnati (United States) (Lawyers: C. van Nispen and G. Kuipers) v against the judgments of the Court of First Instance of the European Communities (Second Chamber) of 19 September 2001 in Case T-117/00 Procter & Gamble v OHIM (Square tablet, white and pale green) [2001] ECR II-2723, Case T-118/00 Procter & Gamble v OHIM (Square tablet, white with green speckles and pale green) [2001] ECR II-2731, Case T-119/00 Procter & Gamble v OHIM (Square tablet, white with yellow and blue speckles) [2001] ECR II-2761, Case T-120/00 Procter & Gamble v OHIM (Square tablet, white with blue speckles) [2001] ECR II-2769, and Case T-121/00 Procter & Gamble v OHIM (Square tablet, white with green and blue speckles) [2001] ECR II-2777, seeking to have those judgments set aside, the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: D. Schennen and C. Røhl Søberg) - the Court (Sixth Chamber), composed of: V. Skouris, acting as the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismisses the appeals;*

2. *Orders Procter & Gamble Company to pay the costs*

[1] OJ C 68 of 16.3.2002

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Joined Cases C-473/01 P and C-474/01 P: Procter & Gamble Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Appeal — Community trade mark — Article 7(1)b) of Regulation (EC) No 40/94 — Three-dimensional tablets for washing machine or dishwashers — Absolute ground for refusal to register — Distinctive character)

(2004/C 118/28)

(Language of the case: English)

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

In Joined Cases C-473/01 P and C-474/01 P: two appeals by Procter & Gamble Company, established in Cincinnati (United States) (Lawyers: C. van Nispen and G. Kuipers) against the judgments of the Court of First Instance of the European Communities (Second Chamber) of 19 September 2001 in Case T-128/00 Procter & Gamble v OHIM (square tablet with inlay) [2001] ECR II-2785 and Case T-129/00 Procter & Gamble v OHIM (rectangular tablet with inlay) [2001] ECR II-2793, seeking to have those judgments set aside in part, the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: D. Schennen and C. Røhl Søberg) - the Court (Sixth Chamber), composed of: V. Skouris, acting as the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004 in which it:

1. *Dismisses the appeals;*

2. *Orders Procter & Gamble Company to pay the costs.*

[1] OJ C 68 of 16.3.2002
OJ 84 of 6.4.2002

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-476/01 (reference for a preliminary ruling from the Amtsgericht Frankenthal): Felix Kapper [1]

(Directive 91/439/EEC — Mutual recognition of driving licences — Residence requirement — Article 8(4) — Effects of withdrawal or cancellation of a previous driving licence — Recognition of a new driving licence issued by another Member State)

(2004/C 118/29)

(Language of the case: German)

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

In Case C-476/01: reference to the Court under Article 234 EC from the Amtsgericht (District Court) Frankenthal (Germany) for a preliminary ruling in the criminal proceedings pending before that court against Felix Kapper - on the interpretation of Article 1(2) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Council Directive 97/26/EC of 2 June 1997 (OJ 1997 L 150, p. 41) - the Court (Fifth Chamber), composed of: C.W.A. Timmermans, acting for the President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1. *The provisions of Articles 1(2), 7(1)(b) and 9 of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Council Directive 97/26/EC of 2 June 1997, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise a driving licence issued by another Member State on the ground that, according to the information available to the first Member State, the holder of the licence had, on the date on which it was issued, taken up normal residence in that Member State and not in the Member State in which the licence was issued.*

2. *The provisions of Articles 1(2) and 8(4) of Directive 91/439, taken together, must be interpreted as meaning that they preclude a Member State from refusing to recognise the validity of a driving licence issued by another Member State on the ground that its holder has, in the first Member State, been subject to a measure withdrawing or cancelling the driving licence issued by that Member State, where a temporary ban on obtaining a new licence in that State, with which that measure is coupled, has expired before the date of issue of the driving licence issued by the other Member State.*

[1] OJ C 56 of 2.3.2002

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Joined Cases C-482/01 and C-493/01 (Reference for a preliminary ruling from the Verwaltungsgericht Stuttgart): Georgios Orfanopoulos and Others v Land Baden-Württemberg and between Raffaele Oliveri and Land Baden-Württemberg [1]

(Freedom of movement of persons — Public policy — Directive 64/221/EEC — Decision to expel on ground of criminal offences — Taking into account of the length of residence and personal circumstances — Fundamental rights — Protection of family life — Taking into account circumstances occurring between the final decision of the administrative authorities and the review, by an administrative court, of the lawfulness of that decision — The person concerned's right to submit considerations of expediency before an authority called upon to give an opinion)

(2004/C 118/30)

(Language of the case: German)

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

In Joined Cases C-482/01 and C-493/01: REFERENCE to the Court under Article 234 EC from the Verwaltungsgericht Stuttgart (Germany), for a preliminary ruling in the proceedings pending before that court between Georgios Orfanopoulos, Natascha Orfanopoulos, Melina Orfanopoulos, Sofia Orfanopoulos and Land Baden-Württemberg, and between Raffaele Oliveri and Land Baden-Württemberg - on the interpretation of Articles 39(3) EC and 9(1) of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition, 1963-1964, p. 117) (C-482/01), and of Article 39 EC and Article 3 of that directive (C-493/01) - the Court (Fifth Chamber), composed of: A. Rosas (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1) *It is for the national court to determine the provisions of Community law, other than Article 18(1) EC, on which a national of a Member State such as Mr Oliveri may, if appropriate, rely in the circumstances of the proceedings which gave rise to Case C-493/01. In that regard, it must, in particular, establish whether the person concerned comes within the scope of Article 39 EC, either as a worker, or as a person otherwise entitled, under the provisions of the secondary legislation adopted to give effect to that article, to freedom of movement, or whether he may rely on other provisions of Community law, such as Council Directive 90/364/EEC of 28 June 1990 on the right of residence, or Article 49 EC, which applies particularly to recipients of services.*

2) *Article 3 of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, precludes national legislation which requires national authorities to expel nationals of other Member States who have been finally sentenced to a term of youth custody of at least two years or to a custodial sentence for an intentional offence against the Law on narcotics, where the sentence has not been suspended.*

3) *Article 3 of Directive 64/221 precludes a national practice whereby the national courts may not take into consideration, in reviewing the lawfulness of the expulsion of a national of another Member State, factual matters which occurred after the final decision of the competent authorities which may point to the cessation or the substantial diminution of the present threat which the conduct of the person concerned constituted to the requirements of public policy. That is so, above all, if a lengthy period has elapsed between the date of the expulsion order and that of the review of that decision by the competent court.*

4) *Article 39 EC and Article 3 of Directive 64/221 preclude legislation and national practices whereby a national of another Member State who has been sentenced to a certain penalty for specific offences is ordered to be expelled, in spite of family considerations being taken into account, based on the presumption that that person must be expelled, without proper account being taken of his personal conduct or of the danger which he represents for public policy.*

5) *Article 39 EC and Directive 64/221 do not preclude the expulsion of a national of another Member State who has been sentenced to a certain penalty for specific offences and who, on the one hand, constitutes a present threat to the requirements of public policy and, on the other hand, has resided for many years in the host Member State and can plead family circumstances against that expulsion, provided that the assessment made on a case by case basis by the national authorities of where the fair balance lies between the legitimate interests at issue is made in compliance with the general principles of Community law and, in particular, by taking proper account of respect for fundamental rights, such as the protection of family life.*

6) *Article 9(1) of Directive 64/221 precludes a provision of a Member State which provides neither a complaints procedure nor an appeal, comprising also an examination of expediency, against a decision to expel a national of another Member State taken by an administrative authority, where no authority independent of that administration has been put in place. It is for the national court to establish whether courts such as the Verwaltungsgerichte are able to examine the expediency of expulsion orders.*

[1] OJ C 56 of 2.3.2002

JUDGMENT OF THE COURT

(Fifth Chamber)

29 April 2004

in Joined Case C-487/01 and C-7/02 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): Gemeente Leusden (C-487/01), Holin Groep BV cs (C-7/02) v Staatssecretaris van Financiën [1]

(Turnover taxes — Common system of value added tax — Article 17 of the Sixth Directive 77/388/EEC — Deduction of input tax — Amendment of national legislation withdrawing the right to opt for taxation of lettings of immovable property — Adjustment of deductions — Application to current leases)

(2004/C 118/31)

(Language of the case: Dutch)

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

In Joined Cases C-487/01 and C-7/02: REFERENCE to the Court under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between Gemeente Leusden (C-487/01), Holin Groep BV cs (C-7/02) and Staatssecretaris van Financiën - on the interpretation of Articles 5(7)(a), 17 and 20(2) 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 the principles of the protection of legitimate expectations and legal certainty - the Court, composed of: P. Jann, acting for the President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1) *Articles 17 and 20(2) 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, interpreted in accordance with the principles of the protection of legitimate expectations and legal certainty do not preclude the withdrawal by a Member State of the right to opt for taxation of lettings of immovable property which results in the adjustment of deductions made in respect of the immovable property acquired as capital goods which is let pursuant to Article 20 of the Sixth Directive 77/388.*

Where a Member State withdraws the right to opt for taxation of lettings of immovable property, it must take account of the legitimate expectation of its taxable persons when determining the arrangements for implementing the legislative amendment. The repeal of legislation from which a taxable person has derived an advantage in paying less tax, without there being any abuse, cannot however, as such, breach a legitimate expectation based on Community law.

2) *Article 5(7)(a) of the Sixth Directive 77/388 concerns the application of goods by a taxable person for the purposes of his business and not a legislative amendment withdrawing the right to opt for taxation of a financial transaction which is generally exempt.*

[1] OJ C 44 of 16.2.2002
OJ C 109 of 4.5.2002

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-102/02 (reference for a preliminary ruling from the Verwaltungsgericht Stuttgart): Ingeborg Beuttenmüller v Land Baden-Württemberg [1]

(Freedom of movement for workers — Recognition of diplomas — Directives 89/48/EEC and 92/51/EEC — Primary and secondary school teachers — Holder of a diploma of post-secondary studies of two years' duration — Conditions for the exercise of the profession)

(2004/C 118/32)

(Language of the case: German)

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

In Case C-102/02: reference to the Court under Article 234 EC from the Verwaltungsgericht Stuttgart (Germany) for a preliminary ruling in the proceedings pending before that court

between Ingeborg Beuttenmüller and Land Baden-Württemberg — on the interpretation of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) and Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48 (OJ 1992 L 209, p. 25) — the Court (Fifth Chamber) composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A. Timmermans, A. Rosas (Rapporteur), A. La Pergola and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1) *The second subparagraph of Article 1(a) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration must be interpreted as meaning that a qualification for the profession of teacher, such as that formerly awarded on the basis of a two-year period of education and training in Austria, is to be treated in the same way as a diploma within the meaning of the first subparagraph of that provision where the competent authority of that Member State certifies that the diploma awarded following education and training of two years' duration is recognised as being of a level equivalent to the diploma currently awarded after three years' study and confers the same rights in that Member State in respect of the taking up or pursuit of the profession of teacher. It is for the national court to determine, in the light of the evidence submitted by the applicant in accordance with Article 8(1) of that directive and the national provisions applicable to the assessment of such evidence, whether the final condition laid down by the second subparagraph of Article 1(a) must be regarded as satisfied in the case in the main proceedings. That condition concerns the right to take up a regulated profession and not the remuneration and other employment conditions applicable in the Member State which recognises the equivalence of the old and new education and training.*

2) *Article 3(a) of Directive 89/48 may be relied upon by a national of a Member State as against national provisions inconsistent with that directive. That directive precludes such provisions where, for the purpose of recognising a professional teaching qualification awarded or recognised in a Member State other than the host Member State, they require, without exception, completion of a period of higher education and training of at least three years' duration and covering at least two of the subjects stipulated for the teaching profession in the host Member State.*

3) *In the absence of implementing measures enacted within the period prescribed in the first subparagraph of Article 17(1) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48, a national of a Member State may rely on Article 3(a) of that directive in order to obtain in the host Member State recognition of a professional teaching qualification such as that awarded in Austria following education and training of two years' duration. In circumstances such as those in the case in the main proceedings, that possibility is neither excluded by reason of the application of the derogation laid down by the final subparagraph of Article 3 of that directive nor is it conditional upon the applicant first complying with any compensatory measures that may be required pursuant to Article 4 of that directive.*

([1]) OJ C 144, 15.6.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-111/02 P: European Parliament v Patrick Reynolds ([1])

(Appeal — Officials — Secondment to a political group of the Parliament — Decision to terminate the secondment — Rights of the defence)

(2004/C 118/33)

(Language of the case: French)

In Case C-111/02 P: European Parliament (Agents: H. von Hertzen and D. Moore) with an address for service in Luxembourg, appeal against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 23 January 2002 in Case T-237/00 Reynolds v Parliament [2002] ECR II-163, seeking to have that judgment set aside, the other party to the proceedings being: Patrick Reynolds, an official of the European Parliament, residing in Brussels (Belgium), (Lawyers: P. Legros and S. Rodrigues) with an address for service in Luxembourg — the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A. Timmermans, A. Rosas, A. La Pergola and S. von Bahr (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 29 April 2004, in which it:

1) *Sets aside paragraphs 1, 2, 4 and 5 of the operative part of the judgment of the Court of First Instance of the European Communities of 23 January 2002 in Case T-237/00 Reynolds v Parliament;*

2) *Refers the case back to the Court of First Instance;*

3) *Reserves the costs.*

([1]) OJ C 156, 29.6.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-117/02: Commission of the European Communities v Portuguese Republic [1]

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Construction of holiday villages and hotel complexes — Failure to make a project to construct a hotel complex subject to such an assessment)

(2004/C 118/34)

(Language of the case: Portuguese)

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

In Case C-117/02: Commission of the European Communities (Agent: A. Caeiros), with an address for service in Luxembourg, v Portuguese Republic (Agents: L. Fernandes, M. Telles Romão and J. Lois) acting as Agents, with an address for service in Luxembourg — application for a declaration that, by allowing consent to be given to a planned tourism complex including residential units, hotels and golf courses, located in the area of Ponta do Abano, without an assessment of the effects of that project on the environment, the Portuguese Republic has failed to fulfil its obligations under Article 2(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — the Court (Fifth Chamber), composed of: A. Rosas (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismisses the application;*

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

[1] OJ C 156, 29.6.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-137/02 (reference for a preliminary ruling from the Bundesfinanzhof): Finanzamt Offenbach am Main-Land v Faxworld Vorgründungsgesellschaft Peter Hünninghausen und Wolfgang Klein GbR [1]

(Reference for a preliminary ruling — Interpretation of the Sixth VAT Directive — Right of a Vorgründungsgesellschaft (civil-law partnership the object of which is to prepare the means necessary for the activities of a capital company yet to be formed) to deduct input VAT — Transfer for consideration of the totality of those means upon formation of the capital company — Transfer not subject to VAT in consequence of the exercise by the Member State concerned of the option provided for in Article 5(8) of the Sixth VAT Directive)

(2004/C 118/35)

(Language of the case: German)

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

In Case C-137/02: reference to the Court under Article 234 EC from the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Finanzamt Offenbach am Main-Land and Faxworld Vorgründungsgesellschaft Peter Hünninghausen und Wolfgang Klein GbR — on the interpretation of Article 17(2) 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), as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18) — the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, A. Rosas and S. von Bahr (Rapporteur), Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

A partnership established for the sole purpose of founding a capital company is entitled to deduct the input tax paid on supplies of goods and services where its only output transaction in the performance of its object was to effect by formal act the transfer for consideration of the supplies obtained to that company once founded and where, because the Member State concerned has exercised the options

provided for in Articles 5(8) and 6(5) 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, as amended by Council Directive 95/7/EC of 10 April 1995, a transfer of a totality of assets is not deemed to be a supply of goods or services.

(1) OJ C 169, 13.7.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-152/02 (reference for a preliminary ruling from the Bundesfinanzhof): Terra Baubedarf-Handel GmbH v Finanzamt Osterholz-Scharmbeck (1)

(Sixth VAT Directive — Article 17(1) and Article 18(1) and (2) — Right to deduct input VAT — Conditions of exercise)

(2004/C 118/36)

(Language of the case: German)

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

In Case C-152/02: reference to the Court under Article 234 EC from the Bundesfinanzhof (Federal Finance Court) (Germany) for a preliminary ruling in the proceedings pending before that court between Terra Baubedarf-Handel GmbH and Finanzamt Osterholz-Scharmbeck — on the interpretation of Articles 17 and 18 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, C.W.A. Timmermans, A. Rosas, A. La Pergola and S. von Bahr (Rapporteur), Judges; C. Stix-Hackl, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

For the deduction referred to in Article 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, the first subparagraph of Article 18(2) of that directive must be interpreted as meaning that the right to deduct must be exercised in respect of the tax period in which the two conditions required by that provision are satisfied, namely that the goods have been delivered or the services performed and that the taxable person holds the invoice or the document which, under the criteria determined by the Member State in question, may be considered to serve as an invoice.

(1) OJ C 156, 29.6.2002.

JUDGMENT OF THE COURT

(Full Chamber)

of 27 April 2004

in Case C-159/02 (reference for a preliminary ruling from the House of Lords): Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA (1)

(Brussels Convention — Proceedings brought in a Contracting State — Proceedings brought in another Contracting State by the defendant in the existing proceedings — Defendant acting in bad faith in order to frustrate the existing proceedings — Compatibility with the Brussels Convention of the grant of an injunction preventing the defendant from continuing the action in another Member State)

(2004/C 118/37)

(Language of the case: English)

In Case C-159/02: reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the House of Lords (United Kingdom) for a preliminary ruling in the proceedings pending before that court between Gregory Paul Turner and Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA — on the interpretation of the abovementioned Convention of 27 September 1968 (OJ 1972 L 299, p. 32), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and – amended version – p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) — the Court, composed of: V. Skouris, President, P. Jann (Rapporteur), C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas, Presidents of Chambers, A. La Pergola, J.-P. Puissochet, R. Schintgen, N. Colneric and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 27 April 2004, in which it has ruled:

The Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic, is to be interpreted as precluding the grant of an injunction whereby a court of a Contracting State prohibits a party to proceedings pending before it from commencing or continuing legal proceedings before a court of another Contracting State, even where that party is acting in bad faith with a view to frustrating the existing proceedings.

([1]) OJ C 169, 13.7.2002.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 29 April 2004

in Case C-160/02 (reference for a preliminary ruling from the Oberster Gerichtshof): Friedrich Skalka v Sozialversicherungsanstalt der gewerblichen Wirtschaft ([1])

(Social security for migrant workers — Austrian rules on compensatory supplements to retirement pensions — Classification of benefits and lawfulness of the residence requirement under Regulation (EEC) No 1408/71)

(2004/C 118/38)

(Language of the case: German)

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

In Case C-160/02: reference to the Court under Article 234 EC from the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Friedrich Skalka and Sozialversicherungsanstalt der gewerblichen Wirtschaft — on the interpretation of Articles 4(2a) and 10a of, and Annex IIa to, Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) — the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues, President of the Chamber, J.-P. Puissochet (Rapporteur) and F. Macken, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled that:

The provisions of Article 10a of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, and those of Annex IIa thereto must be interpreted as meaning that the compensatory supplement, within the meaning of the Gewerbliche Sozialversicherungsgesetz (Austrian Federal Law of 11 October 1978 on Social Insurance for self-employed persons engaged in trade and commerce), falls within the scope of that regulation and therefore constitutes a special non-contributory benefit within the meaning of Article 4(2a) of that regulation, so that the situation of a person who, after 1 June 1992, fulfils the conditions for the grant of that benefit is governed with effect from 1 January 1995, the date of the Republic of Austria's accession to the European Union, solely by the coordinating provisions laid down by Article 10a.

([1]) OJ C 169, 13.7.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-171/02: Commission of the European Communities v Portuguese Republic ([1])

(Articles 39 EC, 43 EC and 49 EC — Directive 92/51/EEC — General system for the recognition of professional education and training — Private security services — Provisions of a Member State requiring private security firms, in order that they may operate in Portugal, to have their head office or an establishment in Portugal, to be constituted as a legal person, to have a specific share capital and to provide references and guarantees already submitted in the Member State of origin — Failure to provide for recognition of professional qualifications in the private security services sector)

(2004/C 118/39)

(Language of the case: Portuguese)

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

In Case C-171/02: Commission of the European Communities (Agents: M. Patakia and A. Caeiros), with an address for service in Luxembourg, against Portuguese Republic (Agent: L. Fernandes, assisted by J.M. Calheiros), with an address for service in Luxembourg – application for a declaration that:

1. in view of the fact that, under the regime for type approval to be given by the Minister for Internal Administration, foreign undertakings wishing to provide person and goods surveillance services in the private security services sector in Portugal

   (a) must have their head office or an establishment in Portugal,

   (b) may not rely on references and guarantees already submitted in their Member State of establishment,

   (c) must be constituted as a legal person,

   (d) must have a specific share capital;

2. in view of the fact that the staff members of foreign undertakings wishing to provide person and goods surveillance services in the private security services sector in Portugal must hold a professional licence issued by the Portuguese authorities;

3. in view of the fact that the professions in the private security services sector are not subject to the Community system for the recognition of professional qualifications,

the Portuguese Republic has failed to fulfil its obligations under Articles 39 EC, 43 EC and 49 EC and under Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) – the Court (Fifth Chamber), composed of: P. Jann (Rapporteur) acting for the President of the Fifth Chamber, A. Rosas and S. von Bahr, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 29 April 2004, the operative part of which is as follows:

1. *By requiring that, in order that they may be able to operate in Portugal, foreign undertakings wishing to provide person and goods surveillance services in the private security services sector in Portugal must:*

   — *have their head office or a permanent establishment in Portugal;*

   — *be constituted as a legal person;*

   — *have a minimum share capital;*

   — *obtain a licence granted by the Portuguese authorities without their being able to rely on references and guarantees already submitted in their Member State on origin;*

   — *ensure that their staff members hold a professional licence issued by the Portuguese authorities, without their being able to rely on checks or inspections already carried out in the Member State of origin, the Portuguese Republic has failed to fulfil its obligations under Articles 39 EC 43 EC and 49 EC.*

2. *The remainder of the action is dismissed.*

3. *The Portuguese Republic is ordered to pay the costs.*

(1) OJ C 169, 13.7.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-181/02 P: Commission of the European Communities v Kvaerner Warnow Werft GmbH (1)

(Appeal — State aid — Shipbuilding — Commission decisions authorising payment of aid — Condition — Compliance with a 'capacity restriction' — Definition)

(2004/C 118/40)

(Language of the case: German)

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

In Case C-181/02 P: Commission of the European Communities (Agents: K.-D. Borchardt and V. Kreuschitz), with an address for service in Luxembourg – appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 28 February 2002 in Joined Cases T-227/99 and T-134/00 Kvaerner Warnow Werft v Commission [2002] ECR II-1205, seeking to have that judgment set aside, the other party to the proceedings being: Kvaerner Warnow Werft GmbH, established in Rostock-Warnemünde (Germany), (avocat: M. Schütte) with an address for service in Luxembourg, – the Court (Fifth Chamber), composed of C.W.A. Timmermans, acting as President of the Fifth Chamber, A. La Pergola (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; M. Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismisses the appeal;*

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

(1) OJ C 169, 13.7.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 April 2004

in Case C-224/02 (reference for a preliminary ruling from the Korkein oikeus): Heikki Antero Pusa v Osuuspankkien Keskinäinen Vakuutusyhtiö [1]

(Citizenship of the Union — Article 18 EC — Right to move freely and to reside in the Member States — Attachment of remuneration — Detailed rules)

(2004/C 118/41)

(Language of the case: Finnish)

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

In Case C-224/02: reference to the Court under Article 234 EC by the Korkein oikeus (Finland) for a preliminary ruling in the proceedings pending before that court between Heikki Antero Pusa and Osuuspankkien Keskinäinen Vakuutusyhtiö on the interpretation of Article 18 EC — the Court (Fifth Chamber), composed of: P. Jann, acting as President of the Fifth Chamber, C.W.A. Timmermans, A. Rosas, A. La Pergola (Rapporteur) and S. von Bahr, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

1. *Community law in principle precludes legislation of a Member State under which the attachable part of a pension paid at regular intervals in that State to a debtor is calculated by deducting from that pension the income tax prepayment levied in that State, while the tax which the holder of such a pension must pay on it subsequently in the Member State where he resides is not taken into account at all for the purposes of calculating the attachable portion of that pension;*

2. *On the other hand, Community law does not preclude such national legislation if it provides for tax to be taken into account, where taking the tax into account is made subject to the condition that the debtor prove that he has in fact paid or is required to pay within a given period a specified amount as income tax in the Member State where he resides. However, that is only the case to the extent that, first, the right of the debtor concerned to have tax taken into account is clear from that legislation; secondly, the detailed rules for taking tax into account are such as to guarantee to the interested party the right to obtain an annual adjustment of the attachable portion of his pension to the same extent as if such a tax had been deducted at source in the Member State which enacted that legislation; and, thirdly, those detailed rules do not have the effect of making it impossible or excessively difficult to exercise that right.*

[1] OJ C 202, 24.8.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 29 April 2004

in Case C-371/02 (reference for a preliminary ruling from the Svea hovrätt): Björnekulla Fruktindustrier AB v Procordia Food AB [1]

(Trade marks — Directive 89/104/EEC — Article 12(2)(a) — Revocation of rights conferred by the trade mark — Trade mark which has become the common name in the trade — Relevant classes of persons for purposes of the assessment)

(2004/C 118/42)

(Language of the case: Swedish)

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

In Case C-371/02: reference to the Court under Article 234 EC from the Svea hovrätt (Svea Court of Appeal) (Sweden) for a preliminary ruling in the proceedings pending before that court between Björnekulla Fruktindustrier AB and Procordia Food AB — on the interpretation of Article 12(2)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), — the Court (Sixth Chamber) composed of: V. Skouris, acting as the President of the Sixth Chamber, C. Gulmann (Rapporteur), J.N. Cunha Rodrigues, J.-P. Puissochet and R. Schintgen, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 29 April 2004, in which it has ruled:

Article 12(2)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that in cases where intermediaries participate in the distribution to the consumer or the end user of a product which is the subject of a registered trade mark, the relevant classes of persons whose views fall to be taken into account in determining whether that trade mark has become the common name in the trade for the product in question comprise all consumers and end users and, depending on the features of the market concerned, all those in the trade who deal with that product commercially.

[1] OJ C 305, 7.12.2002.

JUDGMENT OF THE COURT

(Grand Chamber)

of 28 April 2004

in Case C-373/02 (reference for a preliminary ruling from the Oberster Gerichtshof): Sakir Öztürk v Pensionsversicherungsanstalt der Arbeiter ([1])

(Article 9 of the EEC-Turkey Association Agreement — Article 3 of Decision No 3/80 — Principle of equal treatment — Article 45(1) of Regulation (EEC) No 1408/71 — Social security for migrant workers — Retirement pension — Early pension in the event of unemployment — Condition whereby the worker must have received unemployment benefits in the Member State concerned)

(2004/C 118/43)

(Language of the case: German)

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

In Case C-373/02: 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 Sakir Öztürk and Pensionsversicherungsanstalt der Arbeiter - on the interpretation of Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey signed on 12 September 1963 at Ankara by the Republic of Turkey, on the one hand, and the Member States of the EEC and the Community, on the other, which was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 on the conclusion of the Agreement establishing an Association between the European Economic Community and Turkey (Journal Officiel 1964 217, p. 3685), and of Article 45(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) - the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann and J. Cunha Rodrigues (Presidents of Chambers), J.-P. Puissochet, R. Schintgen (Rapporteur), F. Macken, N. Colneric, S. von Bahr and K. Lenaerts, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 28 April 2004, in which it has ruled:

Article 3(1) of Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families must be interpreted as precluding the application of legislation of a Member State which makes entitlement to an early old-age pension in the event of unemployment conditional upon fulfilment of the requirement that the person concerned has received, within a certain period prior to his application for the pension, unemployment insurance benefits from that Member State alone.

([1]) OJ C 7 of 11.1.2003

ORDER OF THE COURT OF JUSTICE

(Fourth Chamber)

of 5 April 2004

in Case C-3/02 (reference for a preliminary ruling from the Tribunale amministrativo regionale per il Veneto): Alessandro Mosconi, Ordine degli Ingegneri di Verona e Provincia v Soprintendenza per i Beni Ambientali e Architettonici di Venezia – Ministero per i Beni e le Attività Culturali ([1])

(Article 104(3) of the Rules of Procedure — Directive 85/384/EEC — Mutual recognition of formal qualifications in architecture — Articles 10 and 11(g) — National legislation recognising the equivalence of qualifications in architecture and civil engineering, but reserving work on classified heritage buildings to architects — Principle of equal treatment — Situation purely internal to a Member State)

(2004/C 118/44)

(Language of the case: Italian)

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

In Case C-3/02: reference to the Court under Article 234 EC from the Tribunale amministrativo regionale per il Veneto (Italy) for a preliminary ruling in the proceedings pending before that court between Alessandro Mosconi, Ordine degli Ingegneri di Verona e Provincia and Soprintendenza per i Beni Ambientali e Architettonici di Venezia – Ministero per i Beni e le Attività Culturali, in the presence of: Comune di San Martino Buon Albergo (VR), Consiglio Nazionale degli Architetti, Pianificatori, Paesaggisti e Conservatori, Ordine degli Architetti de Verona and Consiglio Nazionale degli Ingegneri – on the interpretation of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15), in particular Articles 10 and 11(g) of that directive, and on the principle of equal treatment – the Court (Fourth Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, A. La Pergola and S. von Bahr, Judges; P. Léger, Advocate General; R. Grass, Registrar, has made an order on 5 April 2004, in which it has ruled:

In matters purely internal to a Member State, neither Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, in particular Articles 10 and 11(g) thereof, nor the principle of equal treatment

precludes national legislation which recognises in principle the equivalence of qualifications in architecture and civil engineering, but reserving work on inter alia classified heritage buildings to architects only.

(1) OJ C 56 of 2.3.2002

ORDER OF THE COURT OF JUSTICE

(Third Chamber)

of 30 April 2004

in Case C-172/02 (reference for a preliminary ruling from the Cour de cassation): Robert Bourgard v Institut national d'assurances sociales pour travailleurs indépendants (Inasti) (1)

(Article 104(3) of the Rules of Procedure — Social policy — Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Self-employed workers — Derogation allowed for the determination of pensionable age — Possibility for male workers to claim early entitlement to old-age pension — Limited to forms of discrimination necessary and objectively linked to the difference in pensionable ages — Method of calculation — Reduction for early entitlement)

(2004/C 118/45)

(Language of the case: French)

In Case C-172/02: reference to the Court under Article 234 EC by the Cour de cassation (Belgium), seeking to obtain, in the proceedings pending before that court between Robert Bourgard and Institut national d'assurances sociales pour travailleurs indépendants (Inasti), a preliminary ruling on the interpretation of Article 7(1)(a) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24) – the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, R. Schintgen and N. Colneric, Judges; J. Kokott, Advocate General; R. Grass, Registrar, made an order on 30 April 2004, the operative part of which is as follows:

Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, read in conjunction with Article 7(1)(a), must be interpreted as meaning that, where the national legislation of a Member State has maintained a difference of retirement ages for men and women, it does not preclude that Member State, in circumstances such as those in the main proceedings in this case, from calculating the amount of the retirement pension differently according to the sex of the worker and from applying to male workers, who alone have the right to apply for an early retirement pension in the five years prior to the normal age of retirement, a reduction of five per cent for each year in which the pension is taken in advance.

(1) OJ C 156 of 29. 6. 2002.

ORDER OF THE COURT OF JUSTICE

(Third Chamber)

of 27 April 2004

in Case C-358/02 (reference for a preliminary ruling from the Tribunal du travail de Bruxelles): Yamina Haddad v Belgian State (1)

(Article 104(3) of the Rules of Procedure — Cooperation Agreement EEC-Morocco — Article 41(1) — Persons covered — Principle of non-discrimination in matters of social security — Disability allowance)

(2004/C 118/46)

(Language of the case: French)

In Case C-358/02: reference to the Court under Article 234 EC from the Tribunal du travailed Bruxelles, for a preliminary ruling in the proceedings pending before that court between Yamina Haddad and Belgian State – on the interpretation of Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1) – the Court (Third Chamber), composed of: A Rosas, President of the Chamber, R. Schintgen (Rapporteur) and K. Schiemann, Judges; Advocate General: F.G. Jacobs; Registrar: R. Grass, made an order on 27 April 2004, the operative part of which is as follows:

Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978, must be interpreted as meaning that it does not apply to the case of a student with Moroccan nationality, the wife of an unemployed Moroccan national who is also unemployed both resident in a Member State which refuses to grant a disability allowance to the claimant, when the couple are insured on a voluntary basis under the sickness insurance scheme of that State, where it is not proven that the claimant lives with a worker of Moroccan nationality with whom she has a close family relationship.

(1) OJ C 305 of 7.12.2002.

ORDER OF THE COURT OF JUSTICE

(Third Chamber)

of 30 April 2004

in Case C-446/02 (reference for a preliminary ruling from the Bundesfinanzhof): Hauptzollamt Hamburg-Jonas v Gouralnik & Partner GmbH [1]

(Article 104(3) of the Rules of Procedure — Agriculture — Common organisation of the markets — Export refunds — Inaccurate declaration — Consequential effects on the validity of the declaration)

(2004/C 118/47)

(Language of the case: German)

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

In Case C-446/02: reference to the Court under Article 234 EC from the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Hauptzollamt Hamburg-Jonas and Gouralnik & Partner GmbH – on the interpretation of the legislation applicable to export refunds – the Court of Justice (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, R. Schintgen and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, made an order on 30 April 2004, the operative part of which is as follows:

1. *For refunds requested before 1 April 1995, Article 78(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 3(5)(a) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, must be interpreted as meaning that an entitlement to an export refund exists at least at the rate of refund applicable to the product actually exported where it is established during a control by the customs authorities that the declared and exported consignment did not consist entirely of the declared product but contained a proportion of another product to which a lower rate of refund applied and the customs authorities adjusted the declaration in accordance with Article 78(3) of the Community Customs Code.*

2. *For the purposes of the decision, it is not material whether the goods which were the subject of the incorrect customs declaration are goods similar to those which were in fact declared.*

3. *For refunds requested after 1 April 1995, Article 11 of Regulation No 3665/87, as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 amending Regulation No 3665/87 as regards the recovery of amounts unduly paid and sanctions, is applicable in such circumstances.*

[1] OJ C 55, 8.3.2003.

ORDER OF THE COURT OF JUSTICE

(First Chamber)

of 22 March 2004

in Case C-455/02 P: Sgaravatti Mediterranea Srl v Commission of the European Communities [1]

(Article 24 of Regulation (EEC) No 4253/88 — Principle of non bis in idem — EAGGF — Cancellation of financial assistance — Appeal partly clearly inadmissible and partly clearly unfounded)

(2004/C 118/48)

(Language of the case: Italian)

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

In Case C-455/02 P: Sgaravatti Mediterranea Srl, established in Capoterra (Italy), (Lawyers: M. Merola and P. Ferrari), appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 26 September 2002, in Case T-199/99 Sgaravatti Mediterranea v Commission [2002] ECR II-3731, seeking annulment of that judgment, the other party to the proceedings being: Commission of the European Communities (Agents: C. Cattabriga, L. Visaggio and M. Moretto) – the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, A. Rosas, S. von Bahr, K. Lenaerts and K. Schiemann, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, made an order on 22 March 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The applicant shall pay the costs.*

[1] OJ C 44 of 22. 2. 2003

ORDER OF THE COURT OF JUSTICE

(Fourth Chamber)

of 28 April 2004

in Case C-3/03 P Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Similarity between two signs — Likelihood of confusion — Application for a figurative Community trade mark containing the word 'Matratzen' — Earlier word mark MATRATZEN)

(2004/C 118/49)

(Language of the case: German)

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

In Case C-3/03 P: appeal by Matratzen Concord GmbH, formerly Matratzen Concord AG, established in Cologne (Germany) (lawyer: W.-W. Wodrich) against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 23 October 2002 in Case T-6/01 Matratzen Concord v OHIM – Hukla Germany (Matratzen) [2002] ECR II-4335, seeking annulment of that judgment, by which the Court of First Instance dismissed the action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 October 2000, refusing registration of a figurative mark as a Community trade mark (Joined Cases R 728/1999-2 and R 792/1999-2), the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl and G. Schneider) – the Court (Fourth Chamber), composed of J.N. Cunha Rodrigues, President of the Chamber, F. Macken (Rapporteur) and K. Lenaerts Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, made an order on 28 April 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The applicant shall pay the costs.*

[1] OJ C 70 of 22. 3. 2003.

ORDER OF THE COURT OF JUSTICE

(Third Chamber)

of 1 April 2004

in Case C-47/03 P: Michael Cwik v Commission of the European Communities [1]

(Appeal — Officials — Reasons for judgment — Reorganisation of the administrative structures of the Commission — Re-assignment — Interests of the service — Misuse of powers — Duty to have regard to the interests of officials — Manifestly inadmissible appeal)

(2004/C 118/50)

(Language of the case: French)

In Case C-47/03 P: Michael Cwik, an official of the Commission of the European Communities, residing in Tervuren (Belgium), (Lawyer: N. Lhoëst), appealing against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 26 November 2002, Case T-103/01 Cwik v Commission, ECR-SC I-A-229 and I-1137) and seeking annulment of that judgment, the other party to the proceedings being the Commission of the European Communities (Agent: J. Currall, assisted by D. Waelbroeck) – the Court (Third Chamber), composed of: A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges, D. Ruiz-Jarabo Colomer, Advocate General, R. Grass, Registrar, made an order on 1 April 2004, the operative part of which is as follows:

1. *Dismisses the appeal.*

2. *Orders M. Cwik to pay the costs.*

[1] OJ C 83 of 5.4.2004

ORDER OF THE COURT

(Fourth Chamber)

of 31 March 2004

in Case C-51/03 (reference for a preliminary ruling from the Amtsgericht Löbau): Nicoleta Maria Georgescu [1]

(Regulation (EC) No 539/2001 — Countries for which the application of the abolition of the visa requirement is suspended until a further decision of the Council — Extent of the suspension — Lack of jurisdiction of the Court)

(2004/C 118/51)

(Language of the case: German)

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

In Case C-51/03: reference to the Court under Article 234 EC from the Amtsgericht Löbau (Germany) for a preliminary

ruling in the criminal proceedings pending before that court against Nicoleta Maria Georgescu - on the interpretation of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1) - the Court (Fourth Chamber), composed of: J. N. Cunha Rodrigues (Rapporteur), President of the Chamber, J.-P. Puissochet and F. Macken, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 31 March 2004, the operative part of which is as follows:

The Court of Justice of the European Communities manifestly has no jurisdiction to answer the question referred by the Amtsgericht Löbau (Germany) by order of 21 October 2002.

([1]) OJ C 112 of 10.5.2003.

ORDER OF THE COURT OF JUSTICE

(Grand Chamber)

of 12 March 2004

in Case C-54/03 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien): Austroplant-Arzneimittel GmbH v Republik Österreich ([1])

(Reference for a preliminary ruling — Article 104(5) of the Rules of Procedure — Request for the national court to provide clarification — Inadmissibility of the reference for a preliminary ruling)

(2004/C 118/52)

(Language of the case: German)

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

In Case C-54/03: reference to the Court under Article 234 EC by the Landesgericht für Zivilrechtssachen Wien (Austria), seeking to obtain, in the proceedings pending before that court between Austroplant-Arzneimittel GmbH and Republik Österreich, a preliminary ruling on the interpretation of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8) – the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas, Presidents of Chambers, R. Schintgen, F. Macken, N. Colneric, S. von Bahr and R. Silva de Lapuerta (Rapporteur), Judges, made an order on 12 March 2004, the operative part of which is as follows:

The request for a preliminary ruling by the Landesgericht für Zivilrechtssachen Wien, by order of 29 January 2003, is manifestly inadmissible.

([1]) OJ C 112 of 10. 5. 2003.

ORDER OF THE COURT

(First Chamber)

of 1 April 2004

in Case C-156/03 P: Commission of the European Communities v Les Laboratoires Servier SA ([1])

(Directives 65/65/EEC and 75/319/EEC — Medicinal products for human use — Dexfenfluramine and fenfluramine — Withdrawal of a marketing authorisation — Competence of the Commission — Conditions for withdrawal — Appeal clearly unfounded)

(2004/C 118/53)

(Language of the case: English)

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

In Case C-156/03 P: Commission of the European Communities (Agents: R.B. Wainwright and H. Støvlbæk), appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 28 January 2003 in Case T-147/00 Laboratoires Servier v Commission [2003] ECR II-85, seeking to have that judgment set aside, the other party to the proceedings being: Les Laboratoires Servier SA, established in Neuilly-sur-Seine (France) (Lawyers: I. S. Forrester QC and J. Killick, barrister) - the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas, A. La Pergola, R. Silva de Lapuerta and K. Lenaerts, Judges; J. Kokott, Advocate General; R. Grass, Registrar, made an order on 1 April 2004, the operative part of which is as follows:

1) *The appeal is dismissed.*

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

([1]) OJ C 146 of 21.6.2003.

