ISSN 1725-2423

Official Journal of the European Union

C 45

Volume 48

English edition

Information and Notices

19 February 2005

Notice No | Contents | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Grand Chamber)

of 14 December 2004

in Case C-463/01: Commission of the European Communities v Federal Republic of Germany [1]

(Environment — Free movement of goods — Packaging and packaging waste — Directive 94/62/EC — Exploitation and marketing of natural mineral waters — Directive 80/777/EEC — Deposit and return obligations for non-reusable packaging that depend on the overall percentage of reusable packaging)

(2005/C 45/01)

(Language of the case: German)

In Case C-463/01: action under Article 226 EC for failure to fulfil obligations, brought on 3 December 2001, **Commission of the European Communities** (Agent: G. zur Hausen) supported by **French Republic** (Agents: G. de Bergues, E. Puisais and D. Petrausch) and by **United Kingdom of Great Britain and Northern Ireland** (Agent: initially P. Ormond and subsequently C. Jackson) v **Federal Republic of Germany** (Agents: W.-D. Plessing and T. Rummler, assisted by D. Sellner) – the Court (Grand Chamber), composed of V. Skouris, President, P. Jann and K. Lenaerts (Rapporteur), Presidents of Chambers, C. Gulmann, J.-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues Judges; D. Ruiz-Jarabo Colomer, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 14 December 2004, in which it:

1. *Declares that, by establishing, through Paragraphs 8(1) and 9(2) of the Verordnung über die Vermeidung und Verwertung von Verpackungsabfällen (Regulation on the Avoidance and Recovery of Packaging Waste), a system seeking the re-use of packaging for products which, under Council Directive 80/777/EEC of 15 July 1980 on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters, must be bottled at source, the Federal Republic of Germany has failed to fulfil its obligations under Article 5 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste in conjunction with Article 28 EC;*

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

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

[1] OJ C 56 of 02.03.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 9 December 2004

in Case C-19/02 (reference for a preliminary ruling from the Oberster Gerichtshof): *Viktor Hlozek* v *Roche Austria Gesellschaft mbH* [1]

((Social policy — Male and female workers — Equal pay — Pay — Concept — Bridging allowance ('Überbrückungsgeld') provided for by a works agreement — Social plan drawn up as part of an operation to restructure an undertaking — Benefit granted to workers having reached a certain age at the time of their dismissal — Benefit granted from a different age according to the sex of the dismissed workers — Account taken of national statutory retirement age, different according to sex))

(2005/C 45/02)

(Language of the case: German)

In Case C-19/02: reference for a preliminary ruling under Article 234 EC from the Oberster Gerichtshof (Austria), made

by decision of 20 December 2001, received at the Court on 29 January 2002, in the proceedings between **Viktor Hlozek** and **Roche Austria Gesellschaft mbH** Ä the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas (Rapporteur), R. Silva de Lapuerta, K. Lenaerts and S. von Bahr, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 9 December 2004, in which it has ruled:

A bridging allowance such as that at issue in the main proceedings falls under the concept of 'pay' within the meaning of Article 141 EC and Article 1 of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. In circumstances such as those of the main proceedings, those provisions do not preclude the application of a social plan providing for a difference in the treatment of male and female workers in terms of the age at which they are entitled to a bridging allowance, since, under the national statutory scheme governing early retirement pensions, they are in different situations with regard to the factors relevant to the grant of that allowance.

([1]) OJ C 109 of 04.05.2002.

JUDGMENT OF THE COURT OF JUSTICE

(Third Chamber)

of 16 December 2004

in Case C-271/02: Commission of the European Communities v Kingdom of Sweden ([1])

(Failure to fulfil obligations — Fishing — Conservation and management of resources — Measures to control fishing activity)

(2005/C 45/03)

(Language of the case: Swedish)

In Case C-271/02: **Commission of the European Communities** (Agents: T. van Rijn and C. Tufvesson) against **Kingdom of Sweden** (Agents: A. