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*(Information)*

# COURT OF JUSTICE

## COURT OF JUSTICE

### JUDGMENT OF THE COURT

**(Full Court)**

**of 22 June 2004**

**in Case C-42/01: Portuguese Republic v Commission of the European Communities** [1]

***(Community control of concentrations between undertakings — Article 21(3) of Council Regulation (EEC) No 4064/89 — Protection by Member States of their legitimate interests — Competence of the Commission)***

(2004/C 201/01)

*(Language of the case: Portuguese)*

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

In Case C-42/01: Portuguese Republic, (Agents: L.I. Fernandes and L. Duarte, assisted by M. Marques Mendes) v Commission of the European Communities (Agents: P. Oliver and M. França) — application for the annulment of Commission Decision C(2000) 3543 final-PT of 22 November 2000 in relation to a proceeding under Article 21 of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (Case No COMP/M.2054 – Secil/Holderbank/Cimpor) — the Court (Full Court), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, C. Gulmann, J.-P. Puissochet and J. N. Cunha Rodrigues, Presidents of Chambers, A. La Pergola, R. Schintgen, N. Colneric and S. von Bahr (Rapporteur), Judges; A. Tizzano, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 22 June 2004, in which it:

1. *Dismisses the action;*

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

[1] OJ C 108, 7.4.2001.

### JUDGMENT OF THE COURT

**(First Chamber)**

**of 17 June 2004**

**in Case C-30/02 (reference for a preliminary ruling from the Tribunal Tributário de Primeira Instância de Lisboa): Recheio — Cash & Carry SA v Fazenda Pública/Registo Nacional de Pessoas Colectivas** [1]

***(Recovery of sums paid though not due — Period of 90 days for the bringing of an action — Principle of effectiveness)***

(2004/C 201/02)

*(Language of the case: Portuguese)*

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

In Case C-30/02: REFERENCE to the Court under Article 234 EC from the Tribunal Tributário de Primeira Instância de Lisboa (Portugal) for a preliminary ruling in the proceedings pending before that court between Recheio — Cash & Carry SA and Fazenda Pública/Registo Nacional de Pessoas Colectivas, intervener: Ministério Público — on the interpretation of Community law concerning recovery of sums paid though not due — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola, S. von Bahr (Rapporteur), R. Silva de Lapuerta and K. Lenaerts, Judges; P. Jann, President of the Chamber, A. La Pergola, S. von Bahr (Rapporteur), R. Silva de Lapuerta and K. Lenaerts D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 17 June 2004, in which it has ruled:

*With regard to a claim for repayment of charges levied in breach of Community law, the principle of effectiveness of Community law does not militate against the fixing of a limitation period of 90 days reckoned from the end of the period prescribed for voluntary payment of those charges.*

[1] OJ C 97, 20.4.2002.

## JUDGMENT OF THE COURT

**(Second Chamber)**

**of 24 June 2004**

**in Case C-49/02 (reference for a preliminary ruling from the Bundespatentgericht): Heidelberger Bauchemie GmbH** [1]

***(Trade marks — Harmonisation of laws — Directive 89/104/EEC — Signs capable of constituting a trade mark — Combinations of colours — Colours blue and yellow for certain products used in the building trade)***

(2004/C 201/03)

*(Language of the case: German)*

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

In Case C-49/02: reference to the Court under Article 234 EC from the Bundespatentgericht (Germany) for a preliminary ruling in the proceedings brought before that court by Heidelberger Bauchemie GmbH — on the interpretation of Article 2 of the 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 (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and N. Colneric, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 24 June 2004, in which it has ruled:

*Colours or combinations of colours which are the subject of an application for registration as a trade mark, claimed in the abstract, without contours, and in shades which are named in words by reference to a colour sample and specified according to an internationally recognised colour classification system may constitute a trade mark for the purposes of Article 2 of the First Council Directive (89/104/EEC) of 21 December 1988 to approximate the laws of the Member States relating to trade marks where:*

— *it has been established that, in the context in which they are used, those colours or combinations of colours in fact represent a sign, and*

— *the application for registration includes a systematic arrangement associating the colours concerned in a predetermined and uniform way.*

*Even if a combination of colours satisfies the requirements for constituting a trade mark for the purposes of Article 2 of the Directive, it is still necessary for the competent authority for registering trade marks to decide whether the combination claimed fulfils the other requirements laid down, particularly in Article 3 of the Directive, for registration as a trade mark in relation to the goods or services of the undertaking which has applied for its registration. Such an examination must take account of all the relevant circumstances of the case, including any use which has been made of the sign in respect of which trade mark registration is sought. That examination must also take account of the public interest in not unduly restricting the availability of colours for other traders who market goods or services of the same type as those in respect of which registration is sought.*

[1] OJ C 131, 1.6.2002.

## JUDGMENT OF THE COURT

**(Fourth Chamber)**

**of 24 June 2004**

**in Case C-119/02: Commission of the European Communities v Hellenic Republic** [1]

***(Failure of a Member State to fulfil obligations — Second subparagraph of Article 3(1) and Article 5(2) of Directive 91/271/EEC — Discharge of urban waste water into a sensitive area — Lack of a collecting system — Lack of treatment more stringent than the secondary treatment provided for in Article 4 of the Directive)***

(2004/C 201/04)

*(Language of the case: Greek)*

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

In Case C-119/02: Commission of the European Communities (Agents: G. Valero Jordana and M. Konstantinidis) v Hellenic Republic (Agent: E. Skandalou) — application for a declaration that, by not taking the measures necessary for the installation of a collecting system for urban waste water from the area of Thriasio Pedio and not subjecting urban waste water from that area to treatment more stringent than secondary treatment before its discharge into the sensitive area of the Gulf of Elefsina, the Hellenic Republic has failed to fulfil its obligations

under Articles 3(1) and 5(2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40), as amended by Commission Directive 98/15/EC of 27 February 1998 (OJ 1998 L 67, p. 29) — the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues, President of the Chamber, J.-P. Puissochet and F. Macken (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 24 June 2004, in which it:

1. *Declares that, by not taking the measures necessary for the installation of a collecting system for urban waste water from the area of Thriasio Pedio and not subjecting urban waste water from that area to treatment more stringent than secondary treatment before its discharge into the sensitive area of the Gulf of Elefsina, the Hellenic Republic has failed to fulfil its obligations under the second subparagraph of Article 3(1) and Article 5(2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, as amended by Commission Directive 98/15/EC of 27 February 1998;*

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

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([1]) OJ C 131, 1.6.2002.

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**JUDGMENT OF THE COURT**

**(Second Chamber)**

**of 24 June 2004**

**in Case C-212/02: Commission of European Communities v Austria Republic** ([1])

***(Failure of a Member State to fulfil obligations — Directives 89/665/EEC and 92/13/EEC — Inadequate transposition — Obligation that legislation relating to the award of public contracts provide for a procedure whereby all unsuccessful tenderers may have the award decision set aside)***

(2004/C 201/05)

*(Language of the case: German)*

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

In Case C-212/02, Commission of the European Communities (Agent: M. Nolin, assisted by R. Roniger) v Republic of Austria (Agents: C. Pesendorfer and M. Fruhmann) — application for a declaration that, inasmuch as the Landesvergabegesetze (regional public procurement laws) of the Länder of Salzburg, Styria, Lower Austria and Carinthia do not in all cases provide for a review procedure whereby an unsuccessful tenderer may have an award decision set aside, the Republic of Austria has failed to fulfil its obligations under Article 2(1)(a) and (b) 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) and of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and admnistrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1991 L 76, p. 14) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet (Rapporteur), R. Schintgen, F. Macken and N. Colneric, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, has given a judgment on 24 June 2004, in which it:

1. *Declares that inasmuch as the Landesvergabegesetze (regional public procurement laws) of the Länder of Salzburg, Styria, Lower Austria and Carinthia do not in all cases provide for a review procedure whereby an unsuccessful tenderer may have an award decision set aside, the Republic of Austria has failed to fulfil its obligations under Article 2(1)(a) and (b) 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 and of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors;*

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

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([1]) OJ C 180, 27.7.2002.

## JUDGMENT OF THE COURT

**(Second Chamber)**

**24 June 2004**

**in Case C-278/02 (reference for a preliminary ruling from the Berufungssenat I der Region Linz bei der Finanzlandesdirektion für Oberösterreich): Herbert Handlbauer GmbH** [1]

***(Agriculture — Common organisation of the markets — Beef and veal — Export refunds — Repayment of amounts wrongly paid — Proceedings relating to irregularities — Article 3 of Regulation (EC, Euratom) No 2988/95 — Direct effect — Limitation period — Interruption of the limitation)***

(2004/C 201/06)

*(Language of the case: German)*

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

In Case C-278/02: Reference to the Court under Article 234 EC from the Berufungssenat I der Region Linz bei der Finanzlandesdirektion für Oberösterreich (Austria) for a preliminary ruling in the proceedings pending before that court by Herbert Handlbauer GmbH — on the interpretation of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1) — the Court, composed of: C.W.A. Timmermans, President of the Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen (Rapporteur) and N. Colneric, Judges; A. Tizzano, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 24 June 2004, in which it has ruled:

1. *Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests is directly applicable in the Member States, including in the field of export refunds on agricultural products, in the absence of sectoral Community rules providing for a shorter limitation period which may not be less than three years or of national rules providing for a longer limitation period.*

2. *The third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that notification of a customs inspection made to the undertaking involved does not constitute an act relating to investigation or legal proceedings which interrupts the limitation period of four years under Article 3(1) of the said regulation unless the transactions to which the suspicion of the existence of irregularities are sufficiently precisely defined by the act.*

[1] OJ C 289, 23.11.2002.

## JUDGMENT OF THE COURT

**(First Chamber)**

**of 24 June 2004**

**in Case C-350/02: Commission of the European Communities v Kingdom of the Netherlands** [1]

***(Failure of a Member State to fulfil its obligations — Processing of personal data and the protection of privacy in the electronic communications sector — Articles 6 and 9 of Directive 97/66/EC — Requirement for specific statement of grounds of complaint in the reasoned opinion)***

(2004/C 201/07)

*(Language of the case: Dutch)*

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

In Case C-350/02: Commission of the European Communities (Agents: M. Shotter and W. Wils) v Kingdom of the Netherlands (Agent: S. Terstal ) — application for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose into national law Articles 6 and 9 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ 1998 L 24, p. 1) or, at least, by not communicating those provisions to the Commission, the Kingdom of the Netherlands has failed to fulfil its obligations under the EC Treaty — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts (Rapporteur), Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 24 June 2004, in which it:

1. *Declares that, by incompletely transposing Article 6 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, in that, first, Article 11(5)(1) of the Wet houdende regels inzake de telecommunicatie (Telecommunicatiewet) refers to a general administrative measure which was not communicated to the Commission of the European Communities and in that, second, the implementing provisions mentioned in Article 11(5)(3) of the Telecommunicatiewet were not communicated to the Commission, and by incompletely transposing Article 9 of that directive, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;*

2. *Dismisses the remainder of the action;*

3. *Orders the Kingdom of the Netherlands to bear, in addition to its own costs, three quarters of the Commission's costs;*

4. *Orders the Commission, as to the remainder of the action to bear its own costs.*

(1) OJ C 323, 21.12.2002.

## JUDGMENT OF THE COURT

**(Third Chamber)**

**of 24 June 2004**

**in Case C-421/02: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland** (1)

***(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Incomplete transposition)***

(2004/C 201/08)

*(Language of the case: English)*

In Case C-421/02: Commission of the European Communities (Agent: X. Lewis) v United Kingdom of Great Britain and Northern Ireland (Agent: P. Ormond) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Article 4(2) 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), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5), in relation to projects listed in Annex II, paragraph 1(b) and 1(c), to that directive, or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive — the Court (Third Chamber), composed of: A. Rosas, President of the Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 24 June 2004, in which it:

1. *Declares that, by failing to adopt in Scotland and Northern Ireland the laws, regulations and administrative provisions necessary to comply with Article 4(2) 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, as amended by Council Directive 97/11/EC of 3 March 1997, in relation to projects listed in Annex II, paragraph 1(c), to the Directive and by failing to notify the measures taken to implement that provision in England and Wales, the United Kingdom has failed to fulfil its obligations under that directive;*

2. *Orders the United Kingdom to pay the costs.*

(1) OJ C 7, 11.1.2002.

## JUDGMENT OF THE COURT

**(Fifth Chamber)**

**of 22 June 2004**

**in Case C-439/02: Commission of the European Communities v French Republic** (1)

***(Failure of a Member State to fulfil its obligations — Maritime Transport — Directive 95/21/EC — Maritime safety — Port State control of vessels — Insufficient number of inspections)***

(2004/C 201/09)

*(Language of the case: French)*

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

In Case C-439/02: Commission of the European Communities (Agents: K. Simonsson and W. Wils ) v French Republic (Agents: G. de Bergues and P. Boussaroque ) — application for a declaration that, by failing to carry out a total number of annual inspections corresponding to at least 25 % of the number of individual vessels which entered its ports in 1999 and 2000, the French Republic has failed to fulfil its obligations under Article 5(1) of Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1995 L 157, p. 1), — the Court (Fifth Chamber), composed of: C. Gulmann, President of the Chamber, S. von Bahr and R. Silva de Lapuerta (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 22 June 2004, in which it:

1. *Declares that, by failing to carry out inspections of at least 25 % of the number of individual vessels which entered its ports in 1999 and 2000, the French Republic has failed to fulfil its obligations under Article 5(1) of Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control);*

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

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([1]) OJ C 19, 25.1.2003.

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**JUDGMENT OF THE COURT**

**(Fifth Chamber)**

**of 17 June 2004**

**in Case C-99/03: Commission of the European Communities v Ireland** ([1])

***(Failure of a Member State to fulfil its obligations — Directive 2000/52/EC — Transparency of financial relations between Member States and public undertakings — Failure to implement within the prescribed period)***

(2004/C 201/10)

*(Language of the case: English)*

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

In Case C-99/03: Commission of the European Communities (Agent: J. Flett) v Ireland (Agent: D. O'Hagan) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ 2000 L 193, p. 75) or, in any event, by failing to notify the Commission of those measures, Ireland has failed to fulfil its obligations under that directive — the Court (Fifth Chamber), composed of: C. Gulmann, President of the Chamber, S. von Bahr (Rapporteur) and R. Silva de Lapuerta, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 17 June 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, Ireland has failed to fulfil its obligations under that directive;*

2. *Orders Ireland to pay the costs.*

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([1]) OJ C 101, 26.4.2003.

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**JUDGMENT OF THE COURT**

**(Fourth Chamber)**

**of 10 June 2004**

**in Case C-302/03: Commission of the European Communities v Italian Republic** ([1])

***(Failure of a Member State to fulfil its obligations — Directive 1999/22/EC — Keeping of wild animals in zoos — Failure to implement within the period prescribed)***

(2004/C 201/11)

*(Language of the case: Italian)*

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

In Case C-302/03: Commission of the European Communities (Agents: M. van Beek and R. Amorosi) v Italian Republic (Agent: I.M. Braguglia, assisted by G. de Bellis) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ 1999 L 94, p. 24), or, in any event, by failing to notify those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under that directive — 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 given a judgment on 10 June 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, the Italian Republic has failed to fulfil its obligations under that directive;*

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

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([1]) OJ C 213, 6.9.2003.

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**Reference for a preliminary ruling by the Simvoulio tis Epikratias by judgment of that court of 3 March 2004 in the case of Elmeka N.E. against the Minister for Economic Affairs**

**(Case C-182/04)**

(2004/C 201/12)

Reference has been made to the Court of Justice of the European Communities by judgment of the Simvoulio tis Epikratias (Council of State, Greece) of 3 March 2004, received at the Court Registry on 19 April 2004, for a preliminary ruling in the case of Elmeka N.E. against the Minister for Economic Affairs on the following questions:

The questions in the present case match the questions in Case C-181/04.

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**Reference for a preliminary ruling by the Simvoulio tis Epikratias by judgment of that court of 3 March 2004 in the case of Elmeka N.E. against the Minister for Economic Affairs**

**(Case C-183/04)**

(2004/C 201/13)

Reference has been made to the Court of Justice of the European Communities by judgment of the Simvoulio tis Epikratias (Council of State, Greece) of 3 March 2004, received at the Court Registry on 19 April 2004, for a preliminary ruling in the case of Elmeka N.E. against the Minister for Economic Affairs on the following questions:

The questions in the present case match the questions in Case C-181/04.

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**Action brought on 7 May 2004 by the Commission of the European Communities against the Federal Republic of Germany**

**(Case C-204/04)**

(2004/C 201/14)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 7 May 2004 by the Commission of the European Communities, represented by Nicola Yarrell, of the Commission's Legal Service, and Horstpeter Kreppel, a labour court judge appointed to the Commission's Legal Service under the exchange programme for national public servants, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that the Federal Republic of Germany has infringed the principle of equal treatment for men and women laid down under Articles 1, 2 and 5 of Council Directive 76/207/EEC ([1]), and Clause 4 of the Framework Agreement on part-time work concluded between UNICE, CEEP and the ETUC set out in the Annex to Council Directive 97/81/EC ([2]), in that it indirectly discriminates against women, who form the great majority of part-time employees working less than 18 hours a week in the German public sector, by excluding,

   (a) under Paragraph 14(2) of the Bundespersonalvertretungsgesetz (Federal Law on staff committees in the public sector) and the equivalent regulations applying in the *Länder* of

   — Bavaria

   — Berlin

   — Bremen

   — Hesse,

   part-time employees who normally work less than 18 hours a week, and

   (b) in the *Länder* of

   — Mecklenburg-Western Pomerania

   — Saxony

   — Schleswig-Holstein

   — Thuringia,

   part-time employees who work less than half of the normal weekly hours of work,

   (c) in the *Länder* of

   — Baden-Württemberg

   — Brandenburg

   — Rhineland-Palatinate

   — Saxony-Anhalt,

   part-time employees who work less than one-third of the normal weekly hours of work,

(d) in North Rhine-Westphalia,

part-time employees who less than 2/5 of the normal weekly hours of work,

(e) in Lower Saxony,

part-time employees who, for a period of up to two months in the course of a year, are employed for less than 15 hours a week,

from eligibility for election to staff committees.

2. Order the Federal Republic of Germany to pay the costs.

*Pleas in law and main arguments:*

The exclusion from eligibility for election to staff committees, for public sector workers employed by the Federal Republic and almost all *Länder*, of part-time employees who normally work less than 18 hours a week (the number of hours is somewhat less in certain *Länder*) constitutes indirect discrimination against women, as they form the great majority of part-time workers. This is accordingly in breach of Directive 76/207/EEC. The rules are also incompatible with Directive 97/81/EC, which provides that part-time workers may not be treated in a less favourable manner than full-time workers unless such different treatment is justified on objective grounds.

However, there are no objective grounds for the exclusion from eligibility for election. The restricted presence of the relevant employees in the workplace could be compensated for by the creation of flexible working time arrangements and modern means of communication. The Betriebsverfassungsgesetz (Law on labour relations at the workplace), which governs elections to works councils in the private sector, does not restrict eligibility for election in the same way. Such works councils perform the same functions as staff committees in the public sector. Representation of the excluded groups is necessary because they have separate interests, which otherwise would not be taken into account.

(1) OJ 1976 L 39, p. 40.
(2) OJ 1998 L 14, p. 9.

## Action brought on 24 May 2004 by the United Kingdom against the European Parliament and the Council of the European Union

**(Case C-217/04)**

(2004/C 201/15)

An action against the European Parliament and the Council of the European Union was brought before the Court of Justice of the European Communities on 24 May 2004 by the United Kingdom, represented by Mark Bethell, acting as agent; assisted by Lord Goldsmith QC, Her Majesty's Attorney General; Nicholas Paines QC and Tim Ward, with an address for service in Luxembourg.

The Applicant claims that the Court should:

— declare that Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Agency (1) is invalid;

— order the European Parliament and the Council of the European Union to pay the United Kingdom's costs.

*Pleas in law and main arguments:*

The contested Regulation (Regulation (EC) No 460/2004, the 'ENISA Regulation') sets up a European Network and Information Security Agency ('the Agency') whose function is to provide guidance, advice and assistance to the Commission, the Member States and the business community on issues relating to network and information security within the scope of the ENISA Regulation. The United Kingdom supports the establishment of the Agency, but submits that article 95 EC does not provide a proper legal basis for doing so. The ENISA Regulation is concerned entirely with the creation of the Agency as a Community body; it prescribes the Agency's objectives and tasks and makes provision for its management and organisation and work programme; in addition it makes provision as to the Agency's budget, legal status, privileges and immunities and working languages. The provisions of the ENISA Regulation take effect entirely at the level of the institutional law of the Community.

The United Kingdom submits that the legislative power conferred by article 95 EC is a power to harmonise national laws; it is not a power to set up Community bodies or to confer tasks upon such bodies. Such matters lie outside the scope of national law, and Community legislation which sets up such a body, or confers tasks upon it, cannot harmonise national law within the meaning of article 95.

None of the provisions of the ENISA Regulation approximate, even indirectly, any provision of national law. On the contrary, the Agency is expressly precluded from interfering with the competencies of national bodies and the objectives and tasks of the Agency are expressed in article 1(3) to be without prejudice to the competence of Member States.

The provisions of the ENISA Regulation therefore fall outside the power of harmonisation conferred on the Parliament and Council by article 95 and the only appropriate legal basis for such a measure could be article 308 EC.

(1) OJ L 077, 13.03.2004, p. 1.

**Reference for a preliminary ruling by the Tribunale di Gorizia by order of that court of 7 April 2004 in the case of Azienda Agricola Roberto and Andrea Bogar against Agenzia per le erogazioni in Agricoltura (AGEA) and Cospalat Friuli Venezia Giulia**

**(Case C-224/04)**

(2004/C 201/16)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Gorizia (District Court, Gorizia, Italy) of 7 April 2004, received at the Court Registry on 28 May 2004, for a preliminary ruling in the case of Azienda Agricola Roberto and Andrea Bogar against Agenzia per le erogazioni in Agricoltura (AGEA) and Cospalat Friuli Venezia Giulia on the following question:

— Since the legal nature of the additional levy on milk and milk products must therefore be determined in the light of the provisions of Community law under which that levy was introduced and the basic rules governing its application were established (in particular Regulation No 856/84 [1] of 31 March 1984 and Regulation No 3950/92 [2] of 28 December 1992), must Article 1 of Regulation (EEC) No 856/84 of 31 March 1984 and Articles 1 to 4 of Regulation No 3950/92 of 28 December 1992 be interpreted as meaning that the additional levy on milk and milk products is in the nature of an administrative penalty with the result that producers are liable to pay it only where quantities allocated have been exceeded by them intentionally or as a result of negligence?

[1] OJ L 90 of 1. 4. 1984, p. 10.
[2] OJ L 405 of 31. 12. 1992, p. 1.

**Reference for a preliminary ruling by the Hanseatisches Oberlandesgericht in Bremen by order of that court of 27 May 2004 in case of Crailsheimer Volksbank eG against Klaus Conrads, Frank Schulzke and Petra Schulzke-Lösche, and Joachim Nitschke.**

**(Case C-229/01)**

(2004/C 201/17)

Reference has been made to the Court of Justice of the European Communities by order of the Hanseatisches Oberlandesgericht in Bremen (Germany) of 27 May 2004, received at the Court Registry on 2 June 2004, for a preliminary ruling in the case of Crailsheimer Volksbank eG against Klaus Conrads, Frank Schulzke and Petra Schulzke-Lösche, and Joachim Nitschke, on the following questions:

1. Is it compatible with Article 1(1) of Directive 85/577/EEC [1] for the rights of consumers, in particular their right of cancellation, to be made subject not only to the existence of a doorstep-selling situation as referred to in Article 1(1) of the directive but also to additional criteria for responsibility, such as a trader's deliberate use of a third party in the conclusion of the agreement or a trader's negligence in respect of the third party's conduct in connection with the doorstep selling?

2. Is it compatible with Article 5(2) of Directive 85/577/EEC for a mortgage borrower, who not only concluded the loan agreement in a doorstep-selling situation but also arranged, in that situation, for the loan to be paid into an account which, in practice, is no longer at his disposal, to have to pay back the loan to the lender if the agreement is cancelled?

3. Is it compatible with Article 5(2) of Directive 85/577/EEC for the mortgage borrower, if he is required to pay back the loan following cancellation, to have to do so not on the instalment repayment dates laid down in the agreement but immediately in a one-off sum?

4. Is it compatible with Article 5(2) of Directive 85/577/EEC for the mortgage borrower, if he is also required to pay back the loan following cancellation, to have to pay interest on it at the normal market rate?

[1] OJ L 372, p. 31.

**Action brought on 2 June 2004 by the Commission of the European Communities against the French Republic**

**(Case C-230/04)**

(2004/C 201/18)

An action against the French Republic was brought before the Court of Justice of the European Communities on 2 June 2004 by the Commission of the European Communities, represented by G. Rozet, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by not allowing to be taken into account the experience and seniority, in another Member State's public sector, of Community nationals who join the French hospital public service, the French Republic has failed to fulfil its obligations under Article 39 EC and Article 7 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement of workers within the Community ([1]);

— order the French Republic to pay the costs.

*Pleas in law and main arguments*

The Member States are required to take into account, for the purposes of migrant workers' recruitment to, and grading and determination of seniority in their public services, employment periods in a comparable field of activity in another Member State, on the same conditions as apply to seniority and professional experience attained in the workers' own systems. The French provisions in force do not allow the experience and seniority, in another Member State's public sector, of Community nationals who join the French hospital public service to be taken into account.

([1]) OJ L 257, of 19.10.1968, p. 2.

**Reference for a preliminary ruling by the Tribunale Amministrativo Regionale per il Lazio by order of that court of 23 February 2004 in the case of Confcooperative Unione Regionale della Cooperazione FVG Federagricole and Others against Ministero delle Politiche Agricole e Forestali and Regione Veneto**

**(Case C-231/04)**

(2004/C 201/19)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrativo Regionale per il Lazio of 23 February 2004, received at the Court Registry on 3 June 2004, for a preliminary ruling in the case of Confcooperative Unione Regionale della Cooperazione FVG Federagricole and Others against Ministero delle Politiche Agricole e Forestali and Regione Veneto on the following questions:

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

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

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

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

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

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

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**Reference for a preliminary ruling by the Arbeitsgericht Düsseldorf by order of that court of 5 May 2004 in the case of Ms Gül Demir against Securicor Aviation Limited, Securicor Aviation (Germany) Limited and Kötter Security GmbH & Co. KG.**

**(Case C-233/04)**

(2004/C 201/20)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht Düsseldorf (Labour Court, Düsseldorf) (Germany) of 5 May 2004, received at the Court Registry on 3 June 2004, for a preliminary ruling in the case of Ms Gül Demir against Securicor Aviation Limited, Securicor Aviation (Germany) Limited and Kötter Security GmbH & Co. KG, on the following question:

1. In examining whether there is — irrespective of the question of ownership — a transfer of a business within the meaning of Article 1 of Directive 2001/23/EC [1] in the context of a fresh award of a contract, does the transfer of the assets from the original contractor to the new contractor — having regard to all the facts — presuppose their transfer for independent commercial use by the transferee? By extension, is conferment on the contractor of a right to determine the manner in which the assets are to be used in its own commercial interest the essential criterion for a transfer of assets? On that basis, is it necessary to determine the operational significance of the contracting authority's assets for the service provided by the contractor?

2. If the Court answers Question 1 in the affirmative:

   (a) Is it precluded to classify assets as being for independent commercial use if they are made available to the contractor by the contracting authority solely for their use and responsibility for maintaining those assets, including the associated costs, is borne by the contracting authority?

   (b) Is there independent commercial use by the contractor when, for the purpose of conducting airport security checks, it uses the walk-through metal detectors, hand-held metal detectors and X-ray equipment supplied by the contracting authority?

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[1] OJ L 82, 22.3.2001, p. 16.

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**Action brought on 4 June 2004 by the Commission of the European Communities against the Kingdom of Spain**

**(Case C-235/04)**

(2004/C 201/21)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 4 June 2004 by the Commission of the European Communities, represented by D.M. van Beek and Gregorio Valero Jordana, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to classify territories of a sufficient number and size as special protection areas for birds in order to provide protection for all the species of birds listed in Annex I to Council Directive 79/409/EEC [1] of 2 April 1979 on the conservation of wild birds and for the migratory species not mentioned in the said Annex I, the Kingdom of Spain has failed to fulfil its obligations under that directive;

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

*Pleas in law and main arguments*

Article 4(1) and (2) of Directive 79/409/EC places on Members States an obligation to classify territories as special protection areas for the conservation of birds, to ensure effective protection of the species listed in Annex I to that directive and of regularly occurring migratory species, in order to guarantee their survival and reproduction in their area of distribution. That obligation relates, as a minimum, to all the most suitable territories, as regards their number and size, for the conservation of the species concerned, having regard to their protection requirements. What constitutes a sufficient number of special protection areas is determined by reference to the objective pursued.

The Member Stakes enjoy a degree of latitude in determining which territories best meet the requirements listed in Article 4 of the directive, but they must base their evaluations solely on scientific ornithological criteria. In the case of Spain, the inventory of important bird areas (IBA) drawn up by the Sociedad Española de Ornitología (Spanish Ornithological Society) in 1998 (SEO/Birdlife Inventory 98) constitutes the best documented and most accurate basis available for defining the most suitable territories for conservation and, in particular, for the survival and reproduction of important species. That inventory is based on balanced ornithological criteria, making it possible to indicate which places are most suitable for guaranteeing conservation of all the species mentioned in Annex 1 and other migratory species, and identifies the priority areas for the conservation of birds in Spain.

From a comparison of the data of the SEO/Birdlife Inventory 98 with the special protection areas designated by the Kingdom of Spain, for Spanish territory as a whole, and from a more detailed analysis by the Autonomous Communities, it can be inferred that the number and size of the areas classified as special protection areas fall short of what scientific evidence indicates as the areas most suitable for providing adequate protection of the birds covered by Article 4 of the directive.

[1] OJ L 103 of 25.4.1979, p. 1.

## Reference for a preliminary ruling by the Tribunale di Cagliari by order of that court of 14 May 2004 in the case of Enirisorse SpA and Sotacarbo SpA

**(Case C-237/04)**

(2004/C 201/22)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Cagliari (Cagliari District Court) of 14 May 2004, received at the Court Registry on 7 June 2004, for a preliminary ruling in the case of Enirisorse SpA and Sotacarbo SpA on the following questions:

(a) Does Article 33 of Law [273/02] implement an incompatible State aid in favour of Sotacarbo SpA., within the meaning of Article 87 of the Treaty and does it do so, moreover, unlawfully in so far as the Commission was not informed of that aid, within the meaning of Article 88(3) EC?

(b) Does Article 33 of Law [273/02] conflict with Articles 43, 44, 48 and 49 et seq. EC, concerning freedom of establishment and the free movement of services?

## Action brought on 14 June 2004 by the Commission of the European Communities against the Hellenic Republic

**(Case C-250/04)**

(2004/C 201/23)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 14 June 2004 by the Commission of the European Communities, represented by Georgios Zavvos and Michael Shotter, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt, or in any event to notify to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2002/19/EC [1] of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

*Pleas in law and main arguments*

The period for transposition of the directive into national law expired on 24 July 2003.

(1) OJ No L 108, 24.4.2002, p. 7.

**Action brought on 14 June 2004 by the Commission of the European Communities against the Hellenic Republic**

**(Case C-251/04)**

(2004/C 201/24)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 14 June 2004 by the Commission of the European Communities, represented by Georgios Zavvos and Knut Simonsson, of its Legal Service.

The Commission claims that the Court should:

— declare that, by allowing only vessels flying the Greek flag to provide towage services on the high seas, the Hellenic Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 3577/92 (1) of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage);

— order the Hellenic Republic to pay the costs.

*Pleas in law and main arguments*

The Greek legislative provisions in force are contrary to Article 1 of Regulation (EEC) No 3577/92.

(1) OJ No L 364, 12.12.1992, p. 7.

**Action brought on 14 June 2004 by the Commission of the European Communities against the Hellenic Republic**

**(Case C-252/04)**

(2004/C 201/25)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 14 June 2004 by the Commission of the European Communities, represented by Georgios Zavvos and Michael Shotter, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt, and in any event to notify to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2002/22/EC (1) of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

*Pleas in law and main arguments*

The period for transposition of the directive into national law expired on 24 July 2003.

(1) OJ No L 108, 24.4.2002, p. 51.

**Action brought on 14 June 2004 by the Commission of the European Communities against the Hellenic Republic**

**(Case C-253/04)**

(2004/C 201/26)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 14 June 2004 by the Commission of the European Communities, represented by Georgios Zavvos and Michael Shotter, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt, and in any event to notify to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2002/21/EC (1) of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

*Pleas in law and main arguments*

The period for transposition of the directive into national law expired on 24 July 2003.

(1) OJ No L 108, 24.4.2002, p. 33.

**Action brought on 14 June 2004 by the Commission of the European Communities against the Hellenic Republic**

**(Case C-254/04)**

(2004/C 201/27)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 14 June 2004 by the Commission of the European Communities, represented by Georgios Zavvos and Michael Shotter, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt, and in any event to notify to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2002/20/EC ([1]) of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

*Pleas in law and main arguments*

The period for transposition of the directive into national law expired on 24 July 2003.

([1]) OJ L 108, 24.4.2002, p. 21.

**Reference for a preliminary ruling by the Cour du travail de Liège (9th Chamber), by a judgment of that court of 7 June 2004 in the case of Office national de l'emploi against Ioannis Ioannidis**

**(Case C-258/04)**

(2004/C 201/28)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour du travail de Liège, (9th Chamber) (Higher Labour Court, 9th Chamber, Liège), Belgium, of 7 June 2004, received at the Court Registry on 17 June 2004, for a preliminary ruling in the case of Office national de l'emploi against Ioannis loannidis on the following question:

Is it contrary to Community law (in particular Articles 12, 17 and 18 of the EC Treaty) for rules of a Member State (such as, in Belgium, the Royal Decree of 25 November 1991 on unemployment) which provide for a tideover allowance to be given to a job seekers who are (in principle) less than 30 years old on the basis of the secondary education they have completed to apply to job seekers who are nationals of another Member State the condition, applicable equally to its own nationals, that the allowance is granted only if the required education has been completed in an educational establishment run, subsidised or recognised by one of the three national Communities (as laid down in the Royal Decree by Article 36(1)1(2)(a)), with the result that the tideover allowance is refused in the case of a young job seeker who is not a member of the family of a migrant worker, but who is a national of another Member State in which, before moving within the Union, he had pursued and completed secondary education, recognised as equivalent to the education required by the authorities of the State in which the application for the tideover allowance has been made?

**Action brought on 23 June 2004 by the Commission of the European Communities against the Federal Republic of Germany**

**(Case C-262/04)**

(2004/C 201/29)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 23 June 2004 by the Commission of the European Communities, represented by Walter Mölls and Karolina Mojzesowicz, of the Commission's Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by failing to supply to the Commission such information as would allow the Commission to confirm that the provisions of the directive have been complied with, the Federal Republic of Germany is in breach of its obligations under Article 9 of Commission Directive 2002/77/EC ([1]) of 16 September 2002 on competition in the markets for electronic communications networks and services;

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

*Pleas in law and main arguments:*

Under Article 9 of Commission Directive 2002/77/EC, Member States were to supply to the Commission by not later than 24 July 2003 such information as would allow the Commission to confirm that the provisions of that directive have been complied with. That period has expired without the Federal Republic of Germany supplying to the Commission the information required under Article 9.

([1]) OJ L 249, p. 21.

## Action brought on 24 June 2004 by the Commission of the European Communities against the French Republic

**(Case C-263/04)**

(2004/C 201/30)

An action against the French Republic was brought before the Court of Justice of the European Communities on 24 June 2004 by the Commission of the European Communities, represented by E. Gippini Fournier and K. Mojzesowicz, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to supply the Commission with the information necessary to allow it to confirm that the provisions of Directive 2002/77/EC [1] have been complied with, France has failed to fulfil its obligations under Article 9 of that directive;
2. order the French Republic to pay the costs.

*Pleas in law and main arguments*

Article 9 of Directive 2002/77/EC requires the Member States to supply the Commission, by not later than 24 July 2003, with such information as to allow it to confirm that the provisions of that directive have been complied with.

[1] Commission Directive 2002/77/EC of 16 September 2002 on competition in markets for electronic communications networks and services (OJ 2002 L 249, p. 21).

## Reference for a preliminary ruling by the Tribunal des affaires de sécurité sociale de Saint-Etienne by judgment of that Tribunal of 5 April 2004 in the case of SAS Bricorama France against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC

**(Case C-276/04)**

(2004/C 201/31)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal des affaires de sécurité sociale de Saint-Etienne (Saint-Etienne Social Security Tribunal) (France) of 5 April 2004, received at the Court Registry on 29 June 2004, for a preliminary ruling in the case of SAS Bricorama France against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC.

The Tribunal des affaires de sécurité sociale de Saint-Etienne asks the Court of Justice of the European Communities to give a preliminary ruling on the following question:

Should Article 87 EC be interpreted as meaning that State funding by France through the Comité Professionnel de la Distribution des Carburants (Fuel Distributors' Trade Committee) ('the CPDC') and through the Fonds d'Intervention pour la Sauvegarde de l'Artisanat et du Commerce (Intervention Fund for the Support of Crafts and Trade) ('the FISAC') by way of assistance when self-employed craftsmen and traders retire and grants made to the old-age insurance scheme for self-employed persons in manufacturing and trading occupations, and to the scheme for self-employed persons in the craft sector constitute State aid?

## Removal from the register of Case C-258/03 [1]

(2004/C 201/32)

By order of 17 May 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-258/03: Commission of the European Communities v French Republic.

[1] OJ C 213, 6.9.2003.

## Removal from the register of Case C-382/03 [1]

(2004/C 201/33)

By order of 11 May 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-382/03 (reference for a preliminary ruling from the Supreme Court, Dublin): Ryanair Ltd v Aer Rianta cpt.

[1] OJ C 275, 15.11.2003.

## COURT OF FIRST INSTANCE

### Assignment of Judges to Chambers

(2004/C 201/34)

The Court of First Instance decided, at its Plenary Meeting on 8 July 2004, following the entry into office as Judge of Ms Trstenjak, to amend the decision of the Plenary Meeting of 2 July 2003 on the assignment of Judges to Chambers as follows:

The following are appointed for the period from 8 July 2004 to 31 August 2004

*to the First Chamber, sitting with three Judges:*

Mr Vesterdorf, President, Mr Mengozzi, Ms Martins Ribeiro, Ms Labucka and Ms Trstenjak, Judges;

*to the First Chamber, Extended Composition, sitting with five Judges:*

Mr Vesterdorf, President, Mr Mengozzi, Ms Martins Ribeiro, Ms Labucka and Ms Trstenjak Judges;

With regard to cases in which the written procedure was completed and a hearing for the oral procedure held or fixed before 8 July 2004, the First Chamber, sitting with three judges, and the First Chamber, Extended Composition, sitting with five judges, shall continue to sit with the same composition as before for the oral procedure, the deliberations and the judgment.

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### JUDGMENT OF THE COURT OF FIRST INSTANCE

**of 25 May 2004**

**in Case T-69/03: W v European Parliament** ([1])

***(Officials — Resettlement allowance — Definition of residence — Evidence)***

(2004/C 201/35)

*(Language of the case: French)*

In Case T-69/03: W., a former official of the European Parliament, residing in Folkestone (United Kingdom), represented by P Goergen, lawyer, against the European Parliament (Agents: J. de Wachter and L. Knudsen) — application for annulment of the decision of the European Parliament of 3 June 2002 refusing to grant the applicant a resettlement allowance — the Court of First Instance, composed of J.D. Cooke, single judge; I. Natsinas, administrator, for the Registrar, gave a judgment on 25 May 2004, in which it:

1. *Dismisses the application.*

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

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([1]) OJ C 101 of 26.4.2003.

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### Action brought on 13 May 2004 by Asklepios Kliniken GmbH against the Commission of the European Communities

**(Case T-167/04)**

(2004/C 201/36)

*(Language of the case: German)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 May 2004 by Asklepios Kliniken GmbH, Königstein-Falkenstein (Germany), represented by K. Füßer, lawyer.

The applicant claims that the Court should:

— declare that, by failing to take any decision pursuant to Article 4(2), (3) or (4) of Regulation (EC) No 659/1999 in response to the applicant's letter of complaint of 20 January 2003, the Commission is in breach of its obligations under Article 88 EC and Article 10(1) and Article 13(1) of Regluation (EC) No 659/1999.

*Pleas in law and main arguments:*

The applicant is a company which specialises in hospital management. It is incorporated under private law and is owned exclusively by private interests. Since January 2003, it has been endeavouring to obtain a decision from the Commission under Article 4(2), (3) or (4) of Regluation (EC) No 659/1999 in relation to alleged aid in favour of publicly-owned hospitals in the Federal Republic of Germany.

The applicant maintains that privately-owned hospitals must generally finance themselves from sums paid under health-care arrangements entered into with the appropriate health-insurance schemes and their central associations and, where applicable, from direct contributions for hospital construction under funding arrangements in place in the relevant Land. By contrast, publicly-owned hospitals also benefit from the fact that their regular operating losses are consistently covered by the relevant public authorities. In the applicant's opinion, those payments constitute aid within the meaning of Article 87(1) EC which not only is subject to a notification requirement under Article 88(3) EC but is also incompatible with the common market.

The applicant also maintains that the complaint is well founded as the Commission has failed to act notwithstanding a duty to act upon receipt of the complaint.

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**Action brought on 14 May 2004 by easyJet Airline Company Limited against the Commission of the European Communities**

**(Case T-177/04)**

(2004/C 201/37)

*(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 14 May 2004 by easyJet Airline Company Limited, Luton, United Kingdom, represented by Mr J. Cook, Mr S. Dolan and Mr J. Parker Solicitors.

The applicant claims that the Court should:

— Annul the Commission's Decision of 11 February 2004 in Case No. COMP/M.3280 (Air France/KLM) declaring a concentration to be compatible with the common market, subject to conditions, in accordance with Article 6 (1) (b) and Article 6 (2) of Council Regulation (EEC) No. 4064/89 [1]

— order the Commission to pay the costs

*Pleas in law and main arguments:*

In the contested decision the Commission concluded that the merger between the airlines 'Air France' and 'KLM' would result in the creation or strengthening of a dominant position on a total of fourteen city-to-city air routes. However, the Commission declared the concentration compatible with the common market, subject to compliance with the undertakings submitted by the parties to the merger.

The applicant, which is itself an airline company, seeks the annulment of that decision invoking a number of manifest errors of assessment by the Commission. More particularly, it claims that the Commission failed to consider properly the following matters:

— the enhancement of the merged entity's dominance on routes where there was no existing overlap between Air France and KLM;

— whether the merger created or strengthened a dominant position in markets for the purchase of airport services;

— the effects of the merger on potential competition.

It further claims that the Commission failed to provide adequate reasons to support its conclusion that the airports 'Charles de Gaulle' and 'Orly' in Paris were substitutable. Finally, it considers that the undertakings of the parties were manifestly inadequate to restore a structure of effective competition on markets where dominance concerns arose and that the Commission committed an error of assessment in accepting them.

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[1] OJ L 257/90, p. 13

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**Action brought on 17 May 2004 by MPS Group Inc., against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-178/04)**

(2004/C 201/38)

*(Language of the case: English)*

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 17 May 2004 by MPS Group Inc., Jacksonville, Florida, USA represented by Ms K. O'Rourke and Mr P. Kavanagh Solicitors.

Modis-Distribuiçao Centralizada SA was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— Annul the Decision of the Fourth Board of Appeal of 4 February 2004 insofar as it upheld Opposition number B000170599 with respect to the following services in class 35: 'Employment agency services, recruitment consultancy services; payroll preparation services; time recording services; provision of temporary and permanent staff';

— in the alternative, annul the decision insofar as it covers the following services in class 35: 'Employment agency services, recruitment consultancy services, provision of temporary and permanent staff'.

*Pleas in law and main arguments:*

| | |
|---|---|
| Applicant for Community trade mark: | MPS Group Inc. |
| Community trade mark sought: | The Community trade mark application No 778795 'MODIS' for services in class 35 (employment agency services, recruitment consultancy services, payroll preparation services,...), class 41 (staff training services) and class 42 (psychometric testing) |
| Proprietor of mark or sign cited in the opposition proceedings: | Modis Distribuiçao Centralizada SA |
| Mark or sign cited in opposition: | The Portuguese trade mark 'MODIS' for services in class 35 (Advertising, business management and business administration) |
| Decision of the Opposition Division: | Rejection of the Community trade mark application for classes 35 and 41 and admission of the application for class 42. |
| Decision of the Board of Appeal : | Annulment of the Decision of the Opposition Division as it upheld the opposition with respect to the services applied for in Class 41, remittal of the case for further prosecution to the examiner and rejection of the appeal for the remainder. |
| Pleas in law: | Violation of Articles 8(1)(a) and 8(1)(b)of Council Regulation No 40/94 on the Community Trade Mark [1] in deciding that the services concerned were similar. |

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

## Action brought on 17 May 2004 by Siegfried Krahl against the Commission of the European Communities

**(Case T-179/04)**

(2004/C 201/39)

*(Language of the case: French)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 17 May 2004 by Siegfried Krahl, residing in Zagreb (Croatia), 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's decision to recover the daily subsistence allowances paid to the applicant during the period when temporary accommodation was made available to him;

— Order the defendant to pay the costs.

*Pleas in law and main arguments*

The applicant, an official of the Commission, took up his post in the Commission's delegation to Zagreb on 2 February 2002 and until 19 September 2002 stayed in accommodation made available by the Commission. By the contested decision, the Commission decided to recover the daily subsistence allowances paid to the applicant during that period on the ground that he was not entitled to them, as he had stayed in an apartment provided by the Commission.

In support of his action, the applicant claims that there has been a breach of Article 10 of Annex VII to the Staff Regulations. He alleges that the Commission made the accommodation available only on a temporary basis, without security of tenure, and that he was therefore not prevented from receiving the daily subsistence allowances. He further claims that there has been an infringement of the principle of legitimate expectations, on the ground that the Commission gave him specific assurances concerning payment of the daily subsistence allowances while he was staying in the apartment in question.

## Action brought on 25 May 2004 by Spa Monopole, Compagnie Fermière de Spa against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

**(Case T-186/04)**

(2004/C 201/40)

*(Language of the case: French)*

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 25 May 2004 by Spa Monopole, Compagnie Fermière de Spa, established in Spa (Belgium), represented by L. de Brouwer, E. Cornu, E. De Gryse and D. Moreau, lawyers.

Spaform Limited was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul Decision R 0827/2002-4 of 25 February 2004 of the Fourth Board of Appeal dismissing the appeal by the applicant against the Opposition Division's decision to dismiss the opposition brought by the applicant against registration of the word mark 'SPAFORM' for goods in Classes 7, 9 and 11.

— order OHIM to pay the costs.

*Pleas in law and main arguments:*

| | |
|---|---|
| Applicant for Community trade mark: | Spaform Limited |
| Community trade mark sought: | Word mark 'SPAFORM' — application No 609 776 for goods in Classes 7 (pumps, etc.), 9 (apparatus and instruments for measuring pressure) and 11 (whirlpool baths) |
| Proprietor of mark or sign cited in the opposition proceedings: | The applicant |
| Mark or sign cited in opposition. | The national mark SPA for products in Classes 32 (mineral waters, etc.) |
| Decision of the Opposition Division: | Dismissal of the application |
| Decision of the Board of Appeal: | Dismissal of the appeal |
| Pleas in law: | Infringement of Article 18(1) of Regulation (EC) No 2868/95 [1]. On the basis of that article, the Opposition Division held that the information available to the Office at the end of the opposition period did not permit identification of the earlier mark relied on. The applicant calls in question that finding. |

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

## Action brought on 19 May 2004 by DJ (*) against the Commission of the European Communities

**(Case T-187/04)**

(2004/C 201/41)

*(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 19 May 2004 by DJ (*), represented by Carlos Mourato, lawyer.

The applicant claims that the Court should:

— Annul the decision of 22 July 2003 of the Appeal Assessor concerning the applicant's career development report for the period 1 July 2001 to 31 December 2002;

— Annul the appointing authority's implied decision of 20 February 2004 giving a negative reply to the applicant's complaint;

— Order the defendant to pay the costs of the case and also the essential costs incurred for the purposes of the proceedings, in particular the costs of domiciliation, travel and lodging, and also lawyers' fees.

*Pleas in law and main arguments*

In support of his action, the applicant claims first of all that there has been a series of breaches of the assessment procedure and of the provisions for the implementation of Article 43 of the Staff Regulations, namely:

— the fact that a different official should have been his assessor, since it was the official who was his hierarchical superior and not the assessor who appears in the contested report,

— failure to consult his previous superiors,

— the belated nature of the second dialogue and also of the opinion of the Appeal Assessor,

— the allegedly unlawful appointment of the President of the Joint Assessment Committee.

The applicant also claims that there has been a breach of the principle of the independence of internal auditors, on the ground that one of the members of the Joint Assessment Committee was from a Directorate-General audited by the applicant and that the applicant's Appeal Assessor was the Secretary-General of the Commission, who was himself liable to be audited. The applicant claims that in the light of that situation, it is the Vice-President responsible for the reform of the Commission who should have been his Appeal Assessor. Last, the applicant relies on breach of the obligation to state reasons and of the principle of equal treatment and also on manifest errors of assessment by the assessor.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

**Action brought on 24 May 2004 by Société Freixenet S.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-190/04)**

(2004/C 201/42)

*(Language of the case: French)*

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 24 May 2004 by Société Freixenet S.A., established in Sant Sadurní d'Anoia (Spain), represented by F. de Visscher, E. Cornu, E. De Gryse and D. Moreau, lawyers.

