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I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Second Chamber)

of 28 October 2004

in Case C-164/01 P G. van den Berg v Council of the European Union and Commission of the European Communities [1]

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producers having entered into a non-marketing undertaking — SLOM producers — Change of holding — Refusal to grant a special reference quantity)

(2005/C 19/01)

(Language of the case: Dutch)

In Case C-164/01 P: appeal under Article 49 of the EC Statute of the Court of Justice brought on 13 April 2001 by G. van den Berg, residing in Dalfsen (Netherlands) (avocat: E.H. Pijnacker Hordijk), the other parties to the procedure being the Council of the European Union (Agent: A.-M. Colaert) and the Commission of the European Communities (Agent: T. van Rijn) – the Court (Second Chamber), composed of: C.W.A. Timmermanns, President of the Chamber, J.-P. Puissochet and N. Colneric (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 28 October 2004, in which it:

1. *Dismisses the appeal;*

2. *Orders Mr van den Berg to pay the costs.*

[1] OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT

(Third Chamber)

of 2 December 2004

in Case C-41/02: Commission of the European Communities v Kingdom of the Netherlands [1]

(Failure of a Member State to fulfil obligations — Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — Foodstuffs to which vitamins or mineral salts have been added — National legislation making their marketing subject to there being a nutritional need — Measures having equivalent effect — Justification — Public health — Proportionality)

(2005/C 19/02)

(Language of the case: Dutch)

In Case C-41/02: action under Article 226 EC for failure to fulfil obligations, brought on 13 February 2002, Commission of the European Communities (Agents: H. van Lier and H.M.H. Speyart) against Kingdom of the Netherlands (Agents: H.G. Sevenster and S. Terstal) – the Court (Third Chamber), composed of: A. Rosas, President of the Chamber, A. Borg Barthet, J.-P. Puissochet, J. Malenovský (Rapporteur) and U. Lõhmus, Judges; M. Poiares Maduro, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 2 December 2004 in which it:

1. *Declares that, by applying an administrative practice under which foodstuffs for everyday consumption fortified with vitamin A (in the form of retinoids), vitamin D, folic acid, selenium, copper or zinc which are lawfully produced or marketed in other Member States may be marketed in the Netherlands, when they are neither substitution products nor reconstituted foodstuffs within the meaning of Article 1(1)(c) and (d) of the Warenwetbesluit Toevoeging micro-voedingsstoffen aan levensmiddelen (Decree implementing the Warenwet, on the addition of micronutrients to foodstuffs) of 24 May 1996 only if that enrichment meets a nutritional need in the Netherlands population and, in addition, without ascertaining whether those fortified foodstuffs might be a substitute for foodstuffs already marketed for which the addition of those nutrients is mandatory, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC);*

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

([1]) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 11 November 2004

in Case C-372/02 (reference for a preliminary ruling from the Bundessozialgericht): Roberto Adanez-Vega v Bundesanstalt für Arbeit ([1])

(Regulation (EEC) No 1408/71 — Determination of the applicable legislation — Unemployment benefits — Conditions governing aggregation of periods of insurance or employment — National measure not taking into account a period of compulsory military service completed in another Member State)

(2005/C 19/03)

(Language of the case: German)

In Case C-372/02: reference for a preliminary ruling under Article 234 EC from the Bundessozialgericht (Germany), made by decision of 15 August 2002, received at the Court on 16 October 2002, in the proceedings between Roberto Adanez-Vega and Bundesanstalt für Arbeit – the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas and S. von Bahr, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 11 November 2004, in which it has ruled:

1. *Article 13(2)(f) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, as amended by Council Regulation (EEC) No 2195/91 of 25 June 1991, must be interpreted as meaning that a person residing in a Member State and unemployed there after performing his compulsory military service in another Member State is subject to the legislation of the Member State of residence.*

   Article 71(1)(b)(ii) of Regulation No 1408/71, as amended, must be interpreted as meaning that it is a special provision concerning the determination of the legislation applicable in regard to unemployment benefits with the result that if the conditions determining its application are met the applicable legislation is that provided for in that provision.

   It is for the referring court to determine whether in the main proceedings the conditions governing application of Article 71(1)(b)(ii) are met.

   If in the main proceedings the conditions governing the application of Article 71(1)(b)(ii) of Regulation No 1408/71, as amended, are satisfied, the legislation applicable to a person residing in a Member State and unemployed there after performing his compulsory military service in another Member State would, under that provision, also be the legislation of the Member State of residence.

2. *A period of compulsory military service in another Member State constitutes a '[period of employment] completed as an employed person under the legislation of [that] other Member State' for the purposes of Article 67(1) of Regulation No 1408/71, in the version updated by Regulation No 2001/83, as amended by Regulation No 2195/91, where, first, it is so defined or recognised by the legislation of that other Member State or treated as such and regarded by that legislation as a period equivalent to a period of employment and where, second, the person concerned was insured within the meaning of Article 1(a) of Regulation No 1408/71 during his military service.*

   The condition that 'the person concerned should have completed lastly … periods of insurance … in accordance with the provisions of the legislation under which the benefits are claimed' for the purposes of Article 67(3) of Regulation No 1408/71, as amended, precludes the obligation to aggregate periods of employment only where a period of insurance was completed in another Member State after the last period of insurance completed under the legislation under which the benefits are claimed.

3. *In circumstances such as those of the main proceedings, Article 3 of Regulation No 1408/71, in the version updated by Regulation No 2001/83, as amended by Regulation No 2195/91, does not preclude a competent institution, when examining entitlement to unemployment benefit, from not taking into account, in calculating periods of insurance completed, a period of compulsory military service performed in another Member State.*

([1]) OJ C 7 of 11.1.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 30 November 2004

in Case C-16/03 (reference for a preliminary ruling from the Hovrätten över Skåne och Blekinge): Peak Holding AB v Axolin-Elinor AB ([1])

(Trade marks — Directive 89/104/EEC — Article 7(1) — Exhaustion of the rights conferred by a trade mark — Putting on the market of the goods in the EEA by the proprietor of the trade mark — Concept — Goods offered for sale to consumers and then withdrawn — Sale to an operator established in the EEA with the obligation to put the goods on the market outside the EEA — Resale of the goods to another operator established in the EEA — Marketing in the EEA)

(2005/C 19/04)

(Language of the case: Swedish)

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

In Case C-16/03: reference for a preliminary ruling under Article 234 EC from the Hovrätten över Skåne och Blekinge (Sweden), made by decision of 19 December 2002, received at the Court on 15 January 2003, in the proceedings between Peak Holding AB and Axolin-Elinor AB, formerly Handelskompaniet Factory Outlet i Löddeköpinge AB – the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and R. Silva de Lapuerta, Presidents of Chambers, C. Gulmann (Rapporteur), J.-P. Puissochet, R. Schintgen and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 30 November 2004, in which it has ruled:

1. *Article 7(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, must be interpreted as meaning that goods bearing a trade mark cannot be regarded as having been put on the market in the European Economic Area where the proprietor of the trade mark has imported them into the European Economic Area with a view to selling them there or where he has offered them for sale to consumers in the European Economic Area, in his own shops or those of an associated company, without actually selling them.*

2. *In circumstances such as those of the main proceedings, the stipulation, in a contract of sale concluded between the proprietor of the trade mark and an operator established in the European Economic Area, of a prohibition on reselling in the European Economic Area does not mean that there is no putting on the market in the European Economic Area within the meaning of Article 7(1) of Directive 89/104, as amended by the Agreement on the European Economic Area, and thus does not preclude the exhaustion of the proprietor's exclusive rights in the event of resale in the European Economic Area in breach of the prohibition.*

([1]) OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 2 December 2004

in Case C-42/03: Commission of the European Communities v Kingdom of Spain ([1])

(Failure of a Member State to fulfil obligations — Conservation and management of resources — Control measures for fishing activities)

(2005/C 19/05)

(Language of the case: Spanish)

In Case C-42/03: Commission of the European Communities (Agents: T. van Rijn and S. Pardo Quintillán) v Kingdom of Spain (Agent: N. Díaz Abad) – ACTION under Article 226 EC for failure to fulfil obligations, brought on 4 February 2003 – the Court (Third Chamber), composed of: A. Rosas, President of Chamber, J.-P. Puissochet (Rapporteur), S. von Bahr, J. Malenovský and U. Lõhmus, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 2 December 2004, in which it:

1. *Declares that, for each fishing year 1990 to 1997, by failing:*

   — *to adopt the appropriate methods for the use of the quotas assigned to it and to carry out the inspections and other checks required by the applicable Community regulations,*

   — *provisionally to prohibit fishing upon exhaustion of the quotas, and*

   — *to take all penal or administrative measures which it was required to apply to masters of vessels infringing those regulations or to any other person liable for such infringement,*

   the Kingdom of Spain has failed to fulfil its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, Articles 1 and 11(1) and (2) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities and Articles 2, 21(1) and (2) and 31 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy.

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

([1]) OJ C 101, 26.4.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 25 November 2004

in Case C-109/03 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven): KPN Telecom BVv Onafhankelijke Post en Telecommunicatie Autoriteit (OPTA) ([1])

(Telecommunications — Directive 98/10/EC — Application of open network provision to voice telephony — Supply of information on subscribers — Determination of prices)

(2005/C 19/06)

(Language of the case: Dutch)

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

In Case C-109/03: reference for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), by decision of 8 January 2003, received at the Court on 10 March 2003, in the proceedings between KPN Telecom BV and Onafhankelijke Post en Telecommunicatie Autoriteit (OPTA), in the presence of: Denda Multimedia BV, Denda Directory Services BV – the Court (First Chamber), composed of: P. Jann (Rapporteur), President of Chamber, A. Rosas, K. Lenaerts, S. von Bahr and K. Schiemann, Judges; M. Poiares Maduro, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 25 November 2004, in which it has ruled:

1. *Article 6(3) of Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment must be interpreted as meaning that the words 'relevant information' refer only to data relating to subscribers who have not expressly objected to being listed in a published directory and which are sufficient to enable users of a directory to identify the subscribers they are looking for. Those data include in principle the name and address, including postcode, of subscribers, together with any telephone numbers allocated to them by the entity concerned. However, it is open to the Member States to provide that other data are to be made available to users where, in light of specific national circumstances, they appear to be necessary in order to identify subscribers.*

2. *Article 6(3) of Directive 98/10, in so far as it provides that the relevant information must be provided to third parties on terms which are fair, cost oriented and non-discriminatory, must be interpreted as meaning that:*

   — *with regard to data such as the name and address of the persons and the telephone number allocated to them, only the costs of actually making those data available to third parties may be invoiced by the supplier of the universal service;*

   — *with regard to additional data which such a supplier is not bound to make available to third parties, the supplier is entitled to invoice, apart from the costs of making that provision, the additional costs which he has had to bear himself in obtaining the data provided that those third parties are treated in a non-discriminatory manner.*

([1]) OJ C 146 of 21.6.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 2 December 2004

in Case C-226/03 P: José Martí Peix SA v Commission of the European Communities [1]

(Appeal — Fisheries — Community financial aid — Reduction of the aid — Council Regulation (EC, Euratom) No 2988/95 — Articles 1 and 3 — Limitation period)

(2005/C 19/07)

(Language of the case: Spanish)

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

In Case C-226/03 P: action under Article 226 EC for failure to fulfil obligations, brought on 22 May 2003, between José Martí Peix SA, established in Huelva (Spain), (avocats: J.R. García-Gallardo Gil-Fournier and D. Domínguez Pérez, avocats) and the other party to the proceedings being: Commission of the European Communities (Agents: S. Pardo Quintillán, avocat: J. Guerra Fernández) – the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet and N. Colneric (Rapporteur), Judges; A. Tizzano, Advocate General; Múgica Azarmendi, Principal Administrator, for the Registrar, has given a judgment on 2 December 2004, in which it:

1. *Dismisses the appeal;*

2. *Orders José Martí Peix SA to pay the costs.*

[1] OJ C 213 of 6.9.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 17 June 2004

in Case C-255/03: Commission of the European Communities v Kingdom of Belgium [1]

(Failure of a Member State to fulfil its obligations — Free movement of goods — Measures having equivalent effect — Label of quality and origin — 'Walloon label of quality')

(2005/C 19/08)

(Language of the case: French)

In Case C-255/03: Commission of the European Communities (Agents: C.-F. Durand and F. Simonetti) v Kingdom of Belgium (Agent: E. Dominkovits) – application for a declaration that, by adopting and maintaining in force rules under which the 'Walloon label of quality' is granted to finished products of a certain quality manufactured or processed in Wallonie, the Kingdom of Belgium has failed to fulfil its obligations under Article 28 EC – the Court (Fifth Chamber), composed of C. Gulmann (Rapporteur), President of the Chamber, S. von Bahr and R. Silva de Lapuerta, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 17 June 2004, in which it:

1. *Declares that, by adopting and maintaining in force rules under which 'the Walloon label of quality' is granted to finished products of a certain quality manufactured or processed in Wallonie, the Kingdom of Belgium has failed to fulfil its obligations under Article 28 EC;*

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

[1] OJ C 200 of 23.8.2003.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 2 December 2004

in Case C-398/03 (reference for a preliminary ruling from the Helsingin Hallinto-Oikeus): E. Gavrielides Oy [1]

(Directive 90/642/EEC — Maximum levels for pesticide residues — Vine leaves)

(2005/C 19/09)

(Language of the case: Finnish)

In Case C-398/03: reference for a preliminary ruling under Article 234 EC from the Helsingin Hallinto-Oikeus (Finland), made by judgment of 22 September 2003, received at the Court on 24 September 2003, in the proceedings brought by E. Gavrielides Oy, – the Court (Fourth Chamber), composed of: K. Lenaerts (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues and K. Schiemann, Judges; J. Kokott, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 2 December 2004, in which it has ruled:

Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables, as amended by Commission Directive 2000/42/EC of 22 June 2000, is not applicable to vine leaves.

([1]) OJ C 275 of 15.11.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 November 2004

in Case C-447/03 Commission of the European Communities v Italian Republic ([1])

(Failure by a Member State to fulfil its obligations — Environment — Waste management — Factory site and waste in province of Foggia — Directive 75/442/EEC amended by Directive 91/156/EEC — Articles 4 and 8)

(2005/C 19/10)

(Language of the case: Italian)

In Case C-447/03 Commission of the European Communities (Agents: R. Amorosi and M. Konstantinidis) v Italian Republic (Agent: I.M. Braguglia and M. Fiorilli) – action under Article 226 EC for failure to fulfil obligations, brought on 22 October 2003 – the Court (Fifth Chamber), composed of: C. Gulmann, acting as President of the Fifth Chamber, G. Arestis and J. Klučka (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 25 November 2004, in which it:

1. *Declares that, by failing to take the necessary measures to ensure that waste, stored or deposited in dumps on the site of the former Enichem Manfredonia factory (province of Foggia, Italy) and at the Pariti I urban waste dump near Manfredonia, is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and by failing to take the necessary measures to ensure that the holder of the waste stored or deposited in dumps on the site of Enichem's former factory, also situated near Manfredonia, and the holder of the waste in the Pariti I dump and Conte di Troia urban waste dump has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or II B to Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, or recover or dispose of it themselves, the Italian Republic has failed to fulfil its obligations under Article 4 and Article 8 of that directive.*

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

([1]) OJ C 7 of 10.1.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 28 October 2004

in Case C-16/04: Commission of the European Communities v Federal Republic of Germany ([1])

(Failure of a Member State to fulfil its obligations — Directive 89/654/EEC — Protection of workers — Safety and health of workers in the workplace — Emergency doors, windows and skylights — Failure to transpose)

(2005/C 19/11)

(Language of the case: German)

In Case C-16/04, action under Article 226 EC for failure to fulfil obligations, brought on 20 January 2004, Commission of the European Communities (Agents: H. Kreppel and D. Martin) against Federal Republic of Germany (Agents: C.-D. Quassowski and M. Lumma) – the Court (Sixth Chamber), composed of A. Borg Barthet (Rapporteur), President of the Chamber, J.-P. Puissochet and J. Malenovský, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 28 October 2004 in which it:

(1) *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary fully to comply with Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Federal Republic of Germany has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 59 of 6.3.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 2 December 2004

in Case C-48/04: Commission of the European Communities v Portuguese Republic ([1])

(Failure to fulfil obligations — Directive 2000/76/EC — Incineration of waste — Failure to transpose)

(2005/C 19/12)

(Language of the case: Portuguese)

In Case C-48/04: Commission of the European Communities (Agents: A. Caeiros and M. Konstantinidis) v Portuguese Republic (Agents: L. Fernandes and F. Andrade) – ACTION under Article 226 EC for failure to fulfil obligations, brought on 6 February 2004 – the Court (Fourth Chamber), composed of: K. Lenaerts, President of Chamber, N. Colneric and E. Levits (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 2 December 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative measures necessary to comply with Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, the Portuguese Republic has failed to fulfil its obligations under that directive, in particular those under Article 21(1) thereof;*

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

([1]) OJ C 71, 20.3.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 18 November 2004

in Case C-85/04: Commission of the European Communities v French Republic ([1])

(Failure of a Member State to fulfil its obligations — Directive 2001/17/EC — Reorganisation and winding-up of insurance undertakings — Failure to transpose within the prescribed period)

(2005/C 19/13)

(Language of the case: French)

In Case C-85/04: action under Article 226 EC for failure to fulfil obligations, brought on 23 February 2004, Commission of the European Communities (Agents: E. Traversa and P. Léouffre) against French Republic (Agents: G. de Bergues and O. Christmann) – the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues, acting as President of the Fourth Chamber, M. Ilešič (Rapporteur) and E. Levits, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 18 November 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings, the French Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 84 of 3.4.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 18 November 2004

in Case C-87/04: Commission of the European Communities v Kingdom of Belgium [1]

(Failure of a Member State to fulfil its obligations — Directive 2001/17/EC — Reorganisation and winding-up of insurance undertakings — Failure to transpose within the prescribed period)

(2005/C 19/14)

(Language of the case: French)

In Case C-87/04: action under Article 226 EC for failure to fulfil obligations, brought on 23 February 2004, Commission of the European Communities (Agents: E. Traversa and P. Léouffre) against Kingdom of Belgium (Agent: E. Dominkovits) – the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues, acting as President of the Fourth Chamber, M. Ilešič (Rapporteur) and E. Levits, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 18 November 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings, the Kingdom of Belgium has failed to fulfil its obligations under that directive,*

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

[1] OJ C 85 of 3.4.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 18 November 2004

in Case C-91/04: Commission of the European Communities v Kingdom of Sweden [1]

(Failure by a Member State to fulfil its obligations — Directive 2001/29/EC — Harmonisation of certain aspects of copyright and related rights in the information society — Failure to transpose within the prescribed period)

(2005/C 19/15)

(Language of the case: Swedish)

In Case C-91/04: action under Article 226 EC for failure to fulfil obligations, brought on 25 February 2004, between Commission of the European Communities (Agents: K. Banks and K. Simonsson) and Kingdom of Sweden (Agent: A. Kruse) – the Court (Sixth Chamber), composed of: J.-P. Puissochet, acting as President of the Sixth Chamber, S. von Bahr and J. Malenovský (Rapporteur), Judges; J. Kokott, Advocate General; R. Grass, Registrar, has given a judgment on 18 November 2004, in which it:

1. *Declares that, failing to take the laws, regulations and administrative provisions necessary to comply with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, the Kingdom of Sweden has failed to fulfil its obligations under that directive.*

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

[1] OJ C 94 of 17.4.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 2 December 2004

in Case C-97/04 Commission of the European Communities v Italian Republic [1]

(Failure by a Member State to fulfil its obligations — Directive 2000/76/EC — Incineration of waste — Failure to transpose)

(2005/C 19/16)

(Language of the case: Italian)

In Case C-97/04 Commission of the European Communities (Agents: R. Amorosi and M. Konstantinidis) v Italian Republic (Agent: I.M. Braguglia, and G. Fiengo) – action under Article 226 EC for failure to fulfil obligations, brought on 26 February 2004 – the Court (Fourth Chamber), composed of: K. Lenaerts, President of the Chamber, N. Colneric and E. Levits (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 2 December 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, the Italian Republic has failed to fulfil its obligations under that directive and, in particular, Article 21(1) thereof.*

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

(1) OJ C 94 of 17.4.2002.

ORDER OF THE COURT

(Second Chamber)

of 29 October 2004

in Case C-360/02 P: Carlo Ripa di Meana v European Parliament (1)

(Appeal — Former member of the European Parliament — Provisional retirement pension scheme — Suspension of payment of the pension following the election of that member as a regional councillor — Action for annulment — Confirmatory act — Inadmissibility — Appeal manifestly unfounded)

(2005/C 19/17)

(Language of the case: Italian)

In Case C-360/02 P: appeal under Article 49 of the EC Statute of the Court of Justice, brought on 2 October 2002, Carlo Ripa di Meana, former member of the European Parliament, residing in Montecastello di Vibio (Italy) (lawyers: W. Viscardini and G. Donà), the other party to the proceedings being: European Parliament (Agents: A. Caiola and G. Ricci), defendant at first instance – the Court (Second Chamber), composed of: C. W. A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, J. Makarczyk, P. Kūris and J. Klučka, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, has made an order on 29 October 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Mr Ripa di Meana shall pay the costs.*

(1) OJ C 305 of 7.12.2002.

ORDER OF THE COURT

(Second Chamber)

of 14 October 2004

in Case C-288/03 P: Bernard Zaoui and Others v Commission of the European Communities (1)

(Non-contractual liability of the Community — Appeal in part manifestly unfounded and in part manifestly inadmissible)

(2005/C 19/18)

(Language of the case: French)

In Case C-288/03 P: appeal under Article 56 of the Statute of the Court of Justice, brought on 3 July 2003, Bernard Zaoui, residing at Combs-la-Ville (France), Lucien Zaoui, residing at Netanya (Israel), Déborah Stain, née Zaoui, residing at Ramat Gan (Israel) the other party to the proceedings being: Commission of the European Communities (Agents: P. Kuijper, F. Dintilhac and C. Tufvesson) – the Court (Second Chamber), composed of: C.W.A. Timmermans (Rapporteur) President of the Chamber, C. Gulmann, R. Schintgen, J. Makarczyk and J. Klučka, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, has made an order on 14 October 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Mr Bernard Zaoui, Mr Lucien Zaoui and Mrs Déborah Stain, née Zaoui, shall bear the costs.*

(1) OJ C 171 of 19.7.2003.

ORDER OF THE COURT

(Fifth Chamber)

of 1 October 2004

in Case C-379/03 P: Rafael Pérez Escolar v Commission of the European Communities [1]

(Appeal — State aid — Action for declaration of failure to act — Locus standi — Admissibility of the action)

(2005/C 19/19)

(Language of the case: Spanish)

In Case C-379/03 P: appeal under Article 56 of the Statute of the Court of Justice, brought on 10 September 2003, Rafael Pérez Escolar (Agent: F. Moreno Pardo), the other party to the proceedings being: Commission of the European Communities (Agent: J. L. Buendía Sierra) – the Court (Fifth Chamber), composed of: C. Gulmann (Rapporteur), President of the Chamber, R. Schintgen and J. Klucka, Judges; P. Léger, Advocate General; R. Grass, Registrar, has made an order on 1 October 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Mr Pérez Escolar shall pay the costs.*

[1] OJ C 251 of 18.10.2003.

ORDER OF THE COURT

(Fourth Chamber)

of 29 October 2004

in Case C-18/04 P: Grégoire Krikorian and Others v European Parliament, Council of the European Union, Commission of the European Communities [1]

(Appeal — Non-contractual liability of the Community — Action for damages — Appeal in part manifestly inadmissible and in part unfounded)

(2005/C 19/20)

(Language of the case: French)

In Case C-18/04 P: Grégoire Krikorian, residing in Bouc-Bel-Air (France), Suzanne Krikorian, née Tatoyan, residing in Bouc-Bel-Air (France), Euro-Arménie ASBL, established in Marseille (France), (avocat: P. Krikorian), the other parties to the proceedings being European Parliament (Agents: A. Baas and R. Passos), Council of the European Union, (Agents: S. Kyriakopoulou and G. Marhic), Commission of the European Communities (Agents: C. Ladenburger and F. Dintilhac) – Appeal pursuant to Article 56 of the Statute of the Court of Justice, brought on 16 January 2004 – the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, made an order on 29 October 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *The appellants shall bear the costs of the appeal.*

[1] OJ C 94, 17.4.2004.

Reference for a preliminary ruling by the Tribunale Amministrativo Regionale per la Sicilia by decision of that court of 20 July 2004 in the case of Agip Petroli SpA against Capitaneria di Porto di Siracusa, Capitaneria di Porto di Siracusa, Sezione Staccata di Santa Panagia, Ministero delle Infrastrutture e dei Trasporti, interested party (for the applicant): Arbix Diamone Shipping

(Case C-456/04)

(2005/C 19/21)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrativo Regionale per la Sicilia (Sicily Regional Administrative Court) (Italy) of 20 July 2004 received at the Court Registry on 29 October 2004, for a preliminary ruling in the case of Agip Petroli SpA against Capitaneria di Porto di Siracusa, Capitaneria di Porto di Siracusa, Sezione Staccata di Santa Panagia, Ministero delle Infrastrutture e dei Trasporti, interested party (for the applicant): Arbix Diamone Shipping on the following question:

For the purposes of Article 3(3) of Regulation No 3577/92 [1], does the term 'voyage which follows or precedes the cabotage voyage' apply only to a voyage which is 'functionally and commercially autonomous, that is with cargo on board, the final/starting point of which is a foreign port', as referred to in the contested measure in the present case, or does it also apply to a voyage without cargo on board (that is, a 'voyage in ballast')?

[1] OJ L 364 of 12.12.1992, p. 7.

Reference for a preliminary ruling by the First Chamber of the Tribunal administratif de Caen, by judgment of that court dated 5 October 2004, in the case of Chambre de commerce et d'industrie de Flers-Argentan against Directeur des services fiscaux, Dircofi Ouest

(Case C-458/04)

(2005/C 19/22)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of First Chamber of the Tribunal administratif de Caen (Caen Administrative Court) dated 5 October 2004, which was received at the Court Registry on 29 October 2004, for a preliminary ruling in the case of Chambre de commerce et d'industrie de Flers-Argentan (Flers-Argentan Chamber of Commerce and Industry) against Directeur des services fiscaux (Head of the Fiscal Authorities), Dircofi Ouest.

The First Chamber of the Tribunal administratif de Caen asks the Court of Justice to give a preliminary ruling on the question whether internal financial transfers constitute subsidies within the meaning of Article 19 of Sixth Council Directive 77/388/EEC of 17 May 1977 [1] for the purposes of the calculation of the deductible proportion.

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)

Reference for a preliminary ruling by the Tribunale Amministrative Regionale per la Lombardia, Milano, by order of that court of 29 September 2004, in the case of Federconsumatori and Others against Comune di Milano (Municipality of Milan) and Aem Spa

(Case C-463/04)

(2005/C 19/23)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrative Regionale per la Lombardia, Milano, Sezione I (Regional Administrative Court for Lombardy, Milan, Division I) (Italy) of 29 September 2004, received at the Court Registry on 2 November 2004, for a preliminary ruling in the case of Federconsumatori and Others against Comune di Milano (Municipality of Milan) and Aem Spa, on the following questions:

— Can Article 2449 of the Civil Code, as applied in the circumstances at issue in this case, be held to be compatible with Article 56 of the EC Treaty as interpreted in the judgments in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, when it is invoked by a public entity which, although it has lost control by operation of law over the company limited by shares, retains a substantial shareholding (33.4 %) as a shareholder holding a relative majority of the shares, thereby obtaining a disproportionate power of control?

— Can Article 2449 of the Civil Code, applied in conjunction with Article 4 of Decree-Law No 332 of 31 May 1994 converted into Law No 474 of 30 July 1994, be held to be compatible with Article 56 of the EC Treaty as interpreted in the judgments of the Court of Justice in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, when it is invoked by a public entity which, although it has lost control by operation of law over the company limited by shares, retains a substantial shareholding (33.4 %) as a shareholder holding a relative majority of the shares, and thereby obtaining a disproportionate power of control?

— Can Article 2449 of the Civil Code be held to be compatible with Article 56 of the EC Treaty, as interpreted in the judgments of the Court of Justice in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, inasmuch as, when applied in specific cases, it brings about a result that is contrary to another provision of national law (in particular Article 2(1)(d) of Decree-Law No 332 of 31 May 1994, converted into Law No 474 of 30 July 1994) which itself complies with Article 56 of the EC Treaty and consequently reflects, in respect of the conditions on which special powers are exercised and the requirements to which they are subject, the principles established in that connection by the judgments of the Court of Justice cited above?

Reference for a preliminary ruling by the Tribunale Amministrative Regionale per la Lombardia, Milano, by order of that court of 29 September 2004, in the case of Associazione Azionariato Diffuso dell'AEM and Others against Comune di Milano, and Aem Spa

(Case C-464/04)

(2005/C 19/24)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Amministrative Regionale per la Lombardia, Milano, Sezione I (Regional Administrative Court for Lombardy, Milan, Division I) (Italy) of 29 September 2004, received at the Court Registry on 2 November 2004, for a preliminary ruling in the case of Associazione Azionariato Diffuso dell'AEM and Others against Comune di Milano on the following questions:

— Can Article 2449 of the Civil Code, as applied in the circumstances at issue in this case, be held to be compatible with Article 56 of the EC Treaty as interpreted in the judgments in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, when it is invoked by a public entity which, although it has lost control by operation of law over the company limited by shares, retains a substantial shareholding (33.4 %) as a shareholder holding a relative majority of the shares, thereby obtaining a disproportionate power of control?

— Can Article 2449 of the Civil Code, applied in conjunction with Article 4 of Decree-Law No 332 of 31 May 1994 converted into Law No 474 of 30 July 1994, be held to be compatible with Article 56 of the EC Treaty as interpreted in the judgments of the Court of Justice in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, when it is invoked by a public entity which, although it has lost control by operation of law over the company limited by shares, retains a substantial shareholding (33.4 %) as a shareholder holding a relative majority of the shares, and thereby obtaining a disproportionate power of control?

— Can Article 2449 of the Civil Code be held to be compatible with Article 56 of the EC Treaty, as interpreted in the judgments of the Court of Justice in Cases C-58/99, C-503/99 and C-483/99, C-98/01 and C-463/00, inasmuch as, when applied in specific cases, it brings about a result that is contrary to another provision of national law (in particular Article 2(1)(d) of Decree-Law No 332 of 31 May 1994, converted into Law No 474 of 30 July 1994) which itself complies with Article 56 of the EC Treaty and consequently reflects, in respect of the conditions on which special powers are exercised and the requirements to which they are subject, the principles established in that connection by the judgments of the Court of Justice cited above?

Reference for a preliminary ruling by the Tribunal Superior de Justicia de Cantabria, Sala de lo Social, by decision of that court of 1 October 2004 in the case of Manuel Acereda Herrera v Servicio Cántabro de Salud

(Case C-466/04)

(2005/C 19/25)

(Language of the case: Spanish)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Superior de Justicia de Cantabria (High Court of Justice, Cantabria), Sala de lo Social (Social Court), received at the Court Registry on 3 November 2004, for a preliminary ruling in the case of Manuel Acereda Herrera against the Servicio Cántabro de Salud on the following questions:

1. Must Article 22(1)(c) and (2) and Article 36 of Council Regulation (EEC) No 1408/71 of 14 June 1971, in the version arising from the consolidated text approved by Council Regulation (EC) No 118/97 [1], be interpreted as meaning that the authorisation, granted by the competent institution, to go to the territory of another Member State to receive there the appropriate medical treatment also confers on the individual concerned the right to be reimbursed, by the institution which granted the authorisation, for the costs of travel to, and stay and/or subsistence on, the territory of the Member State in question?

2. In the event that the reply to the first question is in the affirmative: is there a provision or rule of Community law in accordance with which the costs to be refunded, and their amount, must be set?

3. In the event that the reply to the first question is in the negative: is it compatible with the division of powers between the Member States and the institutions of the Community laid down in the Treaty establishing the European Community, and in particular with Article 10 EC (formerly Article 5 of the EC Treaty), and with the legal status of Community regulations laid down in Article 249 EC (formerly Article 189 of the EC Treaty), for a Member State to implement the provisions of a Community regulation by domestic law, adopting additional provisions which supplement those of the regulation and by means of which it introduces different rules for different cases which, under the regulation, are governed by the same rules, thereby impeding the exercise by individuals of certain options and rights available to them under the Community provision? Specifically, is it compatible with the Treaty establishing the European Community, and with Council Regulation (EEC) No 1408/71, for the Kingdom of Spain to maintain provisions of domestic law which confer on individuals registered with the social security scheme benefit rights additional to those referred to in Article 22 of Regulation No 1408/71 but which differentiate between the cases referred to in that regulation, with the result that the additional benefits concerned may be provided only in the case of Article 22(1)(c), notwithstanding that there appears to be no objective, proportionate and reasonable justification for such differentiation?

4. In any event:

   (a) Is a rule of national law of the kind contained in Article 5.3 of Royal Decree 63/1995, which, by repealing Article 18.3 of Royal Decree 2766/1967, abolishes the right of individuals entitled to benefits under the Spanish public social security scheme to obtain reimbursement of the costs of medical treatment provided by medical establishments and practitioners established on Spanish territory where the treatment to which they are entitled is not provided to them under the public scheme within a reasonable period, taking account of their condition and the probable course of the disease, notwithstanding that the body which administers the social security scheme is required to authorise the individuals concerned to receive treatment in such cases from medical establishments and practitioners established on the territory of a Member State other than Spain, compatible with the prohibition of discrimination on grounds of nationality laid down in Article 12 EC?

   (b) Is a rule of national law of the kind contained in Article 5.3 of Royal Decree 63/1995, which, by repealing Article 18.3 of Royal Decree 2766/1967, abolishes the right of individuals entitled to benefits under the Spanish public social security scheme to obtain reimbursement of the costs of medical treatment provided by medical establishments and practitioners established on Spanish territory where the treatment to which they are entitled is not provided to them under the public scheme within a reasonable period, taking account of their condition and the probable course of the disease, notwithstanding that the body which administers the social security scheme is required to authorise the individuals concerned to receive treatment in such cases from medical establishments and practitioners established on the territory of a Member State other than Spain, compatible with the principle of freedom to provide services enshrined in Article 49 EC et seq.?

   (c) Is a rule of national law of the kind contained in Article 5.3 of Royal Decree 63/1995, which, by repealing Article 18.3 of Royal Decree 2766/1967, abolishes the right of individuals entitled to benefits under the Spanish public social security scheme to obtain reimbursement of the costs of medical treatment provided by medical establishments and practitioners established on Spanish territory where the treatment to which they are entitled is not provided to them under the public scheme within a reasonable period, taking account of their condition and the probable course of the disease, notwithstanding that the body which administers the social security scheme is required to authorise the individuals concerned to receive treatment in such cases from medical establishments and practitioners established on the territory of a Member State other than Spain, compatible with the rules on competition in Articles 81, 82 and 87 EC?

[1] Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1997 L 28, p. 1).

Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 14 July 2004 in the case of Finanzamt Offenbach am Main-Land against Keller Holding GmbH

(Case C-471/04)

(2005/C 19/26)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) (Germany) of 14 July 2004, received at the Court Registry on 5 November 2004, for a preliminary ruling in the case of Finanzamt Offenbach am Main-Land against Keller Holding GmbH on the following question:

Is it contrary to Article 52, in conjunction with Article 58, of the Treaty establishing the European Community and to Article 73b of that Treaty if financing costs incurred by a corporation which have a direct economic link to profits, not subject to tax in Germany, derived from a holding in a capital company established in another Member State may be deducted as operating expenditure only in so far as no profits from that holding are distributed on a tax-free basis?

Reference for a preliminary ruling by the Hof van Cassatie van België by judgment of 22 October 2004 in the case of Plumex v Young Sports N.V.

(Case C-473/04)

(2005/C 19/27)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by judgment of 22 October 2004 by the Hof van Cassatie van België (Belgian Court of Cassation), which was received at the Court Registry on 9 November 2004, for a preliminary ruling in the case of Plumex v Young Sports N.V. on the following questions:

1. Is the service defined in Articles 4 to 11 inclusive [of Regulation No 1348/2000] ([1]) the principal method of service and service directly by post, as defined in Article 14 [of Regulation No 1348/2000], a secondary method of service, with the proviso that the first method takes precedence over the second method when both are effected in accordance with the legal provisions?

2. In the case of a combination of methods of service in accordance with Articles 4 to 11 inclusive [of Regulation No 1348/2000], on the one hand, and directly by post in accordance with Article 14 [of Regulation No 1348/2000], on the other, does the period within which the addressee of the service may lodge an appeal commence on the date of the service effected in accordance with Articles 4 to 11 inclusive and not on the date of service effected in accordance with Article 14?

([1]) Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37).

Reference for a preliminary ruling by the Bundesverwaltungsgericht by order of that court of 3 August 2004 in the case of Engin Torun against Stadt Augsburg, interested parties: 1. the representative of the national interest before the Bundesverwaltungsgericht, 2. Landesanwaltschaft Bayern.

(Case C-481/04)

(2005/C 19/28)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesverwaltungsgericht (Federal Administrative Court), of 3 August 2004, which was received at the Court Registry on 22 November 2004, for a preliminary ruling in the case of Engin Torun against Stadt Augsburg, interested parties: 1. the representative of the national interest before the Bundesverwaltungsgericht, 2. Landesanwaltschaft Bayern on the following questions:

1. Where a Turkish worker has been legally employed in the Federal Republic of Germany for more than three years, does his child who has reached the age of majority and has completed a course of vocational training as a metalworker by passing the final apprenticeship examination also forfeit his right of residence that is the corollary of the right under the second sentence of Article 7 of Decision No 1/80 of the EEC/Turkey Association Council ('Decision No 1/80') to respond to any offer of employment – apart from cases under Article 14 of Decision No 1/80 or where the host Member State is left without legitimate reason for a significant period of time – where

   (a) the child has been sentenced to a term of imprisonment totalling three years and three months for aggravated robbery and drug offences, the sentence has not been suspended (even at a later date) and the whole of the sentence has been served by offsetting the period spent on remand pending trial?

(b) the child has himself pursued employment as a worker within the legitimate labour force of the Federal Republic of Germany and has thereby acquired in his own right a right of residence that is the corollary of the right of free access to employment under the second or third indents of Article 6(1) of Decision No 1/80, and has subsequently forfeited that right?

Is such forfeiture caused by

(aa) the fact that he left his last place of employment as a result of drug addiction-induced summary termination of his employment by his employer?

(bb) the fact that, following a period of ill health of more than three months, he did not register with the competent authority as unemployed for a period of three working days between the end of his incapacity for work and his arrest for the commission of a criminal offence?

(cc) the fact that he was sentenced to a term of imprisonment totalling three years and three months for aggravated robbery and drug offences, that the sentence was not suspended (even at a later date), that the whole of the sentence was served by offsetting the period spent on remand pending trial and that during that time he was not available to the legitimate labour force but, approximately three months after his release, did find employment again with a firm on a temporary basis, without then having any national right of residence?

2. If the answer to the first question is in the affirmative: Does a Turkish national forfeit his right of residence that is the corollary of the right of free access to employment under the second or third indents of Article 6(1) of Decision No 1/80 in the circumstances described above in Question 1b)?

Appeal brought on 22 November 2004 by SNF S.A.S. against the order made on 6 September 2004 by the Fifth Chamber of the Court of First Instance of the European Communities in case T-213/02 between SNF S.A. and the Commission of the European Communities

(Case C-482/04 P)

(2005/C 19/29)

(Language of procedure: English)

An appeal against the order made on 6 September 2004 by the Fifth Chamber of the Court of First Instance of the European Communities in case T-213/02 [1] between SNF S.A. and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 22 November 2004 by SNF S.A.S, established in Andrézieux, France, represented by Messrs K. Van Meldegem and C. Mereu, lawyers.

The Appellant claims that the Court should:

— declare the present appeal admissible and well-founded;

— set aside the order of the Court of First Instance of 6 September 2004 in case T-213/02;

— declare the Apellant's requests in case T-213/02 admissible;

— rule on the merits or, in the alternative, refer the case to the Court of First Instance to rule on the merits; and

— order the European Commission to bear all costs and expenses of both proceedings.

Pleas in law and main arguments

The Appellant submits that the contested order of the Court of First Instance should be set aside on the following grounds:

a) The Court of First Instance misinterpreted Article 114(1) of the Rules of Procedure and infringed the principle of legal effectiveness and the duty to state reasons;

b) The Court of First Instance erred in law in the legal assessment of the facts;

c) The order of the Court of First Instance infringes the right to complete and effective judicial protection, and the right to a fair hearing.

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[1] OJ C 233, 28.9.2002, p. 28.

Action brought on 22 November 2004 by the Commission of the European Communities against the Italian Republic

(Case C-483/04)

(2005/C 19/30)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 22 November 2004 by the Commission of the European Communities, represented by Knut Simonsson and Enrico Traversa acting as Agents.

The applicant claims that the Court should:

— declare that, by having failed to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/6/EC [1] of the European Parliament and of the Council of 18 February 2002 on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community or, in any case, by having failed to communicate them to the Commission, the Italian Republic has failed to fulfil its obligations under Article 7 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition into national law of the directive expired on 19 September 2003.

[1] OJ L 67 of 9.3.2002, p. 31.

Action brought on 6 December 2004 by the Commission of the European Communities against the Kingdom of Spain

(Case C-501/04)

(2005/C 19/31)

(Language of the case: Spanish)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 6 December 2004, by the Commission of the European Communities, represented by Enrico Traversa, Legal Adviser, and Ramón Vidal Puig, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that by giving policyholders the option of cancelling contracts in the event of transfer of its portfolio under the right of establishment or the freedom to provide services where the transferor and/or transferee is not an insurance undertaking with its head office in Spain, but not where the transfer is between Spanish undertakings, the Kingdom of Spain has failed to fulfil its obligations under

  — Article 12(6) of Council Directive 92/49/EEC [1] of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC;

  — Article 14(5) of Directive 2002/83/EC [2] of the European Parliament and of the Council of 5 November 2002 concerning life assurance;

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Although Article 12(6) of Directive 92/49 and Article 14(5) of Directive 2002/83 give the Member States the authority to grant the option of cancelling contracts, a Member State breaches those provisions where, when granting that option, it discriminates, directly or indirectly, between insurance undertakings with their head office in the Member State in question and undertakings of other Member States which are operating in that Member State under the right of establishment or the freedom to provide services.

The Spanish legislation is discriminatory because it provides for different and more favourable treatment for Spanish insurance undertakings than for insurance undertakings from other Member States as regards the option of cancellation and that difference in treatment is not based on objective differences between the situations contemplated.

The difference in treatment is not justified by considerations relating to consumer protection.

[1] OJ L 228 of 11.8.1992.
[2] OJ L 345 of 19.12.2002.

Removal from the register of Case C-177/02 [1]

(2005/C 19/32)

(Language of the case: Italian)

By order of 19 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-177/02 (reference for a preliminary ruling from the Corte Suprema di cassazione): Agenzia per le Erogazioni in Agricoltura – AGEA v Azienda Agricola Fava Allessandro e Delledonne Carla.

[1] OJ C 156 of 29.6.2002.

Removal from the register of Case C-330/02 [1]

(2005/C 19/33)

(Language of the case: English)

By order of 14 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-330/02: Commission of the European Communities v Ireland.

[1] OJ C 274 of 9.11.2002.

Removal from the register of Case C-77/03 [1]

(2005/C 19/34)

(Language of the case: German)

By order of 19 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-77/03: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 101 of 26.4.2003.

Removal from the register of Case C-257/03 [1]

(2005/C 19/35)

(Language of the case: English)

By order of 25 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-257/03: Commission of the European Communities v Ireland.

[1] OJ C 226 of 20.9.2003.

Removal from the register of Case C-340/03 [1]

(2005/C 19/36)

(Language of the case: German)

By order of 25 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-340/03: Commission of the European Communities v Republic of Austria.

[1] OJ C 226 of 20.9.2003.

Removal from the register of Case C-518/03 [1]

(2005/C 19/37)

(Language of the case: Swedish)

By order of 8 September 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-518/03: Commission of the European Communities v Kingdom of Sweden.

[1] OJ C 47 of 21.2.2004.

Removal from the register of Case C-62/04 [1]

(2005/C 19/38)

(Language of the case: Italian)

By order of 28 September 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-62/04: Commission of the European Communities v Italian Republic.

[1] OJ C 85 of 3.4.2004.

Removal from the register of Case C-86/04 [1]

(2005/C 19/39)

(Language of the case: French)

By order of 14 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-86/04: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 85 of 3.4.2004.

Removal from the register of Case C-92/04 ([1])

(2005/C 19/40)

(Language of the case: Italian)

By order of 30 September 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-92/04: Commission of the European Communities v Italian Republic.

([1]) OJ C 94 of 17.4.2004.

Removal from the register of Case C-230/04 ([1])

(2005/C 19/41)

(Language of the case: French)

By order of 29 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-230/04: Commission of the European Communities v Republic of France.

([1]) OJ C 201 of 7.8.2004.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 December 2004

in Case T-120/01: Carlo De Nicola v European Investment Bank [1]

(Staff of the European Investment Bank — Admissibility — Working conditions — Disciplinary procedure — Suspension — Dismissal without notice)

(2005/C 19/42)

(Language of the case: Italian)

In Case T-120/01: Carlo De Nicola, established in Rome (Italy), represented by L. Isola, lawyer, against European Investment Bank (Agents: C. Gómez de la Cruz, F. Mantegazza and C. Camilli, lawyer with an address for service in Luxembourg), – in Case T-120/01, action essentially, first, for annulment of the letter from the Director of Human Resources of the European Investment Bank of 6 March 2001 concerning the conditions for the reinstatement of the applicant following the judgment of the Court of First Instance in Joined Cases T-7/98, T-208/98 and T-109/99 [2001] ECR-SC I-A-49 and II-185 and annulment of the decision of the President of the Bank of 22 May 2001 to suspend him from his duties and, second, for damages, and, in Case T-300/01, action essentially, first, for annulment of the decision of the President of the Bank of 6 September 2001 to dismiss him without notice and without a severance grant and, second, for damages – the Court of First Instance (Third Chamber), composed of J. Azizi, President, M. Jaeger and W.H. Meij, Judges; J. Plingers, administrator, for the Registrar, has given a judgment on 16 December 2004, in which it:

1. *Annuls the decision of the defendant of 22 May 2001 suspending the applicant.*

2. *Annuls the decision of the defendant of 6 September 2001 dismissing the applicant.*

3. *Orders the defendant to pay the applicant, in compensation for the partial failure to implement paragraph 2 of the operative part of the judgment of 23 February 2001, the sum of EUR 3 716, and, where appropriate, financial compensation for leave not taken with default interest from 1 June 2001 until payment. The rate of default interest applicable is calculated on the basis of the rate fixed by the Central European Bank for principal refinancing operations applicable during the period concerned, plus two percentage points.*

4. *Orders the defendant to pay the applicant the sum of EUR 2 315 by way of salary not received for the period from 1 March 2001 to 31 August 2001 with default interest from 1 June 2001 until payment. The rate of default interest applicable is calculated on the basis of the rate fixed by the Central European Bank for principal refinancing operations applicable during the period concerned, plus two percentage points.*

5. *Orders the defendant to pay the applicant arrears of salary not received from 1 September 2001 with default interest reduced by the sum of EUR 1 290 paid to the applicant by way of geographical mobility allowance for the month of September 2001. The rate of default interest applicable is calculated on the basis of the rate fixed by the Central European Bank for principal refinancing operations applicable during the period concerned, plus two percentage points.*

6. *Orders the defendant to pay the applicant the sum of EUR 10 000 by way of reparation for non-material damage.*

7. *Orders the defendant to pay its own costs including those incurred in interim proceedings, and half of the costs incurred by the applicant in Cases T-120/01 and T-300/01 and in the interim proceedings in those cases.*

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

[1] OJ C 227 of 11.8.2001 and OJ C 44 of 16.2.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 18 November 2004

in Case T-176/01: Ferriere Nord SpA v Commission of the European Communities [1]

(State aid — Community guidelines on State aid for environmental protection — Steel undertaking — Products coming under the EC Treaty — Approved aid scheme — New aid — Initiation of the formal procedure — Time-limits — Rights of the defence — Legitimate expectation — Statement of reasons — Applicability ratione temporis of the Community guidelines — Environmental objective of the investment)

(2005/C 19/43)

(Language of the case: Italian)

In Case T-176/01: Ferriere Nord SpA, established in Osoppo (Italy), represented by W. Viscardini Donà and G. Donà, lawyers, supported by Italian Republic (Agents: initially U. Leanza, acting as Agent, and subsequently I. Braguglia and M. Fiorilli, avvocati dello Stato, with an address for service in Luxembourg), against Commission of the European Communities (Agents: V. Kreuschitz and V. Di Bucci, with an address for service in Luxembourg) – application for, first, annulment of Commission Decision 2001/829/EC, ECSC of 28 March 2001 on the State aid which Italy is planning to grant to Ferriere Nord SpA (OJ 2001 L 310, p. 22) and, second, compensation for the harm allegedly sustained by the applicant following the adoption of that decision – the Court of First Instance (Fourth Chamber, Extended Composition), composed of H. Legal, President, V. Tiili, A.W.H. Meij, M. Vilaras and N.J. Forwood, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 18 November 2004, in which it:

1. *Dismisses the action;*

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

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

[1] OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 December 2004

in Case T-11/02: Spyridon de Athanassios Pappas v Commission of the European Communities [1]

(Officials — Retirement — Monthly allowance under Article 50 of the Staff Regulations — Services taken into account in the calculation of the allowance — Employment prior to entry into the service of the Communities — Transfer of pension rights)

(2005/C 19/44)

(Language of the case: French)

In Case T-11/02: Spyridon de Athanassios Pappas, established in Kraainem (Belgium), represented by K. Adamantopoulos and V. Akritidis, lawyers, against Commission of the European Communities – action for annulment of the decision of the Commission fixing the duration of the monthly allowance which the applicant receives following his retirement in the interests of the service under Article 50 of the Staff Regulations of Officials of the European Communities – the Court of First Instance composed of M. Jaeger (single Judge); I. Natsinas, administrator, for the Registrar, has given a judgment on 16 December 2004, in which it:

1. *Dismisses the action:*

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

[1] OJ C 68 of 16.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 November 2004

in Case T-164/02: Kaul GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark ARCOL — Earlier Community word mark CAPOL — Scope of the assessment conducted by the Board of Appeal — Assessment of evidence adduced before the Board of Appeal)

(2005/C 19/45)

(Language of the case: German)

In Case T-164/02: Kaul GmbH, established in Elmshorn (Germany), represented by G. Würtenberger and R. Kunze, lawyers, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl and G. Schneider) the other party to the proceedings before the OHIM Board of Appeal having been Bayer AG, established in Leverkusen (Germany), – action brought against the decision of the Third Board of Appeal of OHIM of 4 March 2002 (Case R 782/2000-3), relating to opposition proceedings between Kaul GmbH and Bayer AG – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, M. Vilaras and I. Wiszniewska-Białecka, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 10 November 2004, in which it:

1. *Annuls the decision of 4 March 2002 (Case R 782/2000-3) of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

2. *Orders OHIM to pay the costs.*

[1] OJ C 180 of 27.2.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 9 November 2004

in Joined Cases T-285/02 and T-395/02 Eva Vega Rodríguez v Commission of the European Communities [1]

(Officials — Open competition — Multiple-choice questions — Accuracy of the answers in the marking sheet — Judicial scrutiny — Limits)

(2005/C 19/46)

(Language of the case: French)

In Joined Cases T-285/02 and T-395/02, Eva Vega Rodríguez, residing in Brussels (Belgium), represented in Case T-285/02 by J. Iturriagagoitia Bassas and, in Case T-395/02, by J. Iturriagagoitia Bassas and K. Delvolvé, lawyers, against Commission of the European Communities (Agent: J. Currall, with an address for service in Luxembourg) – applications, primarily, for annulment of the decision of the selection board in competition COM/A/10/01 excluding the applicant and awarding an insufficient number of marks for her to continue in the competition and of the decision rejecting her complaint and, in the alternative, for damages – the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; I. Natsinas, Administrator, for the Registrar, has given a judgment on 9 November 2004, in which it:

1. *Dismisses the actions;*

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

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 November 2004

in Case T-396/02: August Storck KG v Office for Harmonisation in the Internal Market (Trade marks and Designs) (OHIM) [1]

(Community trade mark — Three-dimensional mark — Shape of a sweet — Absolute grounds for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94)

(2005/C 19/47)

(Language of the case: German)

In Case T-396/02: August Storck KG, established in Berlin, represented by H. Wrage-Molkenthin, T. Reher, A. Heise and I. Rohr, lawyers, with an address for service in Luxembourg against Office for Harmonisation in the Internal Market (Trade marks and Designs) (OHIM) (Agents: B. Müller and G. Schneider) – action for annulment of the decision of the Fourth Board of Appeal of OHIM of 14 October 2002 (Case R 187/2001-4), refusing registration of a three-dimensional mark comprised of the shape of a light-brown sweet – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and M. Vilaras, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 10 November 2004, in which it:

1. *Dismisses the action;*

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

[1] OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 November 2004

in Case T-402/02: August Storck KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Figurative mark representing the form of a twisted wrapper (shape of a sweet wrapper) — Subject-matter of the application — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Distinctive character acquired though use — Article 7(3) of Regulation (EC) No 40/94 — Right to be heard — Article 73(1) of Regulation (EC) No 40/94 — Examination of the facts by OHIM of its own motion — Article 74(1) of Regulation (EC) No 40/94)

(2005/C 19/48)

(Language of the case: German)

In Case T-402/02: August Storck KG, established in Berlin (Germany), represented by H. Wrage-Molkenthin, T. Reher, A. Heise and I. Rohr, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (Agents: B. Müller and G. Schneider) – action for annulment of the decision of the Second Board of Appeal of OHIM of 18 October 2002 (Case R 0256/2001-2) refusing registration of a trade mark representing a twisted wrapper (shape of a sweet wrapper) – the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and M. Vilaras, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 10 November 2004, in which it:

1. *Dismisses the action;*

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

[1] OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 9 November 2004

in Case T-116/03 Oresto Montalto v Council of the European Union [1]

(Officials — Recruitment — Temporary agent — Vacancy notice — Recruitment procedure)

(2005/C 19/49)

(Language of the case: French)

In Case T-116/03, Oresto Montalto, official of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), residing in Alicante (Spain), represented by G. Vandersanden, lawyer, against Council of the European Union (Agents: B. Hoff-Nielsen and F. Anton) – application, first, for annulment of the Council decision of 23 May 2002 appointing an additional chairperson of a Board of Appeal and President of the Appeals Department of OHIM (OJ 2002 C 130, p. 2) and, secondly, for damages – the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; I. Natsinas, Administrator, for the Registrar, has given a judgment on 9 November 2004, in which it:

(1) *Annuls the Council decision of 23 May 2002 appointing an additional Chairperson of a Board of Appeal and President of the Appeals Department of the Office for Harmonisation in the Internal Market (Trade Marks and Designs);*

(2) *Dismisses the remainder of the action;*

(3) *Orders the Council to pay the costs.*

([1]) OJ C 135 of 7.6.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 November 2004

in Case T-165/03 Eduard Vonier v Commission of the European Communities ([1])

(Officials — Competition — Non-inclusion on the reserve list — National seminar — Composition of the selection board — Oral test — Private life — Knowledge of languages)

(2005/C 19/50)

(Language of the case: German)

In Case T-165/03, Eduard Vonier, residing in Amsterdam (Netherlands), represented by W. Schmolke, lawyer, against Commission of the European Communities (Agent: J. Currall, assisted by B. Wägenbaur, lawyer, with an address for service in Luxembourg) – application, first, for annulment of the decision of 30 July 2002, by which the selection board in competition COM/A/6/01 decided not to include the applicant on the reserve list of administrators in the field of foreign relations and, secondly, for damages in compensation for the loss and damage allegedly incurred – the Court of First Instance (Third Chamber), composed of J. Azizi, President, F. Dehousse and O. Czúcz, Judges; H. Jung, Registrar, has given a judgment on 10 November 2004, in which it:

(1) *Dismisses the action;*

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

([1]) OJ C 213 of 6.9.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 13 July 2004

in Case T-29/03 Communidad Autonóma de Andalucía v Commission of the European Communities ([1])

(European Anti-Fraud Office (OLAF) — Report relating to the administrative enquiry into the marketing of olive oil in Andalusia (Spain) — Complaint — Inadmissibility)

(2005/C 19/51)

(Language of the case: Spanish)

In Case T-29/03, Communidad Autónoma de Andalucía, represented by C. Carretero Espinosa de los Monteros, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Ladenburger and S. Pardo Quintillán, with an address for service in Luxembourg) – application for annulment of the decision allegedly contained in the letter of the Director General of the European Anti-Fraud Office (OLAF) of 8 November 2002, by which the latter informed the applicant of the impossibility of investigating its complaint against OLAF Report IO/2000/7057 relating to administrative enquiries into the marketing of olive oil in Andalusia (Spain) – the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, P. Mengozzi and M.E. Martins Ribiero, Judges; H. Jung, Registrar, made an order on 13 July 2004, the operative part of which is as follows:

(1) *The action is dismissed as inadmissible;*

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

([1]) OJ C 70 of 22.3.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 9 September 2004

in Case T-14/04 Alto da Casablanca SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Representation by a lawyer — Manifest inadmissibility)

(2005/C 19/52)

(Language of the case: English)

In Case T-14/04, Alto da Casablanca SA, established in Casablanca (Chile), represented by A. Pluckrose, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: O. Montalto), the other party to the proceedings before the Board of Appeal of OHIM being Bodegas Julián Chivite, SL, established in Cintruénigo (Spain) – application for annulment of the decision of the Second Board of Appeal of OHIM of 4 November 2003 (Case R 18/2003-2) concerning an application for registration of the word mark VERAMONTE as a Community trade mark – the Court of First Instance (Fifth Chamber) composed of P. Lindh, President, R. Garcia-Valdecasas and J.D. Cooke, Judges; H. Jung, Registrar, made an order on 9 September 2004, the operative part of which is as follows:

(1) *The action is dismissed as manifestly inadmissible;*

(2) *Each party shall bear its own costs.*

([1]) OJ C 71 of 20.3.2004.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 7 July 2004

in Case T-37/04 R Região autónoma dos Açores v Council of the European Union

(Proceedings for interim relief — Fisheries — Council Regulation (EC) No 1954/2003 — Application for partial suspension and other interim measures — Admissibility — Urgency — Intervention)

(2005/C 19/53)

(Language of the case: English)

In Case T-37/04 R, Região autónoma dos Açores, represented by M. Renouf, S. Crosby and C. Bryant, solicitors, and H. Mercer, barrister, against Council of the European Union (Agents: J. Monteiro and F. Florindo Gijón), supported by Commission of the European Communities (Agents: T. van Rijn and B. Doherty, with an address for service in Luxembourg) and by Kingdom of Spain (Agents: N. Díaz Abad and E. Braquehais Conesa, with an address for service in Luxembourg) – application for partial suspension of Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (OJ 2003 L 289, p. 1), in so far as it adversely affects Azorean waters and, in particular, Articles 3, 5(1), 11, 13(b) and 15 thereof and the Annex thereto, and/or any other interim measures deemed to be appropriate – the President of the Court of First Instance made an order on 7 July 2004, the operative part of which is as follows:

(1) *Porto de Abrigo, Organização de Produtores da Pesca CRL and GÊ-Questa, Associação de Defesa do Ambiente are granted leave to intervene in support of the forms of order sought by the applicant;*

(2) *The application of WWF–World Wide Fund for Nature and Seas at Risk for leave to intervene is dismissed;*

(3) *The application for interim measures is dismissed;*

(4) *Costs are reserved.*

Action brought on 24 August 2004 by Bitburger Brauerei Th. Simon GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-350/04)

(2005/C 19/54)

(Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 24 August 2004 by Bitburger Brauerei Th. Simon GmbH, of Bitburg (Germany), represented by Michaela Huth-Dierig, lawyer. Anheuser-Busch, Inc., of St Louis (United States of America), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 June 2004 in appeal R 453/2002-2;

— order the defendant to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	Anheuser-Busch, Inc.
Community trade mark sought:	Word mark BUD for goods in Class 32 (beer, ale, porter, malted alcoholic beverages) – Application No 24 711
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	German word and figurative marks Bit, BIT, Bitte ein Bit and Bitburger for goods and services in Classes 16, 18, 20, 21, 24, 25, 28, 32, 34 and 42 (inter alia beer and non-alcoholic drinks)
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Applicant's appeal dismissed
Pleas in law:	There is considerable aural similarity between the marks Article 8(1)(b) of Regulation (EC) No 40/94 was applied incorrectly The BIT marks with earlier priority enjoy extended protection under Article 8(5) of the regulation

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Action brought on 24 August 2004 by Bitburger Brauerei Th. Simon GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-351/04)

(2005/C 19/55)

(Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 24 August 2004 by Bitburger Brauerei Th. Simon GmbH, of Bitburg (Germany), represented by Michaela Huth-Dierig, lawyer. Anheuser-Busch, Inc., of St Louis (United States of America), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 June 2004 in appeal R 447/2002-2;

— order the defendant to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	Anheuser-Busch, Inc.
Community trade mark sought:	Figurative mark American Bud for goods in Classes 16, 25 and 32 (inter alia paper, clothing, beer, ale, porter, malted alcoholic and non-alcoholic beverages) – Application No 398 966
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	German word and figurative marks Bit, BIT and Bitte ein Bit for goods and services in Classes 16, 18, 20, 21, 24, 25, 28, 32, 34 and 42 (inter alia beer and non-alcoholic drinks)
Decision of the Opposition Division:	Opposition rejected

Decision of the Board of Appeal:	Applicant's appeal dismissed
Pleas in law:	— There is considerable aural similarity between the marks — Article 8(1)(b) of Regulation (EC) No 40/94 was applied incorrectly — The BIT marks with earlier priority enjoy extended protection under Article 8(5) of the regulation

Action brought on 24 August 2004 by Bitburger Brauerei Th. Simon GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-352/04)

(2005/C 19/56)

(Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 24 August 2004 by Bitburger Brauerei Th. Simon GmbH, of Bitburg (Germany), represented by Michaela Huth-Dierig, lawyer. Anheuser-Busch, Inc., of St Louis (United States of America), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 June 2004 in appeal R 451/2002-2;

— order the defendant to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	Anheuser-Busch, Inc.
Community trade mark sought:	Figurative mark Anheuser Busch Bud for goods in Classes 16, 25 and 32 (inter alia paper, clothing, beer, ale, porter, malted alcoholic and non-alcoholic beverages) – Application No 398 867
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	German word and figurative marks Bit, BIT and Bitte ein Bit for goods and services in Classes 16, 18, 20, 21, 24, 25, 28, 32, 34 and 42 (inter alia beer and non-alcoholic drinks)
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Applicant's appeal dismissed
Pleas in law:	– There is considerable aural similarity between the marks Article 8(1)(b) of Regulation (EC) No 40/94 was applied incorrectly The BIT marks with earlier priority enjoy extended protection under Article 8(5) of the regulation

Action brought on 8 October 2004 by Henkel KGaA against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-398/04)

(2005/C 19/57)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 8 October 2004 by Henkel KGaA, Düsseldorf (Germany), represented by C. Osterrieth, lawyer.

The applicant claims that the Court should:

— annul Decision R 771/1999-2 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 4 August 2004 relating to Community trade mark application No 941 971 and served on the applicant on 9 August 2004;

— order the Office to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	The applicant.
Community trade mark sought:	Figurative mark in the form of a dual-layered/dual-coloured (red/white) dishwasher tablet with an oval blue centre for goods in Classes 1 (chemicals for use in industry), 3 (soaps etc.) and 21 (sponges etc.) – Application No 941 971.
Decision of the examiner:	Refusal to register.
Decision of the Board of Appeal:	Dismissal of the appeal.
Pleas in law:	Infringement of Article 7(1)(b) of Regulation No 40/94 [1]. Misuse of powers.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 1 October 2004 by Arch Chemicals, Inc., and Arch Timber Protection Limited against the Commission of the European Communities

(Case T-400/04)

(2005/C 19/58)

(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 1 October 2004 by Arch Chemicals Inc., Norwalk, Connecticut, USA and Arch Timber Protection Limited, Castleford, United Kingdom represented by K. Van Maldegem and C. Mereu, lawyers.

The applicants claim that the Court should:

— Order the defendant to respond to the applicants' request;

— Or, in the alternative, order the annulment of the European Commission's act D 341571(04);

— Order the defendant to compensate the applicants in the provisional amount of 1 euro for damages suffered as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicants, or, in the alternative, as a result of the European Commission's act D 341571(04), as well as any applicable interests, pending the exact calculation and determination of the exact amount;

— Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicants produce and sell biocide active substances and biocidal products. They notified several substances and are a participant in the review of these substances organised by Directive 98/8/EC [1] concerning the placing of biocidal products on the market, Regulation 1896/2000 [2] on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC and Regulation 2032/2003 [3] establishing the second phase of the programme referred to in Article 16(2) of Directive 98/8/EC.

Because, according to the applicants, their rights and expectations as a participant in the review were breached, they requested the defendant to adopt specific measures to remedy the alleged illegalities. The applicants claim that Regulation 1896/2000 and Regulation 2032/2003 adversely affect their data protection rights granted by Directive 98/8/EC. The applicants also submit that the regulations allow evaluators to conduct a comparative assessment between active substances, give predominance to hazard based assessments instead of risk assessment and allows taking into account data submitted by third parties.

The applicants claim in the first place that the defendant failed to define its position and did not adopt the necessary measures. In the alternative, they claim that the letter of the defendant rejecting the applicants' request should be annulled.

In support of their application, the applicants submit that the Commission has breached its legal responsibility to implement Directive 98/8/EC in accordance with the EC Treaty and the text of the directive itself, its obligations to respect the legal rights and expectations of participants, like the applicants and its duty to ensure, in accordance with the principles of sound administration, that the implementation by the Member States complies with the EC Treaty and the directive.

(1) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning theplacing of biocidal products on the market (OJ L 123, p. 1)
(2) Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products (OJ L 228, p. 6)
(3) Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 (OJ L 307, p. 1)

Action brought on 1 October 2004 by Bactria Industriehygiene-Service Verwaltungs GmbH against the Commission of the European Communities

(Case T-401/04)

(2005/C 19/59)

(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 1 October 2004 by Bactria Industriehygiene-Service Verwaltungs GmbH, Kirchheimboladen, Germany, represented by K. Van Maldegem and C. Mereu, lawyers.

The applicant claims that the Court should:

— Order the defendant to respond to the applicant's request;

— Or, in the alternative, order the annulment of the European Commission's act D 341571(04);

— Order the defendant to compensate the applicant in the provisional amount of 1 euro for damages suffered as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicant, or, in the alternative, as a result of the European Commission's act D 341571(04), as well as any applicable interests, pending the exact calculation and determination of the exact amount;

— Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law invoked are similar to those invoked in Case T-400/04, Arch Chemicals and Arch Timber Protection/ Commission.

Action brought on 1 October 2004 by Rhodia Consumer Specialties Limited against the Commission of the European communities

(Case T-402/04)

(2005/C 19/60)

(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 1 October 2004 by Rhodia Consumer Specialties Limited,Watford, United Kingdom, represented by K. Van Maldegem and C. Mereu, lawyers.

The applicant claims that the Court should:

— Order the defendant to respond to the applicant's request;

— Or, in the alternative, order the annulment of the European Commission's act D 341571(04);

— Order the defendant to compensate the applicant in the provisional amount of 1 euro for damages suffered as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicant, or, in the alternative, as a result of the European Commission's act D 341571(04), as well as any applicable interests, pending the exact calculation and determination of the exact amount;

— Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law invoked are similar to those invoked in Case T-400/04, Arch Chemicals and Arch Timber Protection/ Commission.

Action brought on 1 October 2004 by Sumitomo Chemical (UK) PLC against the Commission of the European Communities

(Case T-403/04)

(2005/C 19/61)

(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 1 October 2004 by Sumitomo Chemical (UK) PLC, London, (United Kingdom), represented by K. Van Maldegem and C. Mereu, lawyers.

The applicant claims that the Court should:

— Order the defendant to respond to the applicant's request;

— Or, in the alternative, order the annulment of the European Commission's act D 341571(04);

— Order the defendant to compensate the applicant in the provisional amount of 1 euro for damages suffered as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicant, or, in the alternative, as a result of the European Commission's act D 341571(04), as well as any applicable interests, pending the exact calculation and determination of the exact amount;

— Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law invoked are similar to those invoked in Case T-400/04, Arch Chemicals and Arch Timber Protection/ Commission.

Action brought on 1 October 2004 by Troy Chemical Company BV against the Commission of the European Communities

(Case T-404/04)

(2005/C 19/62)

(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 1 October 2004 by Troy Chemical Company BV, Maassluis, the Netherlands, represented by K. Van Maldegem and C. Mereu, lawyers.

The applicant claims that the Court should:

— Order the defendant to respond to the applicant's request;

— Or, in the alternative, order the annulment of the European Commission's act D 341571(04);

— Order the defendant to compensate the applicant in the provisional amount of 1 euro for damages suffered as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicant, or, in the alternative, as a result of the European Commission's act D 341571(04), as well as any applicable interests, pending the exact calculation and determination of the exact amount;

— Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law invoked are similar to those invoked in Case T-400/04, Arch Chemicals and Arch Timber Protection/ Commission.

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

(Case T-410/04)

(2005/C 19/63)

(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 October 2004 by the Italian Republic, represented by Danilo Del Gaizo, Avvocato dello Stato.

The applicant claims that the Court should:

— declare the contested decision void ab initio;

— in the alternative, declare the contested decision void ab initio in so far as it reduces the Italian Republic's total allocation for the years 2000 to 2006 on the basis of Decision 1999/659, as amended by Decision 2000/426;

— order the Commission to pay the costs.

Pleas in law and main arguments:

The contested decision in this case is Commission Decision 2004/592/EC of 23 July 2004 [C(2004) 2837 final] amending Decision 1999/659/EC fixing an indicative allocation by Member State of the allocations under the European Agricultural Guidance and Guarantee Fund-Guarantee section for rural development measures for the period 2000 to 2006. ([1])

According to the applicant, the amendment contained in the contested decision not only adapts the allocation of Community funds to the Italian Republic for 2004 in respect of the expenditure forecasts submitted by the latter, but redetermines the total allocation of funds for the Italian Republic, reducing by about EUR 40 million – by setting a total allocation of EUR 4 473.2 million – the amount available under the 'Berlin envelope' (EUR 4 512.3 million).

In support of its claims, the applicant pleads infringement of the principle of non-retroactivity. It argues that Regulation No 817/2004 ([2]) was adopted on 20 April 2004 and entered into force on 7 May 2004, long after expiry of the time-limit of 30 September laid down in Article 47(1) of Regulation No 445/2002 for the Member States to forward to the Commission the statement of expenditure incurred in 2003 and expenditure remaining to be disbursed by the end of that year, and the forecasts for 2004 and subsequent years. The Commission should therefore have determined the budget appropriations for 2004 on the basis of the provisions of Article 49 of Regulation No 445/2002, which was still in force on 30 September 2003, and not on the basis of Article 57 of Regulation No 817/2004. Accordingly, in 2004 the Commission was not entitled to adopt the contested decision, which relies on the new implementing rules of Regulation No 1257/1999 ([3]) as its legal basis, or make the relevant adjustment of the initial allocations by Member State defined in Decision 659/1999, as amended by Decision 426/2000, provided for by Article 57, cited above.

In the alternative, even if it is held that Regulation 817/2004, and in particular Article 57 thereof in its entirety, was correctly applicable also to the forecasts provided by the Member States by 30 September, under Regulation No 445/2002, the applicant disputes that the Commission is authorised to revise the allocations laid down by Decision 1999/659, as amended by Decision 2000/426, by reducing the total allocation under the 'Berlin envelope' and, in any event, contends that that reduction could not include the Italian Republic. In that connection, the applicant alleges infringement of Article 46 of Regulation No 1257/1999 and of Article 57 of Regulation No 817/2004. The applicant maintains that the complete absence of any legal basis which would allow the reduction made in the contested decision shows that, in adopting that decision, the defendant completely disregarded the purpose of the Regulation underlying the measure, thereby also misusing its powers.

In the further alternative, the applicant pleads infringement of the principle of the protection of legitimate expectations and of the duty to give a statement of the reasons on which a measure is based.

([1]) OJ L 263 of 10.8.2004, p. 24.
([2]) Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 153 of 30.4.2004, p. 30).
([3]) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 160 of 26.6.1999, p. 80).

Action brought on 13 October 2004 by French Republic against Commission of the European Communities

(Case T-425/04)

(2005/C 19/64)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 October 2004 by the French Republic, represented by its Agents Ronny Abraham, Géraud de Bergues and Stéphanie Ramet, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul in its entirety Commission Decision No C(2004)360 of 2 August 2004 concerning State aid paid by France to France Télécom;

— order the Commission to pay the costs.

Pleas in law and main arguments:

In support of its action, the applicant relies, first, on an infringement of essential procedural requirements and the rights of the defence. According to the applicant, the Commission based its decision on factors, namely ministerial proposals of 12 July 2002, which are outside the scope of the procedure as defined by the decision to open the procedure. The applicant claims that the Commission should have extended the procedure by adopting a new decision to open it.

The applicant also relies on an error of law in relation to the concept of State aid within the meaning of Article 87(1) EC. According to the applicant, the Commission wrongly applied the principle of the private investor who is fully informed of the conditions of a market economy. According to the applicant, since the ministerial proposals did not amount to a commitment on the part of the State and could not be categorised as State aid, the principle of the fully-informed private investor was not applicable. The applicant also maintains that the Commission wrongly held there to be aid on the basis of two separate events which, taken separately, it would have to accept did not comprise the elements necessary for the categorisation of State aid to apply. Those events are the statements of July 2002 and the draft shareholder's advance of December 2002.

Thirdly, the applicant claims that the Commission committed a manifest error of assessment when it took the view that an analysis of the contents of the interview of 12 July 2002 allowed it to be concluded that the State was giving an undertaking as a shareholder, which would have had an influence on the markets in December.

Lastly, the applicant submits that the reasoning adopted contains contradictions and inadequacies which lead to the contested decision being vitiated on the ground of a lack of proper reasoning.

Action brought on 13 October 2004 by French Republic against Commission of the European Communities

(Case T-427/04)

(2005/C 19/65)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 October 2004 by the French Republic, represented by its Agents Ronny Abraham, Géraud de Bergues and Stéphanie Ramet, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul in its entirety Commission Decision No C(2004)361 of 2 August 2004 concerning State aid paid by France to France Télécom;

— order the Commission to pay the costs.

Pleas in law and main arguments:

The contested decision in this case held that the business tax regime applying to France Télécom (FT) between January 1994 and December 2002 constituted State aid which was incompatible with the common market.

In support of its claims, the applicant argues, first, that the Commission committed a manifest error of assessment and an error of law. In that regard, it challenges the Commission's analysis of the tax regime applying to FT under Law No 90-568 of 2 July 1990 on the organisation of the French Postal Service and France Télécom. This had led the Commission to treat the levy paid by FT between 1991 and 1993 as being of a mixed character, whereas it was purely fiscal in nature and to take the view that FT had been subject to two separate tax regimes between 1991 and 2002, whereas there had been a single regime, divided into two periods. The defendant should accordingly have applied an offset in respect of the 1991-2002 period.

The applicant also claims infringement of Article 15 of Regulation No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, inasmuch as the Commission should have held that there had been a period of ten years between the day when the alleged aid had been granted, 2 July 1990, being the date on which Law No 90-568 completely and definitively established the tax regime in question, and the first request for information from the defendant on 28 June 2001.

The applicant also relies on the principle of legitimate expectations, in that the contested decision requires the recovery of aid from FT, and of its own rights of defence, in that the Commission made a finding as to the existence of aid without having given the French authorities the opportunity of commenting on an essential element of its arguments, namely the mixed character of the levy paid by FT between 1991 and 1993.

Action brought on 5 November 2004 by the Italian Republic against the Commission of the European Communities

(Case T-443/04)

(2005/C 19/66)

(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 5 November 2004 by the Italian Republic, represented by Antonio Cingolo, Avvocato dello Stato.

The applicant claims that the Court should:

— annul the European Commission's memoranda of 27 August 2004 (DOCUP Abruzzo), 3 September 2004 (DOCUP Lazio), 15 September 2004 (POR Molise), 17 September 2004 (PON Sviluppo Imprenditoriale Locale (local business development)), 17 September 2004 (DOCUP Veneto), 20 September 2004 (POR Calabria) and 22 September 2004 (DOCUP Liguria), all of which make the implementation of the procedures for the payment of advances under the aid schemes subject to obligations which are not laid down in the relevant rules, with the effect of unlawfully restricting the admissibility of the operating costs of the Structural Funds to which they relate;

— order the defendant to pay the costs.

Pleas in law and main arguments:

The pleas in law and main arguments are those put forward in Case T-345/04 Italian Republic v Commission ([1]).

([1]) OJ C 262 of 23.10.2004, p. 55.

Action brought on 9 November 2004 by the CO-FRUTTA Soc. coop. a r.l. against the Commission of the European Communities

(Case T-446/04)

(2005/C 19/67)

(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 9 November 2004 by CO-FRUTTA Soc. coop. a r.l., represented by Wilma Viscardini and Gabriele Donà.

The applicant claims that the Court should:

— annul, pursuant to Article 230 EC, the decision contained in the letter of the Secretary General of the European Commission dated 10 August 2004 (SG/B/2/MM/tf D (2004) 7079), substantially rejecting the confirmatory application – submitted by Co-Frutta by letter of 3 May 2004 – for access to the documents containing data for 1998, 1999 and 2000 relating to operators registered in the Community to import bananas (WTO – bananas);

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

Pleas in law and main arguments:

In support of its complaints, the applicant submits that the Commission could no longer adopt the contested decision given that an (implied) decision rejecting the confirmatory application had already been taken by reason of the absence of a reply.

Furthermore, the applicant puts forwards other arguments largely the same as those in the action brought in Case T-355/04 (OJ C 262 of 23 October 2004).

Action for failure to act brought on 18 November 2004 by Mediocurso – Estabelecimento de Ensino Particular S.A. against the Commission of the European Communities

(Case T-451/04)

(2005/C 19/68)

(Language of the case: Portuguese)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 November 2004 by Mediocurso – Estabelecimento de Ensino Particular S.A., established in Lisbon (Portugal), represented by Carlos Botelho Moniz and Eduardo Maia Cadete, lawyers, with an address for service in Lisbon.

The applicant claims that the Court should:

— declare that the Commission, by failing to comply with Article 233 EC, was in breach of its duty to implement the judgment of the Court of Justice of the European Communities of 21 September 2000 in Case C-462/98 P Mediocurso v Commission;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant founds its claim on the Commission's alleged failure to take the necessary measures to comply with the judgment of the Court of Justice of 21 September 2000 in Case C-462/98 P Mediocurso v Commission.

More than 50 months have passed since the judgment was delivered and the Commission has not taken the measures which implementation of the judgment require it to take, namely taking a decision on the applicant's requests for payment of outstanding balances.

Despite having been formally requested to act, by letter from the applicant dated 19 July 2004, the Commission merely responded, by letter of 31 August 2004, that its services would be taking new decisions as soon as possible. In the applicant's submission, that response is a purely interim communication and does not amount to a measure implementing the abovementioned judgment.

Thus, as provided for in Article 232 EC, the Commission has unlawfully failed to act and in accordance with the first paragraph of Article 232 EC the Court of Justice may establish the infringement.

Removal from the Register of Case T-259/99 ([1])

(2005/C 19/69)

(Language of the case: Dutch)

By order of 9 November 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-259/99, Tankstation Jagt B.V. v Commission of the European Communities.

([1]) OJ C 6 of 8.1.2000.

III

(Notices)

(2005/C 19/70)

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

OJ C 6, 8.1.2005

Past publications

OJ C 314, 18.12.2004

OJ C 300, 4.12.2004

OJ C 273, 6.11.2004

OJ C 262, 23.10.2004

OJ C 251, 9.10.2004

OJ C 239, 25.9.2004

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