ORDER OF THE COURT OF JUSTICE

(Fourth Chamber)

of 1 April 2004

in Case C-184/03 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien): Helmut Fröschl v Republik Österreich [1]

(Article 104(3) of the Rules of Procedure — Proof of competence required in order to exercise a profession — Equivalent — Conditions — Professional experience acquired in another Member State — Principle of non-discrimination — Freedom of establishment — Freedom to provide services)

(2004/C 118/54)

(Language of the case: German)

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

In Case C-184/03: reference to the Court under Article 234 EC by the Landesgericht für Zivilrechtssachen Wien (Austria), seeking to obtain, in the proceedings pending before that court between Helmut Fröschl and Republik Österreich, a preliminary ruling relating to the interpretation of Articles 12 EC, 43 EC and 49 EC – the Court (Fourth Chamber), composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber; F. Macken and K. Lenaerts, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, made an order on 1 April 2004, the operative part of which is as follows:

Articles 12 EC, 43 EC and 49 EC must be interpreted as not precluding national legislation under which, in a situation like that at issue in the main proceedings, professional experience is not recognised as equivalent to possession of the proof of competence required in order to work as a self-employed photographer, on the sole ground that that experience was acquired in the Member State of establishment and not in another Member State.

[1] OJ C 47 of 21. 2. 2004.

ORDER OF THE COURT OF JUSTICE

(Second Chamber)

of 29 April 2004

in Case C-187/03 P: Zissis Drouvis v Commission of the European Communities [1]

(Appeal — Officials — Pensions — Weighting — Article 82(1) of the Staff Regulations — Principle of equal treatment — Freedom of movement and freedom of establishment for workers — Appeal manifestly unfounded)

(2004/C 118/55)

(Language of the case: Greek)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court of Justice)

In Case C-107/83 P: Zissis Drouvis, a former official of the Commission of the European Communities, residing in Maroussi Attikis (Greece), (lawyer: I. Stamoulis), appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 26 February 2003 in Case T-184/00 Drouvis v Commission, not yet published in the ECR, seeking to have that judgment set aside, the other parties to the proceedings being: Commission of the European Communities (Agent: J. Currall, assisted by P. Anestis) and Council of the European Union (Agents: D. Zahariou and A. Pilette), the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), F. Macken and N. Colneric, Judges, Advocate General: F.G. Jacobs, Registrar: R. Grass, has made an order on 29 April 2004, in which it:

1. *Dismisses the appeal.*

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

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

[1] OJ C 171 of 19.7.2003.

ORDER OF THE COURT OF JUSTICE

(Fourth Chamber)

of 29 April 2004

in Case C-202/03 (reference by the Tribunale Amministrativo per la Lombardia, Sezione Staccato di Brescia, for a preliminary ruling): DAC SpA v Azienda Ospedaliera 'Spedali Civili' di Brescia [1]

(Article 104(3) of the Rules of Procedure — Directive 89/665/EEC — Review procedures in the sphere of public procurement — Interim relief ante causam)

(2004/C 118/56)

(Language of the case: Italian)

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

In Case C-202/03 – reference to the Court of Justice pursuant to Article 234 EC by the Tribunale Amministrativo Regionale per la Lombardia, Sezione Staccata di Brescia (Regional Administrative Court for Lombardy, Brescia Division) (Italy) for a preliminary ruling in the case pending before that court between DAC SpA and Azienda Ospedaliera 'Spedali Civili' di Brescia, third party Pellegrini SpA, on the interpretation of Articles 1(3) and 2(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) – the Court (Fourth Chamber), composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, J.-P. Puissochet and K. Lenaerts, Judges; P. Léger, Advocate General, R. Grass, Registrar, has made an order on 29 April 2004 the operative part of which is as follows:

On a proper construction of Article 2(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, the Member States are required to confer on their review bodies the power to adopt, irrespective of whether or not an action going to the substance of the case has already been brought, all interim measures, including measures to suspend the procedure for the award of the public procurement contract at issue.

[1] OJ C 171 of 19 July 2003.

ORDER OF THE COURT OF JUSTICE

(Third Chamber)

of 1 April 2004

in Case C-216/03 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien): DLD Trading Company Import-Export, spol. s.r.o. v Republic of Austria [1]

(Preliminary ruling — Inadmissibility)

(2004/C 118/57)

(Language of the case: German)

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

In Case C-216/03: reference to the Court under Article 234 EC from the Landesgericht für Zivilrechtssachen Wien (Austria) for a preliminary ruling in the proceedings pending before that court between DLD Trading Company Import-Export, spol. s.r.o. and Republic of Austria, on, first, the validity of Council Regulation (EC) No 3316/94 of 22 December 1994 amending Council Regulation (EC) No 355/94 by introducing a temporary derogation applicable to Austria with regard to exemptions from customs duties (OJ 1994 L 350, p. 12), and of Council Regulation (EC) No 2744/98 of 14 December 1998 amending Regulation (EC) No 355/94 and extending the temporary derogation applicable to Germany and Austria (OJ 1994 L 345, p. 9), in the light of the 'provisions of Community law relating to exemptions from customs duties, in particular Council Regulation (EEC) No 918/83 [of 28 March 1983 setting up a Community system of exemptions from customs duty (OJ 1983 L 105, p. 1)] and the principle of the Customs union', and of the principles of legal certainty and the protection of legitimate expectations, and, second, the validity of Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ 1969 L 133, p. 6) and of 'the national provisions transposing it' in view of 'the purposes of harmonising turnover tax and excise duty within the Member States, liberalising and facilitating travel to and from non-member countries and aligning exemptions from tax and from customs duty in the context of travel' – the Court (Third Chamber), composed of A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; J. Kokott, Advocate General; R. Grass, Registrar, made an order on 1 April 2004, the operative part of which is as follows:

The reference for a preliminary ruling made by the Landesgericht für Zivilrechtssachen Wien by order of 7 April 2003 is inadmissible.

[1] OJ C 251 of 18. 10. 2003.

ORDER OF THE COURT OF JUSTICE

(Third Chamber)

of 1 April 2004

in Case C-229/03 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien): Monica Herbstrith v Republic of Austria [1]

(Preliminary ruling — Inadmissibility)

(2004/C 118/58)

(Language of the case: German)

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

In Case C-229/03: reference to the Court under Article 234 EC from the Landesgericht für Zivilrechtssachen Wien (Austria) for a preliminary ruling in the proceedings pending before that court between Monica Herbstrith and Republic of Austria, on, first, the direct effect of 'Community law concerning equal treatment of men and women at work and, more specifically, of Council Directive 76/207/EEC' of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) or the circumstances in which a Member State may be liable to pay compensation for prejudice suffered by individuals as a result of infringements of Community law, and, second, 'the rules on the burden of proof laid down in Article 4 of Council Directive 97/80/EC of 15 December 1997' on the burden of proof in cases of discrimination based on sex (OJ 1998 L 14, p. 6) – the Court (Third Chamber), composed of A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; J. Kokott, Advocate General; R. Grass, Registrar, made an order on 1 April 2004, the operative part of which is as follows:

The reference for a preliminary ruling made by the Landesgericht für Zivilrechtssachen Wien by order of 7 April 2003 is inadmissible.

[1] OJ C 47 of 21. 2. 2004.

Reference for a preliminary ruling by the Bundesfinanzhof, by order of that court of 3 February 2004 in the case of Deutsches Milch-Kontor GmbH against Hauptzollamt Hamburg-Jonas

(Case C-136/04)

(2004/C 118/59)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof of 3 February 2004, received at the Court Registry on 15 March 2004, for a preliminary ruling in the case of Deutsches Milch-Kontor GmbH against Hauptzollamt Hamburg-Jonas on the following question:

Must Regulation (EEC) No 3445/89 [1] and Regulation (EEC) No 1706/89 [2] be interpreted as meaning that cheese under subheading 0406 90 of the Combined Nomenclature, intended for processing in a third country and therefore to be classified for customs tariff purposes under subheading 0406 90 11 of the Combined Nomenclature in the version in Regulation (EEC) No. 2886/89 [3], is excluded from the grant of an export refund?

[1] OJ L 336, p. 1.
[2] OJ L 166, p. 36.
[3] OJ L 282, p. 1.

Reference for a preliminary ruling by the Commissione Tributaria Provinciale di Genova by order of that court of 11 February 2004 in the case of Unicredito Italiano SpA and Agenzia Entrate Ufficio Genova [1]

(Case C-148/04)

(2004/C 118/60)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria Provinciale di Genova (Provincial Tax Commission, Genoa) of 11 February 2004, received at the Court Registry on 23 March 2004, for a preliminary ruling in the case of Unicredito Italiano SpA and Agenzia Entrate Ufficio Genova on the following questions:

1. Is Commission Decision 2002/581/EC [2] of 11 December 2001 (OJ 2002 L 184, p. 27) invalid and incompatible with Community law, in that the provisions of the Ciampi Law and the related legislative decree regarding banks are compatible with the Common Market, contrary to the opinion of the European Commission, or do they in any case fall within the scope of the derogations provided for by Article 87(3)(b) and (c) of the EC Treaty?

2. In particular, is Article 4 of the above-mentioned decision invalid and incompatible with Community law, in that the Commission:

   a) failed in its duty to provide adequate reasons in accordance with Article 253 of the EC Treaty; and/or

   b) infringed the principle of legitimate expectations; and/or

   c) infringed the principle of proportionality?

3. In any event, does a correct interpretation of Article m87 et seq. of the EC Treaty, Article 14 of Council Regulation (EC) No 659/1999 and the general principles of Community law, in particular those mentioned in the grounds of the order for reference, preclude the application of Article 1 of Decree Law 282 of 24 December 2002 (converted into Law No 27 of 21 February 2003 enacting 'Urgent provisions regarding Community and fiscal measures, revenues and accounting procedures' in Suppl. ord. No 29 to Gazzetta Ufficiale No 44 of 22 February 2003)?

(1) OJ L 184, 13.7.2002, p. 27.
(2) OJ L 83, 27.3.1999, p. 1.

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 17 March 2004, in the case of The Queen on the application of 1) Alliance for Natural Health 2) Nutri-Link Ltd against Secretary of State for Health.

(Case C-154/04)

(2004/C 118/61)

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 17 March 2004, which was received at the Court Registry on 26 March 2004, for a preliminary ruling in the case of The Queen on the application of 1) Alliance for Natural Health 2) Nutri-Link Ltd and Secretary of State for Health on the following questions:

Are Article 3, 4(1) and Article 15(b) of Directive 2002/46/EC (1) invalid by reason of:

(a) the inadequacy of Article 95 as a legal basis;

(b) infringement of (i) Articles 28 and 30 of the EC Treaty and/or (ii) Articles 1(2) and 24(2)(a) of Regulation (EEC) No. 3285/94 (2);

(c) infringement of the principle of subsidiarity;

(d) infringement of the principle of proportionality;

(e) infringement of the principle of equal treatment;

(f) infringement of Article 6(2) of the Treaty on European Union, read in the light of Article 8 of and Article 1 of the First Protocol to the European Convention on Human Rights, and of the fundamental right to property and/or the right to carry on an economic activity;

(g) infringement of Article 253 EC and/or the duty to give reasons?

(1) of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (Text with EEA relevance) (OJ L 183, 12.07.2002, p. 51).
(2) Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (OJ L 349, 31.12.1994, p. 126).

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 17 March 2004, in the case of The Queen on the application of 1) National Association of Health Stores 2) Health Food Manufacturers Ltd against 1) Secretary of State for Health 2) National Assembly for Wales

(Case C-155/04)

(2004/C 118/62)

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 17 March 2004, which was received at the Court Registry on 26 March 2004, for a preliminary ruling in the case of The Queen on the application of 1) National Association of Health Stores 2) Health Food Manufacturers Ltd and 1) Secretary of State for Health 2) National Assembly for Wales on questions which are identical to those in Case C-154/04 (1).

(1) See page 34 of this Official Journal.

Reference for a preliminary ruling by the Bundesfinanzhof, by order of that Court of 22 January 2004 in the case of Franz Werner against Finanzamt Cloppenburg

(Case C-163/04)

(2004/C 118/63)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 22 January 2004, received at the Court Registry on 31 March 2004, for a preliminary ruling in the case of Franz Werner v Finanzamt Cloppenburg on the following question:

May the owner of an agricultural undertaking assign, by means of a lease, land which he has previously used for transactions subject to the flat-rate scheme for farmers (Article 25 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 (1)) to an activity which is taxable under the normal value added tax system and deduct input tax in respect of a poultry-fattening house erected on the land?

(1) OJ L 145, p. 1.

Action brought on 14 April 2004 by the Kingdom of Belgium against the Commission of the European Communities

(Case C-176/04)

(2004/C 118/64)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities by the Kingdom of Belgium, represented by A. Goldman, acting as Agent assisted by H. Gilliams, acting as avocat

The Kingdom of Belgium claims that the Court should:

— annul Commission Decision 2004/1367EC of 4 February 2004 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) ([1]) in so far as it excludes from Community financing expenditure of EURO 9,322,809 for arable crops in respect of the applicant;

— in the alternative, on the basis of its comprehensive jurisdiction, reduce the correction of EUR 9,322,809 applied by the Commission to EUR 1,079,814.

— The applicant also asks that the Commission be ordered to pay the costs of these proceedings.

Pleas in law and main arguments

The two infringements alleged by the Commission to have been committed by Belgium, namely incomplete administrative checks and delay in the introduction of the graphic data for the crop years in question, are in reality based on a misapplication by the Commission of the Community provisions. The Commission is therefore wrong to impose a fixed correction on the applicant.

([1]) OJ L 40 of 10.2.2004, p. 31.

Action brought on 14 April 2004 by the Commission of the European Communities against the Republic of France

(Case C-177/04)

(2004/C 118/65)

An action against the Republic of France was brought before the Court of Justice of the European Communities by the Commission of the European Communities, represented by G. Valero Jordana and B. Stromsky, acting as Agents, with an address for service in Luxembourg

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

1. find that, by failing to take the measures required to implement the judgment of the Court of Justice of the European Communities of 25 April 2002 in Case C-52/00 on the incorrect transposition of Directive 85/374/EEC ([1]), the French Republic has failed to fulfil its obligations under Article 228(1) of the Treaty establishing the European Community;

2. order the French Republic to pay the Commission of the European Communities (Community own resources account) a fine of EURO 137,150 per day of delay in implementing the judgment in Case C-52/00 from the day on which judgment is delivered in this case until the day on which the judgment in Case C-52/00 ([2]) is implemented;

3. order the French Republic to pay the costs.

Pleas in law and main arguments

Implementation of the judgment of the Court of 25 April 2002 entails amending provisions of the French civil code that are incompatible with Directive 85/374. The French Republic ought therefore to have begun the necessary legislative procedure immediately after the judgment was delivered. However the amendments have still not been adopted. A fine of EURO 137,150 per day of delay in implementing the judgement is appropriate to the seriousness and durations of the infringement and takes account of the requirement that the penalty be effective.

([1]) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products

([2]) [2002] ECR I-3827

Removal from the register of Case C-49/03 ([1])

(2004/C 118/66)

By order of 26 March 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-49/03 (reference for a preliminary ruling from the Cour d'appel de Rennes): Alain Rousseau v Association Comité économique régional fruits et légumes de Bretagne (CERAFEL).

([1]) OJ C 70 of 22.3.2003.

Removal from the register of Case C-56/03 [1]

(2004/C 118/67)

By order of 23 March 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-56/03: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 83 of 5.4.2003

Removal from the register of Case C-63/03 [1]

(2004/C 118/68)

By order of 24 March 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-63/03: Commission of the European Communities v Kingdom of the Netherlands

[1] OJ C 83 of 5.4.2003.

Removal from the register of Case C-304/03 [1]

(2004/C 118/69)

By order of 26 April 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-304/03: Commission of the European Communities v PROSECOM – Protecção, Segurança e Comunicações, L [da.]

[1] OJ C 213 of 6.9.2003

Removal from the Register of Case C-326/03 [1]

(2004/C 118/70)

By order of 25 March 2004, the President of the Court of Justice of the European Communities has ordered the removal from the Register of Case C-326/03: Commission of the European Communities v Hellenic Republic

[1] OJ C 226 of 20.9.2003

Removal from the register of Case C-381/03 [1]

(2004/C 118/71)

By order of 18 March 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-381/03: Commission of the European Communities v Italian Republic

[1] OJ C 264 of 1.11.2003.

Removal from the register of Case C- 392/03 [1]

(2004/C 118/72)

By order of 19 March 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-392/03: Commission of the European Communities v Italian Republic.

[1] OJ C 264 of 1.11.2003.

Removal from the register of Case C- 493/03 [1]

(2004/C 118/73)

By order of 30 March 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-493/03 (reference for a preliminary ruling from the Cour d' appel de Bordeaux) Ministère public v André Rochus Hiebeler.

[1] OJ C 21 of 24.1.2004.

Removal from the register of Case C-20/04 [1]

(2004/C 118/74)

By order of 29 April 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-20/04: Commission of the European Communities v French Republic.

[1] OJ C 59 of 6.3.2004.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

(First Chamber)

of 21 April 2004

in Case T-172/01 M v Court of Justice of the European Communities ([1])

(Spouse divorced from a former member of a Community institution, since deceased — Maintenance — Verbal agreement between the former spouses — Law applicable to the formal requirements for the agreement and the admissibility of the means of proving its existence (Article 27 of Annex VIII to the Staff Regulations of the European Communities))

(2004/C 118/75)

(Language of the case: French)

In Case T-172/01, M, resident in Athens (Greece), represented by G. Vandersanden and H. Tagaras, lawyers, against the Court of Justice of the European Communities (Agent: M. Schauss, assisted by T Papazissi) – application for annulment of the refusal to grant a survivor's pension based on the service of her ex-husband – the Court of First Instance (First Chamber), composed of: A.W.H. Meij, President, and N.J. Forwood and H. Legal, Judges; Registrar: I Natsinas, gave a judgment on 21 April 2004, in which it:

1. *rejected the application; and*

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

([1]) OJ C 317, 10.11.2001

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 April 2004

in Case T-313/01: R v Commission of the European Communities ([1])

(Officials — Social security — Refusal of prior authorisation of a surgical procedure — Refusal on the ground of the exclusively cosmetic nature attributed by the administration to the operation — Infringement of the provisions of the Community rules)

(2004/C 118/76)

(Language of the case: Greek)

In Case T-313/01: R, a Commission official residing in Brussels, represented by C. Tagaras, lawyer, against Commission of the European Communities (Agents: J. Currall and L. Lozano Palacios, assisted by P. Anestis, lawyer) – application for, first, annulment of the refusal of prior authorisation of a surgical procedure and, secondly, reimbursement of the costs of the operation at issue – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, and V. Tiili and M. Vilaras, Judges; I. Natsinas (Administrator), Registrar, has given a judgment on 21 April 2004, in which it:

1. *Annuls the decision of 22 May 2001 rejecting the application for prior authorisation submitted by the applicant;*

2. *Orders the Commission to reimburse the applicant 85 % of the cost of the surgical procedure as set out by the applicant's surgeon in his prescription of 16 May 2001;*

3. *Orders the parties to determine by agreement the amount to be reimbursed to the applicant for the costs of the operation undergone according to the terms of the prescription and inform the Court of the agreed amount within a period of three months from the delivery of this judgment;*

4. *Orders the parties, in the absence of agreement, to submit to the Court, within a period of three months from the delivery of this judgment, the figures they propose in respect of the amount to be reimbursed; and*

5. *Reserves the costs, including those incurred for the purposes of the expert medical report.*

([1]) OJ C 44 of 16. 2. 2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 March 2004

in Case T-10/02, Marie-Claude Girardot v Commission of the European Communities ([1])

(Staff case — Article 29(1) of the Staff Regulations — Permanent post remunerated on research and investment credits — Temporary agent within the meaning of Article 2(d) of the CEOS — Rejection of application — No comparative examination of merits — Interim judgment)

(2004/C 118/77)

(Language of the case: French)

In Case T-10/02, Marie-Claude Girardot resident in L'Hay-les-Roses (France), represented by N. Lhoest, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agents: F. Clotuche-Cuvieusart and L.

Lozano Palacios, then F. Clotuche-Cuvieusart and H. Tserepa-Lacombe) - Application for, first, annulment of the Commission's decision of 13 March 2001 rejecting seven applications for permanent posts remunerated on research credits, secondly, annulment of the Commission's decision of 15 March 2001 rejecting one application for a permanent post remunerated on research credits and, thirdly, annulment of the Commission's decisions making appointments in respect of those posts - the Court of First Instance (First Chamber), composed of B. Vesterdorf, President and H. Legal and M. E. Martins Ribeiro, Judges; J. Plingers, Administrator for the Registrar, delivered a judgment on 31 March 2004, in which it

1. *Annuls the Commission's decision of 13 March 2001 rejecting seven applications for permanent posts remunerated on research credits;*

2. *Annuls the Commission's decision of 15 March 2001 rejecting one application for a permanent post remunerated on research credits;*

3. *For the rest dismisses the application*

4. *Orders the parties to provide to the Court within a period of three months from delivery of this judgment either an agreed amount of monetary compensation attaching to the decisions of 13 and 15 March 2001 or their submissions, with figures, on that amount;*

5. *Reserves costs.*

([1]) OJ C 68 of 16.3.2002

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 April 2004

in Joined Cases T-124/02 and T-156/02: The Sunrider Corp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Regulations (EC) Nos 40/94 and 2868/95 — Costs of the opposition proceedings — Partial withdrawal of the trade mark application — Withdrawal of opposition — Reimbursement of the appeal fees — Duty to state reasons)

(2004/C 118/78)

(Language of the case: German)

In Joined Cases T-124/02 and T-156/02: The Sunrider Corp., established in Torrance, California (United States of America), represented by A. Kockläuner, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: G. Schneider), the other parties to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being Vitakraft-Werke Wührmann & Sohn, established in Bremen (Germany) in Case T-124/02 and Friesland Brands SV, established in Leeuwarden (the Netherlands) in Case T-156/02 - actions, in Case T-124/02, against the decision of the Second Board of Appeal of OHIM of 17 January 2002 (Case R-386/2000-2) relating to opposition proceedings between Vitakraft-Werke Wührmann & Sohn and The Sunrider Corp., and, in Case T-156/02, against the decision of the First Board of Appeal of OHIM of 21 February 2002 (Case R-34/2000-1) relating to opposition proceedings between Friesland Brands BV and The Sunrider Corp. - the Court of First Instance (Second Chamber), composed of: N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges; B. Pastor, Assistant Registrar, for the Registrar, has given a judgment on 28 April 2004, in which it:

1. *Dismisses the actions;*

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

([1]) OJ C 156 of 29.6.2002

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 April 2004

in Case T-127/02: Concept-Anlagen u. Geräte nach 'GMP' für Produktion u. Labor GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Figurative mark containing the word element 'ECA' — Absolute ground for refusal — Emblem of an international intergovernmental organisation — Article 7(1)(h) of Regulation (EC) No 40/94 — Article 6 ter of the Paris Convention)

(2004/C 118/79)

(Language of the case: German)

In Case T-127/02: Concept-Anlagen u. Geräte nach 'GMP' für Produktion u. Labor GmbH, established in Heidelberg (Germany), represented by G. Hodapp, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: G. Schneider) – action brought against the decision of the Second Board of Appeal of OHIM of 18 February 2002 (Case R 466/2000-2) on the application for registration of a figurative mark containing the word element 'ECA' as a Community trade mark – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and M. Vilaras, Judges; Registrar, J. Plingers (Administrator), gave a judgment on 21 April 2004, in which it:

1. *Dismisses the action;*

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

(1) OJ C 144 of 15.6.2002

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 March 2004

in Case T-216/02: Fieldturf Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Word mark LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS — Absolute ground for refusal — Article 7(1)(b) and Article 73 of Regulation (EC) No 40/94 — Refusal to register)

(2004/C 118/80)

(Language of the case: English)

In Case T-216/02: Fieldturf Inc., established in Montreal (Canada), represented by P. Baronikians, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: O. Waelbroeck) - action against the decision of the First Board of Appeal of OHIM of 15 May 2002 (Case R 462/2001-1) concerning registration of the word mark LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS as a Community trade mark - the Court of First Instance, (Fourth Chamber) composed of: H. Legal, President, V. Tiili and M. Vilaras, Judges; H. Jung, Registrar, has given a judgment on 31 March 2004, in which it:

1. *Dismisses the action;*

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

(1) OJ C 233 of 28.09.2002

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 April 2004

in Case T-277/02: Athanacia-Nancy Pascall v Council of the European Union (1)

(Officials — Open competition — Oral test — Omission from the reserve list — Action for annulment)

(2004/C 118/81)

(Language of the case: French)

In Case T-277/02: Athanacia-Nancy Pascall, an official of the Commission of the European Communities residing in Brussels (Belgium), represented by J.-N. Louis, E. Marchal and A. Coolen, lawyers, against Council of the European Union (Agents: F. Anton and D. Zahariou) – application for annulment of the decision of the selection board for competition Council/A/393 for the drawing up of a reserve list of administrators of Greek mother-tongue to award the applicant lower marks than the minimum required for her oral test and not to place her on the reserve list – the Court of First Instance (Single Judge), composed of J. Pirrung, Judge; I. Natsinas (Administrator), Registrar, has given a judgment on 28 April 2004, in which it:

1. *Dismisses the application;*

2. *Orders the Council to bear its own costs and to pay a quarter of the applicant's costs; and*

3. *Orders the applicant to bear three-quarters of her own costs.*

(1) OJ C 274 of 9.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 April 2004

in Case T-343/02: Roland Schintgen v Commission of the European Communities (1)

(Officials — Staff Committee of the Commission in Luxembourg — Elections to the Luxembourg Staff Committee — Electoral system — Principles of fairness and democracy)

(2004/C 118/82)

(Language of the case: French)

In Case T-343/02: Roland Schintgen, a Commission official residing in Keispelt (Luxembourg), represented by L. Vogel, lawyer, against Commission of the European Communities (Agents: J. Currall and V. Joris) – application for annulment of the decision of the appointing authority, dated 16 July 2002 and notified to the applicant on 6 August 2002, rejecting the

applicant's complaint of 28 February 2002, by which, in essence, he applied for annulment of the elections to the local staff committee of the Commission in Luxembourg which took place in November 2001 and of the appointment of those elected to that committee and the Commission's failure to annul those elections – the Court of First Instance (Third Chamber), composed of J. Azizi, President, and M. Jaeger and F. Dehousse, Judges; D. Christensen (Administrator), Registrar, has given a judgment on 22 April 2004, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 19 of 25.1.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 29 April 2004

in Case T-399/02: Eurocermex SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Three-dimensional trade mark — Form of a bottle — Long-neck bottle in the neck of which a slice of lemon has been plugged — Absolute grounds for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2004/C 118/83)

(Language of the case: French)

In Case T-399/02: Eurocermex SA, established in Evere (Belgium), represented by A. Bertrand and T. Reisch, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (Agents: S. Laitinen and A. Rassat) – application brought for the annulment of the decision of the First Board of Appeal of OHIM of 21 October 2002 (Case R 188/2002-1) concerning an application for registration of a three-dimensional trade mark (long-neck bottle in the neck of which a slice of lemon has been plugged) as a Community trade mark – the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 29 April 2004, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 44 of 22.2.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 23 March 2004

in Case T-216/99: Ter Huurne's Handelsmaatschappij BV, supported by the Kingdom of the Netherlands v Commission of the European Communities ([1])

(Action for annulment — Failure of applicant to act — No need to give a decision)

(2004/C 118/84)

(Language of the case: Dutch)

In Case T-216/99: Ter Huurne's Handelsmaatschappij BV, established in Haaksbergen (Netherlands), represented by H.C van der Sijs, lawyer, supported by the Kingdom of the Netherlands, represented by M. Fierstra and L. Cuelenaere, subsequently by L. Cuelenaere and V. Koningsberger and, finally, by H.G. Sevenster, acting as Agents, against the Commission of the European Communities (represented initially by G. Rozet and H. Speyart, subsequently by G. Rozet and H. van Vliet, Agents) – application for annulment of Commission Decision 1999/705/EC of 20 July 1999 concerning aid granted by the Netherlands to 633 Dutch service stations in the region bordering Germany (OJ 1999 L 280, p. 87) – the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, V. Tiili, A.W.H. Meij, M. Vilaras and N. J Forwood, Judges; Registrar, H. Jung (Administrator), made an order on 23 March 2004, the operative part of which is as follows:

1. *There is no need to give a decision on the present action.*

2. *The applicant shall bear its own costs and pay those of the Commission. The Kingdom of the Netherlands shall bear its own costs.*

([1]) OJ C 6, 8.1.2000

ORDER OF THE COURT OF FIRST INSTANCE

of 19 April 2004

in Case T-321/01 DEP, Internationaler Hilfsfonds eV v Commission of the European Communities ([1])

(Procedure — Taxation of costs)

(2004/C 118/85)

(Language of the case: French)

In Case T-321/01 DEP, Internationaler Hilfsfonds eV, established in Rosbach (Germany), represented by H. Kaltenecker, lawyer, against the Commission of the European Communities

(Agents: M.-J Jonczy and S. Fries), APPLICATION for the taxation of costs following the judgment of the Court of First Instance of 18 September 2003 in Case T-321/01 Internationaler Hilfsfonds v Commission, not yet published in the ECR, the Court of First Instance (Third Chamber), composed of J. Azizi, President, and M. Jaeger and F. Dehousse, Judges; Registrar: H. Jung, made an order on 19 April 2004, the operative part of which is as follows:

The total of the costs to be reimbursed by the Commission to the applicant in Case T-321/01 is fixed at EUR 6 750.

([1]) OJ C 56 of 2.3.2002

ORDER OF THE COURT OF FIRST INSTANCE

of 15 March 2004

in Case T-66/02, Idiotiko Institouto Epaggelmatikis Katartisis N. Avgerinopoulou Anagnorismenes Technikes Idiotikes Epaggelmatikes Scholes AE, Panellinia Enosi Idiotikon Institouton Epaggelmatikis Katarsis and Panellinia Enosi Idiotikis Technikis Epaggelmatikis Ekpaidefsis kai Katarstisis v Commission of the European Communities ([1])

(Structural Funds — Community support — Operational programme — Request for amendment — Application for a declaration of failure to act — Adoption of a position terminating such failure to act — No need to give judgment)

(2004/C 118/86)

(Language of the case: Greek)

In Case T-66/02, Idiotiko Institouto Epaggelmatikis Katartisis N. Avgerinopoulou Anagnorismenes Technikes Idiotikes Epaggelmatikes Scholes AE, Panellinia Enosi Idiotikon Institouton Epaggelmatikis Katarsis and Panellinia Enosi Idiotikis Technikis Epaggelmatikis Ekpaidefsis kai Katarstisis, established in Athens, Greece, represented by T. Antoniou and C. Tsiliotis, v Commission of the European Communities (Agents: M. Condou-Durande and L. Flynn) - Application for a declaration of failure to act based on Article 232 EC and seeking a declaration that the Commission failed to fulfil its obligations under Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ L 161 p.1) and the EC Treaty by failing to remove the unlawful discrimination between private and public professional training bodies in Greece, on the basis that only the latter are financed by the third Community support network and in particular the operational programme Initial Education and Professional Training - the Court of First Instance (Fourth Chamber), composed of H. legal, President and V. Tiili and M. Vilaras, Judges; H. Jung, Registrar, made an order on 15 March 2004, in which it

1 *Finds that there is no need to give judgement in this case;*

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

([1]) OJ C109 of 4.5.2002

ORDER OF THE COURT OF FIRST INSTANCE

of 15 March 2004

in Case T-139/02, Idiotiko Institouto Epaggelmatikis Katartisis N. Avgerinopoulou Anagnorismenes Technikes Idiotikes Epaggelmatikes Scholes AE, Panellinia Enosi Idiotikon Institouton Epaggelmatikis Katarsis and Panellinia Enosi Idiotikis Technikis Epaggelmatikis Ekpaidefsis kai Katarstisis v Commission of the European Communities ([1])

(Structural Funds — Community support — Operational programme — Commission's reply to a request for amendment of a decision approving an operational programme — Action for annulment — Direct allocation — Inadmissible)

(2004/C 118/87)

(Language of the case: Greek)

In Case T-139/02, Idiotiko Institouto Epaggelmatikis Katartisis N. Avgerinopoulou Anagnorismenes Technikes Idiotikes Epaggelmatikes Scholes AE, Panellinia Enosi Idiotikon Institouton Epaggelmatikis Katarsis and Panellinia Enosi Idiotikis Technikis Epaggelmatikis Ekpaidefsis kai Katarstisis, estalblished in Athens, Greece, represented by T. Antoniou and C. Tsiliotis, v Commission of the European Communities (Agents: M. Condou-Durande and L. Flynn) - Application for an action for annulment of the Commission's decision of 27 February 2002 not to remove the alleged discrimination between private and public professional training bodies in Greece in regard to their access to financing from the structural funds provided for by the third Community support network and in particular the operational programme Initial Education and Professional Training - the Court of First Instance (Fourth Chamber), composed of H. Legal, President and V. Tiili and M. Vilaras, Judges; H. Jung, Registrar, made an order on 15 March 2004, in which it

1. *Dismisses the application as inadmissible;*

2. *Orders the applicants to bear their own costs and those of the Commission.*

([1]) OJ C169 of 13.7.2002

ORDER OF THE COURT OF FIRST INSTANCE

(Third Chamber)

of 2 April 2004

in Case T-231/02: Piero Gonnelli and Associazione Italiana Frantoiani Oleari (AIFO) v Commission of the European Communities [1]

(Action for annulment — Natural or legal persons — Acts affecting them individually — Regulation — Marketing norms for olive oil — Inadmissibility)

(2004/C 118/88)

(Language of the case: Italian)

In Case T-231/02: Piero Gonnelli and Associazione Italiana Frantoiani Oleari (AIFO), established in Rome (Italy), represented by U. Scuro, lawyer, against the Commission of the European Communities (Agents: C. Cattabriga and C. Loggi) – application for annulment of Commission Regulation (EC) No 1019/2002 of 13 June 2002 on marketing standards for olive oil (OJ 2002 L 155, p. 27) – the Court of First Instance (Third Chamber), composed of J. Azizi, President, M. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, made an order on 2 April 2004, the operative part of which is as follows:

1. *the application is dismissed as inadmissible;*

2. *the applicants are to bear their own costs and pay those incurred by the defendant.*

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[1] OJ C 331, 24.11.01

ORDER OF THE COURT OF FIRST INSTANCE

of 29 April 2004

in Case T-308/02: SGL Carbon AG v Commission of the European Communities [1]

(Agreements — Fines — Rejection of request for facilities for payment — Annulment of measures — Inadmissibility)

(2004/C 118/89)

(Language of the case: German)

In Case T-308/02: SGL Carbon AG established in Wiesbaden (Germany), represented by M. Klusmann, lawyer v Commission of the European Communities (Agents: G. Wilms and W Mölls) – application for annulment of Commission decision of 24 July 2002 in so far as it rejects the applicant's request for facilities for the payment of the fine imposed in a proceeding under Article 81 of the EC Treaty (COMP/E-1/36.490 – graphite electrodes) and imposes default interest in excess of 6.04 % – the Court (Second Chamber), composed of J. Pirrung, President; W.H. Meij and J. Forwood, Judges; H. Jung, Registrar, has made an order on 29 April 2004, in which it:

1. *Dismisses the appeal as inadmissible;*

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

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[1] OJ C 31 of 8.2.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 23 January 2004

in Case T-248/03 Société de Produits Nestlé SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition — Amicable settlement — No need to adjudicate)

(2004/C 118/90)

(Language of the case: English)

In Case T-248/03: Société de Produits Nestlé SA, established in Vevey (Switzerland), represented by J.-J. Evrard, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: O. Montalto and I. de Medrano Caballero), 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: Grupo Kalise Menorquina SA, established in Palau de Plegamans (Spain) – application for annulment of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 April 2003 (Case R 732/2001-2) relating to opposition proceedings – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and M. Vilaras, Judges; H. Jung, Registrar, has made an order on 23 January 2004, the operative part of which is as follows:

1. *There is no need to adjudicate on the action.*

2. *The applicant shall bear its own costs and pay those incurred by OHIM.*

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[1] OJ C 239 of 4.10.2003

ORDER OF THE COURT OF FIRST INSTANCE

(Fifth Chamber)

of 2 April 2004

in Case T-337/03: Luis Bertelli Gálvez v Commission of the European Communities [1]

(Action for failure to act — Procedure laid down in Article 7 EU — Complaint of alleged breaches of the principles set out in Article 6(1) EU by the Spanish judicial authorities — Clear lack of jurisdiction)

(2004/C 118/91)

(Language of the case: Spanish)

In Case T-337/03: Luis Bertelli Gálvez, represented by J. Puche Rodríguez-Acosta, lawyer, against the Commission of the European Communities – application made under the third subparagraph of Article 232 EC seeking a declaration that the Commission unlawfully failed to bring against the Kingdom of Spain the procedure laid down in Article 7 EU following the complaint made by the applicant regarding alleged breaches affecting him of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, set out in Article 6 EU, by the judicial authorities of that Member State – the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; H. Jung, Registrar, made an order on 2 April 2004, the operative part of which is as follows:

1. *the action is dismissed because it is clear that the Court has no jurisdiction;*

2. *the applicant is to bear his own costs.*

[1] Not yet published.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 30 April 2004

in Case T-412/03 R, Angelo Wille v European Parliament [1]

(Interim measures — Competition procedure — Suspension of operation and application for provisional measures — Admissibility)

(2004/C 118/92)

(Language of the Case: German)

In Case T-412/03 R, Angelo Wille, residing in Brussels (Belgium), represented by D. Rogalla, lawyer, against the European Parliament (Agents: J. de Wachter and N. Lorenz), APPLICATION: (1) that the applicant be allowed to participate in the tests for Competition EUR/A/167/02; (2) for the annulment of the procedure in that competition and its resumption with the participation of the applicant; and (3) for an order prohibiting the Parliament from drawing up an aptitude list and recruiting staff on the strength of the results of that competition – the President of the Court of First Instance; Registrar: H. Jung, made an order on 30 April 2004, the operative part of which is as follows:

1) *The application for interim measures is dismissed;*

2) *Costs are reserved.*

[1] OJ C 94, 17. 4. 2004

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 30 April 2004

in Case T-439/03 R, Ulrike Eppe v European Parliament [1]

(Interim measures — Competition procedure — Application for provisional measures — Admissibility)

(2004/C 118/93)

(Language of the Case: German)

In Case T-439/03 R, Ulrike Eppe, residing in Hanover (Germany), represented by D. Rogalla, lawyer, against the European Parliament (Agents: J. de Wachter and N. Lorenz), APPLICATION: (1) for the annulment of the procedure in Competition EUR/A/167/02 and its resumption with the participation of the applicant; and (2) for an order prohibiting the European Parliament from drawing up an aptitude list and recruiting staff on the strength of the results of that competition – the President of the Court of First Instance; Registrar: H. Jung, made an order on 30 April 2004, the operative part of which is as follows:

1) *The application for interim measures is dismissed;*

2) *Costs are reserved.*

[1] OJ C 94, 17. 4. 2004

Action brought on 25 February 2004 by Jamal Ouariachi against the Commission of the European Communities

(Case T-82/04)

(2004/C 118/94)

(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 25 February 2004 by Jamal Ouariachi, residing in Rabat (Morocco), represented by France Blanmailland, lawyer.

The applicant claims that the Court should:

— order the defendant to pay a lump sum of EUR 150 000 to the applicant as compensation for the non-material damage which he has sustained;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant, who has both Moroccan and Spanish nationality and resides in Morocco, has been divorced since 2000 and has visiting rights in respect of his two children, who are in their mother's custody. In 2002, the mother took the children to Sudan where, according to the applicant, she was joining a Commission official then working at the European Union Delegation in Khartoum, Sudan.

The applicant claims that, in order to be able to take the children away from their father and leave Moroccan territory to go to Sudan, his ex-wife had an invitation from the European Union Delegation in Khartoum, and that it is on the basis of that invitation that the Sudanese consulate issued a visa.

Furthermore, the applicant claims that the official in question usurped the applicant's identity by signing the two children's school reports.

Action brought on 4 March 2004 by Marta Cristiana Moren Abat against the Commission of the European Communities

(Case T-92/04)

(2004/C 118/95)

(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 4 March 2004 by Marta Cristiana Moren Abat, residing in Brussels (Belgium), represented by G. Leibitsch, lawyer.

The applicant claims that the Court should:

— declare void and annul the decision of the selection board of open competition COM/A/1/02 of 22 April 2003 by which the applicant was refused admission to the next stage of the selection procedure on the basis of the results of the preliminary test;

— declare void and annul the decision of the selection board of the appointing authority of 30 January 2004 concerning the applicant's complaint of 17 July 2003 under Article 90(2) of the Staff Regulations;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments correspond to those submitted in Case T-91/04 Just v Commission.

Action brought on 16 March 2004 by AC-Treuhand AG against the Commission of the European Communities

(Case T-99/04)

(2004/C 118/96)

(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 16 March 2004 by AC-Treuhand AG, Zürich (Switzerland), represented by M. Karl, C. Steinle and J. Drolshammer, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission of the European Communities of 10 December 2003 (rectified on 7 January 2004) in Case COMP/E-2/37.857 – Organic Peroxides insofar as it relates to the applicant;

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

Pleas in law and main arguments:

By the contested decision, the Commission found that the applicant and five other undertakings and groups of undertakings had infringed Article 81(1) EC by participating in a series of agreements and coordinated practices on the market for organic peroxides. A fine of EUR 1 000 was imposed on the applicant.

The applicant submits that it neither produces nor distributes organic peroxides and that it was at no time active on the market affected by the infringement. Its action is directed against the Commission's finding that it infringed Article 81 by providing services to three producers of organic peroxides. The Commission's erroneous legal assessment is based on incorrect factual allegations. The Commission adopted those false allegations without criticism because the applicant was unable to comment on them during the Commission's investigation. In doing so, the Commission infringed the applicant's rights of defence and acted in breach of the fundamental right to due process.

Moreover, the applicant states that, although the Commission imposed only a symbolic fine on it, it considers itself compelled to bring an action against the decision in order to obtain legal certainty for its business activities. In the words of the Commission, the decision sets a precedent by which the Commission enters new territory. If the decision were to become final, there would be a risk that, in future, services provided by the applicant which have thus far been lawful and which do not restrict competition would be prohibited and subject to a financial penalty.

The applicant submits further that the Commission has acted in breach of the principle of nullum crimen, nulla poena sine lege since the applicant was neither a party, as an undertaking, to the agreement restricting competition nor is it a group of undertakings. With respect to the applicant, the Commission's legal assessment is not only erroneous but also very unclear and inconsistent. The contested decision is also inconsistent with the need for clarity of measures and infringes the principle of legal certainty and the principle of the protection of legitimate expectations.

Action brought on 16 March 2004 by Peroxid-Chemie GmbH & Co. KG against the Commission of the European Communities

(Case T-104/04)

(2004/C 118/97)

(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 16 March 2004 by Peroxid GmbH & Co. KG, Pullach (Germany), represented by M. Karl and C. Steinle, lawyers.

The applicant claims that the Court should:

— annul Article 2(a), (c) and (d) of the Decision of the Commission of the European Communities of 10 December 2003 (notified on 7 January 2004) in Case COMP/E-2/37.857 – Organic Peroxide;

— in the alternative, reduce the fines imposed on the applicant in Article 2(c) and (d) of the decision;

— set the fine imposed on Akzo Nobel Polymer Chemicals B.V., Akzo Nobel N.V., and Akzo Nobel Chemicals International B.V., as jointly liable companies at EUR 120.75 million;

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

Pleas in law and main arguments:

By the contested decision the Commission held that the applicant and five other undertakings (including Akzo) or groups of undertakings infringed Article 81(1) EC by participating in a series of agreements and concerted practices on the market for organic peroxide. Two fines were imposed on the applicant. No fine was imposed on Akzo.

The applicant is not objecting to the decision as a whole but only to the fines imposed on it therein. The applicant takes the view that the Commission should not have imposed two fines on the applicant as a result of its participation in anti-competitive practices on the market for organic peroxide. The Commission either infringed the prescription provisions or the prohibition on double penalties. Even if the two penalties were imposed on the applicant for two different infringements, the first one (from 1971 to the end of August 1992) on the part of the applicant was already time-barred. If, on the other hand, both fines were imposed for one and the same continuous infringement on the part of the applicant, then there was a double penalty.

The applicant also argues that the Commission disregarded the maximum limit in Article 15(2) of Regulation No 17 as the fines imposed on the applicant by far exceeded 10 % of its total turnover in the last trading year before adoption of the decision. Furthermore, the Commission should not have classified the applicant as a second-time offender and should therefore not have been able to increase the basic amount of the fine imposed on the applicant by 50 %. In so doing the Commission infringed the principle of the presumption of innocence and the applicant's rights of defence.

Finally, the applicant claims that the Commission failed to have regard to the principle of equal treatment and the leniency notice of 1996 by not imposing a fine on Axzo even though it was proven to have played a decisive role in implementing the unlawful conduct. In so doing the Commission afforded the applicant's main competitor an unjustified financial advantage worth millions which directly and individually concerned the applicant.

Action brought on 19 March 2004 by Atlantic Container Line AB, Grupo TMM SA De CV, Hanjin Shipping Co Ltd, Hyundai Merchant Marine Co Ltd, Mediterranean Shipping Co SA, Neptune Orient Lines Ltd, Orient Overseas Container Line (UK) Ltd, P&O Nedlloyd Container Line Limited and Sea-Land Service, Inc against the Commission of the European Communities

(Case T-113/04)

(2004/C 118/98)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 March 2004 by Atlantic Container Line AB, Gothenburg (Sweden), Grupo TMM SA De CV, Tlalpan (Mexico), Hanjin Shipping Co Ltd, Seoul (South Korea), Hyundai Merchant Marine Co Ltd, Seoul (South Korea), Mediterranean Shipping Co SA, Geneva (Switzerland), Neptune Orient Lines Ltd, Singapore (Republic of Singapore), Orient Overseas Container Line (UK) Ltd, Levington (United Kingdom), P&O Nedlloyd Container Line Limited, London, and Sea-Land Service, Inc, Jacksonville (USA), represented by J. Pheasant, M. Levitt and K. Nicholson, Solicitors.

The applicant claims that the Court should:

(a) order the Commission to pay to the applicants the sums set out in Annex A.1 to this application;

(b) order the Commission to pay to the applicants interest at the rate of the European Central Bank for capital refinancing operations plus 2 %, or at such other rate as the Court considers to be just in all the circumstances, payable in relation to the period from the date on which each individual applicant's respective liability for costs in respect of its bank guarantee ceased (as set out in Annex A.1) until the date of the Court's judgment on this application;

(c) order the Commission to pay to the applicants interest at such rate as the Court considers to be just in all the circumstances on such amounts as the Court orders to be paid under sub-paragraphs (b) and (c) above as from the date of the Court's judgment in this case until payment thereof;

(d) order that the decision contained in or evidenced by the Commission's letter of 6 January 2004 be annulled;

(e) order the Commission to pay the applicants' costs.

Pleas in law and main arguments:

On 16 December 1998, the Commission imposed fines on the applicants in respect of two infringements of Article 82 EC. By judgment of 30 September 2003 ([1]), The Court of First Instance annulled those fines in full.

The applicants allege that they have suffered considerable monetary loss as a direct result of the Commission's unlawful imposition of the fines. According to the applicants, this loss takes the form of the costs incurred by the applicants in providing bank guarantees in lieu of payment of the fines unlawfully imposed and in maintaining those guarantees in force from the date on which they were first obtained until the date of their cancellation. The payment of a sum equal to such costs is necessary in order to restore the applicants to the legal position in which they would have been, had the Commission not unlawfully imposed such fines.

The applicant seeks an order requiring the Commission to take the 'necessary measures' required by Article 233 EC to comply with the above-mentioned judgment, by paying each of the applicants an amount equivalent to the costs incurred by each applicant respectively in the provision of its bank guarantee, together with the appropriate interest.

([1]) Judgment of 30.9.2003 in joined Cases T-191/98 and T-212/98–T-214/98, Atlantic Container Line and others/Commission (not yet published in European Court Reports).

Action brought on 24 March 2004 by Wieland-Werke Aktiengesellschaft against the Commission of the European Communities

(Case T-116/04)

(2004/C 118/99)

(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 24 March 2004 by Wieland-Werke Aktiengesellschaft, Ulm (Germany), represented by R. Bechtold and U. Soltész, lawyers.

The applicant claims that the Court should:

— annul the Commission's decision in Case COMP/E-1/38.240 – Industrial Pipes;

— in the alternative, reduce the fine imposed in the decision;

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

Pleas in law and main arguments:

By the contested decision the Commission found that the applicant and five other undertakings had, by their participation in a series of agreements and concerted practices in the form of price-fixing and market sharing in the industrial pipe sector, infringed Article 81(1) EC and, as from 1 January 1994, Article 53(1) of the EEA Agreement. The Commission fined the relevant undertakings.

The applicant argues that the Commission did not take into account proportionally the size of the undertakings concerned in fixing the fine. The fine imposed on the applicant was disproportionately high relative to its total turnover. That constitutes an infringement of the principle of proportionality and contravenes the Commission's own guidelines. Furthermore, that method places small and medium-sized undertakings at a disadvantage and therefore infringes the general principle of equality and the principle of imposing penalties on a case-by-case basis.

The applicant further argues that in setting the fine sufficient account was not taken of the economic significance of the infringement as the Commission did not correctly calculate market volumes. Furthermore, the increase of 10 % per year set by the Commission based on the duration of the infringement was not properly reasoned.

The applicant also argues that the Commission's method for setting fines does not satisfy the requirement of certainty necessary for the rule of law. In particular, the calculation of the basic amount, which is made entirely without reference to the individual economic circumstances of the undertaking concerned, and the economic significance of the infringement does not allow for any practical unlimited discretion on the part of the Commission. Article 15 of Regulation No 17/62 is not compatible with the requirement of certainty and thus superior Community law. Finally, the Commission, in applying the leniency notice of 1996, disadvantaged the applicant without any discernible reason relative to other undertakings.

Action brought on 24 March 2004 by the Vereniging Werkgroep Commerciële Jachthavens Zuidelijke Randmeren and Others against the Commission of the European Communities

(Case T-117/04)

(2004/C 118/100)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 24 March 2004 by the Vereniging Werkgroep Commerciële Jachthavens Zuidelijke Randmeren, established in Zeewolde (Netherlands), Jachthaven Zijl Zeewolde B.V., established in Zeewolde (Netherlands), Wolderwijd II BV, established in Zeewolde (Netherlands), Jachthaven Strand-Horst BV, established in Ermelo (Netherlands), Recreatiegebied Erkemederstrand V.O.F., established in Zeewolde (Netherlands), Jachthaven and Campingbedrijf Nieuwboer B.V., established in Bunschoten-Spakenburg (Netherlands) and Jachthaven Naarden B.V., established in Naarden (Netherlands), represented by T.R. Ottervanger and A.S. Bijleveld.

The applicants claim that the Court of First Instance should:

— annul Commission Decision C(2003)3890fin of 17 December 2003 concerning aid measures implemented by the Netherlands in favour of non-profit making marinas in the Netherlands and deem the aid granted to be unlawful aid;

— order the Commission to pay the costs.

Pleas and main arguments

In the contested decision the Commission is of the opinion that, in regard to the marinas concerned, there is no State aid within the meaning of Article 87(1) EC. According to the Commission, in regard to the Wieringermeer marina, there is no benefit and that, in regard to the Nijkerk and Enkhuizen marinas, trade between the Member States is not adversely affected by the aid measure.

In support of their application, the applicants submit that the Commission misapplied and misconstrued Article 87(1) EC. They maintain first that the Commission manifestly erred in its assessment in accepting that the aid measure in regard to the marinas in Enkhuizen and Nijkerk does not affect trade between the Member States. According to the applicants, the marinas are active in an international tourist sector and do not have a strictly local function.

They further submit that the Commission also manifestly erred in its assessment in regard to the calculation of the amount of State aid in favour of the marina in Nijkerk. According to the applicants, the Commission wrongly proceeded on the basis that the estimation was based on an unpolluted and well-maintained marina.

According to the applicants, there is also State aid in the case of the Wieringermeer marina.

Action brought on 26 March 2004 by Giuseppe Caló against the Commission of the European Communities

(Case T-118/04)

(2004/C 118/101)

(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 26 March 2004 by Giuseppe Caló, residing in Luxembourg, represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court of First Instance should:

— annul the Commission decisions of 9 July and 1 October 2003 and, in so far as necessary, the decision of the President of the Commission of 29 July 2003;

— order the Commission to pay the applicant one euro by way of symbolic compensation for non-material damage suffered;

— order the Commission to pay the costs.

Pleas and main arguments

The applicant in the present case challenges the decision by the appointing authority to re-assign him, and four other directors of the DG ESTAT, together with his post, to the duties of principal adviser to the Director General of the directorate general to which he is assigned, as well as the decision to initiate the procedure for filling the posts for directors of the directorates ESTAT/B, ESTAT/C, ESTAT/D, ESTAT/E and ESTAT/F, on the basis of Article 29(1)(a) and (c) and Article 29(2) of the Staff Regulations.

Those decisions were adopted following the establishment of irregularities within EUROSTAT.

In support of his claims the applicant pleads:

— infringement of Article 2(1) of the Staff Regulations and the Commission Decisions of 21 January 1998 and 9 November 2001 on the exercise of the powers of the appointing authority, inasmuch as the decision to transfer the applicant to the post of principal adviser was taken by an authority not having the powers of an appointing authority;

— infringement of the duty to provide a statement of reasons;

— illegality of the vacancy notices COM/173/03, COM/174/03, COM/175/03, COM/176/03 and COM/177/03, inasmuch as they establish no framework of legality in regard to which the institution is to seek to carry out a comparative examination of the candidates' respective merits;

Finally, the contested decisions undermine the applicant's professional reputation and dignity.

Action brought on 22 March 2004 by Peróxidos Orgánicos, S.A. against the Commission of the European Communities

(Case T-120/04)

(2004/C 118/102)

(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 22 March 2004 by Peróxidos Orgánicos, S.A., Barcelona, (Spain), represented by A. Creus and B. Uriarte, lawyers.

The applicant claims that the Court should:

— annul Articles 1, 2 and 4 of the Commission's decision of 10 December 2003 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/E-2/37.585 Organic Peroxides) insofar as they affect the applicant,

— in the alternative, cancel the fine imposed on the applicant,

— order the Commission the pay the costs of these proceedings.

Pleas in law and main arguments:

By the contested decision the Commission found that the applicant, among others, infringed Article 81 of the EC Treaty by participating in a set of agreements and concerted practices in the sector of organic peroxides from 1 January 1971 to 31 December 1999. On these grounds, the Commission imposed a fine of EUR 500.000 on the applicant.

In support of its application, the applicant submits that the proceedings against it were time barred by virtue of Regulation 2988/1974 [1], since its participation in the infraction ceased in January 1997 and thus a period longer than five years had elapsed before the first actions taken by the Commission in the case in question.

[1] Regulation (EEC) No 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition Official Journal L 319 , 29/11/1974 P. 1 - 3

Action brought on 26 March 2004 by Henri Boquien and 12 other applicants against the Council of the European Union and the Commission of the European Communities

(Case T-121/04)

(2004/C 118/103)

(Language of the Case: French)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 March 2004 by Henri Boquien and 12 other applicants, all resident in France, represented by Jean-François Péricaud, lawyer.

The applicants claim that the Court should:

— order the Council of the European Union and the Commission of the European Communities jointly to pay to each applicant damages corresponding to the harm suffered plus interest at the legal rate from the date on which this application was filed;

— order the Council of the European Union and the Commission of the European Communities to pay the costs

Pleas in law and main arguments:

The pleas in law and main arguments are those advanced in Case T-440/03 Arizmendi and Others v Council and Commission ([1]).