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 11 February 2004 (Case R 97/2001-4) and find that the application for Community trade mark No 32532 is to be published in accordance with Article 40 of Regulation No 40/94;

— in the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 11 February 2004 (Case R 97/2001-4);

— order the Office for Harmonisation in the Internal Market to pay the costs.

*Pleas in law and main arguments:*

| | |
|---|---|
| Applicant for Community trade mark: | The applicant |
| Community trade mark sought: | Three-dimensional mark in the form of a white polished bottle (application No 32532) |
| Goods or services: | Goods in Class 33 (sparkling wines) |
| Decision of the Examiner: | Rejection of the application |
| Decision of the Board of Appeal: | Dismissal of the appeal |
| Pleas in law: | Infringement of Article 73 of Regulation No 40/94, in so far as the decision of the Board of Appeal is based on a certain number of facts in respect of which the applicant was able to submit observations, and Article 7(1)(b) and (3) of that regulation, inasmuch as the trade mark in question is intrinsically distinctive |

**Action brought on 27 May 2004 by MIP Metro Group Intellectual Property GmbH & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-191/04)**

(2004/C 201/43)

*(Language of the case: English)*

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 27 May 2004 by MIP Metro Group Intellectual Property GmbH & Co. KG, Düsseldorf (Germany), represented by R. Kaase, lawyer.

Tesco Stores Limited was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the OHIM of 23 March 2004 in Case R 486/2003-1;

— order the OHIM to pay the costs.

*Pleas in law and main arguments:*

| | |
|---|---|
| Applicant for Community trade mark: | MIP METRO Group Intellectual Property GmbH & Co. KG |
| Community trade mark sought: | The figurative mark 'METRO' in relation to goods which are not the issue in these proceedings (application No 779116) |
| Proprietor of mark or sign cited in the opposition proceedings: | Tesco Stores Limited |

| | |
|---|---|
| Mark or sign cited in opposition: | The national word mark 'METRO' |
| Decision of the Opposition Division: | Rejection of the opposition |
| Decision of the Board of Appeal: | Annulment of the decision of the Opposition Division |
| Pleas in law: | The applicant submits that the time an earlier right as basis for an opposition has to be in force and to be proved to have this status, should be the time of the decision by the Opposition Division, or, alternatively, when the time-limit to provide further evidence expires. In support of its application, the applicant invokes a violation of the parameters of the proceedings, enshrined in Article 74 of Council Regulation No 40/94 [1] and Rules 16 and 20 of Commission Regulation No 2868/95 [2]. According to the applicant, Article 8 (1) (b) of Council Regulation 40/94 does not indicate that the validity of the earlier mark is only required at the time of filling an opposition. |

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

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

## Action brought on 27 May 2004 by The Bavarian Lager Company against the Commission of the European Communities

**(Case T-194/04)**

(2004/C 201/44)

*(Language of the case: English)*

An action against the Commission of the European communities was brought before the Court of First Instance of the European Communities on 27 May 2004 by The Bavarian Lager Company, Clitheroe, United Kingdom, represented by Mr J. Pearson and Mr C. Bright Solicitors with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that the Commission's acceptance of the UK Government's amendment to Article 7(2)(a) of the Supply of Beer (Tied Estate) Order 1989 (S.I. 1989 No 2390) (the 'guest beer provision') was in breach of Article 28 (then Article 30) of the EC Treaty;

— Declare that the Commission should not have accepted the aforementioned amendment and in doing so, the Commission is itself was in breach of Article 28 (then Article 30) of the EC Treaty;

— Annul the Decision of the Commission dated 18 March 2004 to refuse to disclose to the applicant certain documents;

— Order the Commission to produce the full set of names of persons attending the meeting held on 11 October 1996 at which were present officers of the Directorate-General for the Internal Market, officials of the UK Government Department of Trade and Industry and representatives of the Conféderation des Brasseurs du Marché Commun; and

— Order the Commission to pay costs

*Pleas in law and main arguments:*

The applicant company was formed on 28 May 1992 to import German beer for sale in public houses in the United Kingdom. In 1993 the applicant complained to the Commission about an alleged violation of Article 28 EC (then Article 30 of the EC Treaty) in connexion with the 'guest beer provision' in UK legislation. Under this provision breweries are required to allow public houses bound to them by exclusive purchasing agreements to offer a 'guest' beer from a different brewery. The guest beer had to be a beer undergoing fermentation in the cask from which it was sold, a type of beer which is almost exclusively produced in the United Kingdom. The beer sold by the applicant as well as most beers produced outside the United Kingdom could not be covered by this provision and the applicant considered this a measure of equivalent effect to a quantitative restriction. In a letter of 21 April 1997 the Commission informed the applicant that, in view of a proposed amendment of the guest beer provision, the procedure against the United Kingdom had been suspended and would be brought to a close as soon as the amendment had been adopted.

On 5 December 2003 the applicant requested the Commission, on the basis of Regulation 1049/2001 ([1]), to grant it full access to the minutes of a meeting on this matter, which took place on 11 October 1996 between representatives of the Commission, the United Kingdom government and breweries. In particular, the applicant asked the Commission to reveal the identity of certain persons whose names had been blanked out in the minutes previously disclosed to the applicant. The Commission rejected the applicant's request and confirmed its refusal in a letter of the Secretary General to the applicant, dated 18 March 2004. In support of its refusal it invoked the need to protect personal data of the persons present at the meeting, as well as a potential risk to the Commission's ability to carry out investigations in such cases if the identity of persons giving information to the Commission were to be disclosed.

By its application, the applicant requests first of all a declaration against the Commission's decision to suspend the procedure against the United Kingdom. In this respect, the applicant invokes a violation of Articles 28 and 12 EC.

Concerning the Commission's refusal to grant it access to the documents requested, the applicant submits that Article 2 of Regulation 1049/2001 ([1]) obliges the Commission to make full disclosure of the persons who attended the meeting in question, and that none of the exceptions contained in Article 4 apply. The applicant further contends that the exception in Article 4 paragraph 3 may be disregarded because there is overwhelming public interest in disclosure.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001 P. 43 - 48

**Action brought on 27 May 2004 by Madaus Aktiengesellschaft against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-202/04)**

(2004/C 201/45)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 27 May 2004 by Madaus Aktiengesellschaft, Köln, (Germany), represented by I. Valdelomar Serrano, lawyer.

The Optima Health Limited was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— recognise that the OHIM made a judicial error when issuing the contested decision;

— annul the contested decision.

*Pleas in law and main arguments:*

| | |
|---|---|
| Applicant for Community trade mark: | Optima Healthcare Ltd, changed to The Optimal Health Ltd. |
| Community trade mark sought: | The word mark 'ECHINAID' for goods in class 5 (vitamins, food supplements, herbal preparations, pharmaceutical and medical preparations) (CTM application No 1666239) |
| Proprietor of mark or sign cited in the opposition proceedings: | Madaus AG |
| Mark or sign cited in opposition: | The international trade mark registration of the word mark 'ECHINACIN' for goods in class 5 (chemical pharmaceuticals) |
| Decision of the Opposition Division: | Rejection of the opposition |
| Decision of the Board of Appeal: | Dismissal of the appeal brought by Madaus |
| Pleas in law: | The applicant submits that the Board of Appeal erred in applying the concept of relevant territory and relevant public. The applicant also claims that the prefix Echina is not descriptive and that there is a likelihood of confusion between the marks. |

**Action brought on 4 June 2004 by the Italian Republic against the Commission of the European Communities**

**(Case T-207/04)**

(2004/C 201/46)

*(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 4 June 2004 by the Italian Republic, represented by Antonio Cingolo, avvocato dello Stato.

The applicant claims that the Court should:

— annul the Commission's letter No E2/LP D(2004) 712 of 25 March 2004, received on 26 March 2004, by which the European Commission, Directorate-General for Regional Policy, communicated to it the decision that amounts in respect of payments of certain advance payments (advance payments in the context of aid schemes for any Objective 1 and 2 programme) must be clearly identified in future payment declarations, in accordance with the provisions of the abovementioned letter from Commissioner Barnier, together with all underlying and connected measures;

— in the alternative, and so far as may be necessary, annul Commission Regulation (EC) No 448/2004 of 10 March 2004 amending Regulation (EC) No 1685/2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the eligibility of expenditure of operations co-financed by the Structural Funds;

— in any event, annul all underlying and connected measures;

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

*Pleas in law and main arguments:*

The Italian Republic has challenged before the Court of First Instance of the European Communities the Commission's letter No E2/LP D(2004) 712 of 25 March 2004 concerning the payment of advance payments in the context of aid schemes (MOP Research, Technological Development and Advanced Training), and – so far as may be necessary – Commission Regulation (EC) No 448/2004 of 10 March 2004 ([1]), both concerning the eligibility of expenditure of operations co-financed by the Structural Funds.

In support of its claims in respect of the letter of 25 March 2004, the applicant alleges:

— infringement of essential procedural requirements owing to a complete failure to state reasons and owing to the adoption of the contested measure without any proper legal basis and without complying with the defendant's internal procedural rules;

— infringement of Article 9 of Commission Regulation (EC) No 438/2001 ([2]) by failing to comply with the accounting methods set out therein;

— infringement of Article 32 of the basic regulation ([3]) and of Commission Regulation No 448/04, which make the payment of advance payments conditional simply upon proof that the 'final beneficiary' State has transferred the sums in question to the end recipients of the funds;

— infringement of Regulation No 448/04 owing to breaches of the principles of equality and legal certainty, and contradictory reasoning in the contested letter.

In respect of Regulation No 448/04, the applicant alleges infringement:

— of the rules governing the eligibility of expenditure laid down by the basic regulation;

— of the rules governing financial control (which do not impose the obligations alleged by the Commission);

— of the principle of proportionality, in so far as the Commission requests evidence in addition to what is provided for and is necessary;

— of the principle of non-retroactivity, given that Regulation No 448/04 contains provisions with retroactive effect for 44 months prior to its adoption, which is clearly unacceptable in the light of the general principles governing legislative enactment.

([1]) Commission Regulation (EC) No 448/2004 of 10 March 2004 amending Regulation (EC) No 1685/2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the eligibility of expenditure of operations co-financed by the Structural Funds and withdrawing Regulation (EC) No 1145/2003 (OJ 2004 L 72, p. 66).

([2]) Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

([3]) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

## Action brought on 10 June 2004 by the Kingdom of Spain against the Commission of the European Communities

**(Case T-209/04)**

(2004/C 201/47)

*(Language of the case: Spanish)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 June 2004 by the Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by failing to take a decision within a reasonable time on the authorisations applied for by the Spanish authorities, the Commission has failed to fulfil its obligations under Article 7(3) of Regulation No 2792/99, as amended by Regulation No 2369/02, and is thereby liable for failure to act; and

— order the Commission to pay the costs.

*Pleas in law and main arguments:*

The Spanish authorities applied to the Commission for a series of exemptions in order to be in a position to grant the aid for the constitution of joint enterprises provided for in Council Regulation (EC) No 2792/99 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, as amended by Council Regulation (EC) No 2369/02 of 20 December 2002 [1]. Where the vessel is transferred to a third country with which there is no fisheries agreement with the European Community, it is necessary for the Commission to grant the appropriate derogation (Article 7(3) of Regulation No 2792/99, as amended by Regulation No 2369/02). The aid may only be granted by the national authorities until 31 December 2004.

A formal request was made to the Commission on 16 February 2004 asking it to take a decision on the pending applications and, since no decision has been taken on any of them, the Kingdom of Spain has decided to bring an action against the Commission, having regard also to the fact that the Spanish authorities, which are waiting for the Commission's decision on the derogations applied for, have already exceeded the periods allowed them by national legislation and within which they should reach a decision.

[1] Council Regulation (EC) No 2369/2002 of 20 December 2002 amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ L 358 of 31.12.2002, p. 49).

## Action brought on 1 June 2004 by Andreas Mausolf against Europol

**(Case T-210/04)**

(2004/C 201/48)

*(Language of the case: Dutch)*

An action against Europol was brought before the Court of First Instance of the European Communities on 1 June 2004 by Andreas Mausolf, represented by M.F. Baltussen and P. de Casparis.

The applicant claims that the Court should:

— annul the rejection by Europol of 1 March 2004 of the applicant's complaint against the decision of 2 January 2003 and, at the same time, annul the contested decision of 2 January 2003;

— order Europol to grant the applicant another additional salary increment with effect from 1 July 2002;

— order Europol to pay that increment to the applicant within 48 hours of delivery of the judgment to be given in this case, together with the interest due thereon at the statutory rate prescribed by Netherlands law;

— order Europol to reimburse the applicant for the costs incurred by him in these proceedings.

*Pleas in law and main arguments:*

In support of his application, the applicant alleges infringement of Article 29 of the Europol Staff Regulations, submits that Europol exceeded the limits of its discretion and alleges infringement of the principle of the protection of legitimate expectations.

# III

*(Notices)*

(2004/C 201/49)

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

OJ C 190, 24.7.2004

**Past publications**

OJ C 179, 10.7.2004

OJ C 168, 26.6.2004

OJ C 156, 12.6.2004

OJ C 146, 29.5.2004

OJ C 106, 30.4.2004

OJ C 94, 17.4.2004

These texts are available on:
EUR-Lex:http://europa.eu.int/eur-lex
CELEX:http://europa.eu.int/celex

## Action brought on 10 June 2004 by the Kingdom of Spain against the Commission of the European Communities

**(Case T-209/04)**

(2004/C 201/48)

*(Language of the case: Spanish)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 June 2004 by the Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by failing to take a decision within a reasonable time on the authorisations applied for by the Spanish authorities, the Commission has failed to fulfil its obligations under Article 7(3) of Regulation No 2792/99, as amended by Regulation No 2369/02, and is thereby liable for failure to act; and

— order the Commission to pay the costs.

*Pleas in law and main arguments:*

The Spanish authorities applied to the Commission for a series of exemptions in order to be in a position to grant the aid for the constitution of joint enterprises provided for in Council Regulation (EC) No 2792/99 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, as amended by Council Regulation (EC) No 2369/02 of 20 December 2002 [1]. Where the vessel is transferred to a third country with which there is no fisheries agreement with the European Community, it is necessary for the Commission to grant the appropriate derogation (Article 7(3) of Regulation No 2792/99, as amended by Regulation No 2369/02). The aid may only be granted by the national authorities until 31 December 2004.

A formal request was made to the Commission on 16 February 2004 asking it to take a decision on the pending applications and, since no decision has been taken on any of them, the Kingdom of Spain has decided to bring an action against the Commission, having regard also to the fact that the Spanish authorities, which are waiting for the Commission's decision on the derogations applied for, have already exceeded the periods allowed them by national legislation and within which they should reach a decision.

[1] Council Regulation (EC) No 2369/2002 of 20 December 2002 amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ L 358 of 31.12.2002, p. 49).

## Action brought on 1 June 2004 by Andreas Mausolf against Europol

**(Case T-210/04)**

(2004/C 201/49)

*(Language of the case: Dutch)*

An action against Europol was brought before the Court of First Instance of the European Communities on 1 June 2004 by Andreas Mausolf, represented by M.F. Baltussen and P. de Casparis.

The applicant claims that the Court should:

— annul the rejection by Europol of 1 March 2004 of the applicant's complaint against the decision of 2 January 2003 and, at the same time, annul the contested decision of 2 January 2003;

— order Europol to grant the applicant another additional salary increment with effect from 1 July 2002;

— order Europol to pay that increment to the applicant within 48 hours of delivery of the judgment to be given in this case, together with the interest due thereon at the statutory rate prescribed by Netherlands law;

— order Europol to reimburse the applicant for the costs incurred by him in these proceedings.

*Pleas in law and main arguments:*

In support of his application, the applicant alleges infringement of Article 29 of the Europol Staff Regulations, submits that Europol exceeded the limits of its discretion and alleges infringement of the principle of the protection of legitimate expectations.

# III

*(Notices)*

(2004/C 201/50)

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

OJ C 190, 24.7.2004

**Past publications**

OJ C 179, 10.7.2004

OJ C 168, 26.6.2004

OJ C 156, 12.6.2004

OJ C 146, 29.5.2004

OJ C 106, 30.4.2004

OJ C 94, 17.4.2004

These texts are available on:
EUR-Lex:http://europa.eu.int/eur-lex
CELEX:http://europa.eu.int/celex