([1]) OJ C 59 of 6.3.2004, p. 31.

Action brought on 29 March 2004 by Outokumpu OYJ and Outokumpu Copper Products OY against the Commission of the European Communities

(Case T-122/04)

(2004/C 118/104)

(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 March 2004 by Outokumpu OYJ and Outokumpu Copper Products OY, Espoo (Finland), represented by J. Ratliff, Barrister, and F. Distefano and J. Louostarinen, lawyers.

The applicant claims that the Court should:

— annul Article 2 of the Commission's Decision dated 16 December 2003 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/E-1/38.240-Industrial tubes), insofar as it imposes a fine of 18.13 million euros on the applicant.

— reduce the fine imposed on the applicant in the said Decision under the Court's jurisdiction provided for in Article 17 of Council Regulation 17/62 and Article 230 of the EC Treaty.

— require the Commission to pay the costs of the proceedings, including those of the applicant.

Pleas in law and main arguments:

In support of its application, the applicant claims that the Commission erred in law when it increased the fine imposed on the applicant for recidivism, based on the decision of the Commission of 18 July 1990 in cold-rolled stainless steel flat products ([1]). The applicant invokes a violation of Article 15(2) of Regulation 17/62 ([2]), the 1998 Fining Guidelines ([3]), the principles of proportionality and equal treatment and of the obligation to state reasons. It also claims that the Commission made a manifest error of assessment.

Furthermore, the applicant claims that the Commission erred in law by increasing the fine for deterrence. According to the applicant, it has only become larger than the other companies involved at the very end or after the infringement and therefore did not have, at that time, the increased resources or greater economic power the Commission claims the applicant had. The applicant also invokes an infringement of fundamental principles limiting the Commission's discretion by considering only the turnover when assessing deterrent effect.

Finally, the applicant claims that the Commission erred in law by taking into account the full price including the price for the metal, namely, not only the producers' conversion margin for processing copper metal into industrial tubes, but also the underlying copper metal turnover which was not part of any unlawful cooperation.

([1]) 90/417/ECSC: Commission Decision of 18 July 1990 relating to a proceeding under Article 65 of the ECSC Treaty concerning an agreement and concerted practices engaged in by European producers of cold-rolled stainless steel flat products (OJ L 220, p. 28)

([2]) EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ English special edition: Series I Chapter 1959-1962, p. 87)

([3]) Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (OJ C 9, p. 3)

Action brought on 1 April 2004 by Jamal Ouariachi against the Commission of the European Communities

(Case T-124/04)

(2004/C 118/105)

(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 1 April 2004 by Jamal Ouariachi, resident in Rabat (Moroccco), represented by France Blanmailland, avocat.

The applicant claims that the Court should:

— Order the defendant to pay the applicant a total lump sum indemnity of EUR 150 000 by way of compensation for the non-material damage suffered by him;

— Order the defendant to pay the costs.

Pleas in law and main arguments:

The applicant holds Moroccan and Spanish citizenships and resides in Morocco. By the present action he seeks compensation for the non-material loss he alleges he has suffered because his ex-wife has left Morocco with their two children, thereby depriving him of his visitation rights with his children. The applicant's ex-wife allegedly went to Sudan to join a Commission official who provided her with an invitation from the European Union delegation in Sudan in order to enable her to obtain a visa.

The applicant also alleges that the agent in question signed his children's school reports on several occasions, thereby wrongfully assuming the applicant's identity.

Action brought on 28 March 2004 by Patrick Rousseaux against the Commission of the European Communities

(Case T-125/04)

(2004/C 118/106)

(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 28 March 2004 by Patrick Rousseaux, resident in Brussels, represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court of First Instance should:

— annul the decision of the appointing authority of 14 April 2003 inasmuch as it:

  — did not classify the applicant in Grade A6, step 3, at the time of his recruitment;

  — did not reconstitute the career in terms of the applicant's grade by bringing forward the date of his promotions to Grades A5 and A4;

  — limited the date of effect of the reclassification decision in regard to its pecuniary effects to 5 October 1995;

— annul the decision of the appointing authority of 11 December 2003, served on the applicant on 19 December 2003, rejecting his complaint R/474/03;

— order the defendant to pay compensation provisionally set in the amount of EUR 125 000 per annum in the event that, owing to impossibility, it is unable to reconstitute the applicant's career in terms of his grade;

— order the defendant to pay all the costs.

Pleas and main arguments

The applicant in these proceedings who, on his recruitment in October 1986, was classified in Grade A7, step 3, challenges the decision of the appointing authority classifying him, on revision, in Grade A6, step 2, and not in Grade A6, step 3, refusing to reconstitute his career and limiting the date of effect of the decision on his reclassification to 5 October 1995.

The pleas raised are identical to those in Case T-125/04 Rousseaux v Commisison

In support of his claims he asserts:

— on seniority in terms of step as at the date of recruitment, infringement of the Commission Decision of 6 June 1973 and 1 September 1983 on the criteria applicable to the appointment to grade and step classification on recruitment, infringement of Article 4(3) of the Staff Regulations and the principles of equal treatment, as well as breach of the duty to provide a statement of reasons;

— in regard to the refusal to reconstitute the applicant's career, infringement of Article 5(3) and 45 of the Staff Regulations;

— infringement of Article 62 of the Staff Regulations in regard to limitation of the pecuniary effects of the decision concerning his classification.

Action brought on 24 March 2004 by Willem Goris against the Commission of the European Communities

(Case T-126/04)

(2004/C 118/107)

(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 24 March 2004 by Willem Goris, resident in Strassen (Luxembourg), represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court of First Instance should:

— annul the decision of the appointing authority of 5 May 2003 inasmuch as it:

  — did not classify the applicant in Grade B4, step 3, at the time of his recruitment;

  — did not reconstitute the applicant's career in terms of his grade by bringing forward the date of his promotion to Grade B3 and granting him, if it so be, promotion to Grade B2;

  — limited the date of effect of the reclassification decision in regard to its pecuniary effects to 5 October 1995;

— in so far as necessary annul the implied decision of the appointing authority of 14 December 2003, rejecting his complaint R/487/03;

— order the defendant to pay compensation provisionally set in the amount of EUR 125 000 per annum in the event that, owing to impossibility, it is unable to reconstitute the applicant's career in terms of his grade;

— order the defendant to pay all the costs.

Pleas and main arguments

The applicant in these proceedings who, on his recruitment in September 1994, was classified in Grade B5, step 3, challenges the decision of the appointing authority classifying him, on revision, in Grade B4, step 2, and not in Grade B4, step 3, refusing to reconstitute his career and limiting the date of effect of the decision on his reclassification to 5 October 1995.

The pleas raised are identical to those in Case T-125/04 Rousseaux v Commisison

Action brought on 29 March 2004 by Carla Piccinni-Leopardi against Commission of the European Communities

(Case T-128/04)

(2004/C 118/108)

(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 29 March 2004 by Carla Piccinni-Leopardi, residing in Brussels, represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission decision of 14 April 2003 inasmuch as it fixes the classification at recruitment of the applicant at the second step of her grade, reviews and fixes 1 April 1999 as the date for her classification at Grade A5, Step 3, and restricts the pecuniary effects of its decision to 5 October 1995;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas put forward in the present case are the same as those relied on in Case T-402/03 Katalagarianakis v Commission (OJ 2004 C 35, p. 17).

Action brought on 1 April 2004 by Gerhard Frauerwieser against the Commission of the European Communities

(Case T-130/04)

(2004/C 118/109)

(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 1 April 2004 by Gerhard Frauerwieser, resident in Brussels, represented by Gilles Bounéou and Frédéric Frabetti, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— order the Commission to complete the applicant's individual file by drawing up his staff reports from the time of his employment at the Commission, 1 November 1996, in particular by drawing up his staff reports for the periods 1997-1999 and 1999-2001;

— annul the reporting year 2001-2002 in regard to the applicant;

— in the alternative, annul his career development report (CDR) for the period 1 July 2001 to 21 December 2002;

— make a ruling as to costs and fees and order the Commission to pay them.

Pleas in law and main arguments:

The applicant requests annulment of the reporting year 2001-2002 in his regard and challenges the AIPN's refusal to allow his application for his individual file to be completed by drawing up his missing staff reports. In the alternative, he requests the annulment of his career development report for the period 1 July 2001 to 31 December 2002.

In support of his application he argues:

— infringement of Articles 26 and 43 of the Staff Regulations and of the General Implementing Provisions;

— infringement of the Evaluation Guide and the specific guide for staff assessment for 2001-2002:

— infringement of the principle of non-discrimination;

— infringement of the principle of the protection of legitimate expectations and of the rule 'patere legem quam ipse fecisti';

— infringement of the duty to have regard to the welfare of staff.

Action brought on 26 March 2004 by Luc Jacobs against the Commission of the European Communities

(Case T-131/04)

(2004/C 118/110)

(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 26 March 2004 by Luc Jacobs, resident in Brussels, represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court of First Instance should:

— annul the decision of the appointing authority of 14 April 2003 inasmuch as it:

  — did not classify the applicant in Grade B4, step 3, at the time of his recruitment;

  — did not reconstitute the career in terms of the applicant's grade by bringing forward the date of his promotion to Grade B3 and granting him, if it so be, promotion to Grade B2;

  — limited the date of effect of the reclassification decision in regard to its pecuniary effects to 5 October 1995;

— annul the decision of the appointing authority of 11 December 2003, served on the applicant on 16 December 2003, rejecting his complaint R/4/73/03;

— order the defendant to pay compensation provisionally set in the amount of EUR 125 000 per annum in the event that, owing to impossibility, it is unable to reconstitute the applicant's career in terms of his grade;

— order the defendant to pay all the costs.

Pleas and main arguments

The applicant in these proceedings who, on his recruitment in January 1991, was classified in Grade B5, step 3, challenges the decision of the appointing authority classifying him, on revision, in Grade B4, step 2, and not in Grade B4, step 3, refusing to reconstitute his career and limiting the date of effect of the decision on his reclassification to 5 October 1995.

The pleas raised are identical to those in Case T-125/04 Rousseaux v Commisison

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Action brought on 7 April 2004 by Cementir Cementerie del Tirreno spa against the Commission of the European Communities

(Case T-138/04)

(2004/C 118/111)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 April 2004 by Cementir Cementerie del Tirreno spa, represented by Denis Fosselard and Piero Fattori, lawyers.

The applicant claims that the Court should:

— annul the decision contained in the letter of 28 January 2004 inasmuch as it sets the default interest on the fine the applicant is required to pay at the sum of EUR 4 770 949,89

— order the Commission to pay the costs.

Pleas in law and main arguments:

In the contested decision, the Commission applied a fixed rate of 7.25 % to determine the default interest owed on the amount of the fine imposed on Cementir by Commission Decision 94/815/EC of 30 November 1994, as amended by the Court of First Instance in Case T-87/95 of 15 March 2000, and subsequently upheld by the Court of Justice of the European Communities in Case C-219/00 P of 7 January 2004.

The applicant contests the decision and bases its action on two grounds.

In the first ground, it pleads infringement of the general principles of Community law and in particular of the right to effective judicial protection, since the application of a fixed rate of 7.25 % for a period of nine years has produced an excessive and particularly onerous amount of interest. According to the applicant, the use of a fixed rate, calculated on the basis of the market situation in 1995, proves completely unreasonable when applied to an extremely long time period such as more than nine years. Further, in the period in question market rates have fallen considerably and that has brought about a situation in which Cementir's right to judicial protection has been subject to particularly onerous conditions.

In its second ground, the applicant asks the Court to annul the decision contained in the letter of 28 January 2004 on account of infringement of the principle of proportionality enshrined in Article 5 (ex Article 3b) of the EC Treaty. Cementir considers that the application of a variable rate of interest (increased by a reasonable spread) would be as effective in attaining the objectives pursued by the Commission, without imposing unjustified restrictions on the right to full judicial protection.

Removal from the Register of Case T-248/99 ([1])

(2004/C 118/112)

(Language of the case: Dutch)

By order of 23 March 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-248/99, Autobedrijf Diepenmaat V.O.F supported by the Kingdom of the Netherlands v Commission of the European Communities.

([1]) OJ C 6 of 8.1.2000.

Removal from the Register of Case T-253/99 ([1])

(2004/C 118/113)

Language of the Case: Dutch

By order of 23 March 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-253/99, Oliehandel Van den Belt B.V. supported by the Kingdom of the Netherlands v Commission of the European Communities.

([1]) OJ C 6 of 8.1.2000.

Removal from the Register of Case T-320/99 ([1])

(2004/C 118/114)

(Language of the case: Dutch)

By order of 23 March 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-320/99, W.R. Milder supported by the Kingdom of the Netherlands v Commission of the European Communities.

([1]) OJ C 63 of 4.3.2000.

Removal from the Register of Case T-246/01 R ([1])

(2004/C 118/115)

Language of the case: English

By order of 24 March 2004, the President of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-246/01 R, GrafTech International Ltd v Commission of the European Communities.

([1]) OJ C 17 of 19.1.2002.

Removal from the Register of Case T-409/03 [1]

(2004/C 118/116)

(Language of the case: French)

By order of 27 April 2004, the President of the Third Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-409/03, Manuel Simões dos Santos v Office for Harmonisation in the Internal Market (Trade Marks and Designs).

[1] OJ C 59 of 6.3.2004.

Removal from the Register of Case T-82/04 [1]

(2004/C 118/117)

Language of the case: French

By order of 1 April 2004, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-82/04, Jamal Quariachi v Commission of the European Communities.

[1] Not yet published.

III

(Notices)

(2004/C 118/118)

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

OJ C 106, 30.4.2004

Past publications

OJ C 94, 17.4.2004

OJ C 85, 3.4.2004

OJ C 71, 20.3.2004

OJ C 59, 6.3.2004

OJ C 47, 21.2.2004

OJ C 35, 7.2.2004

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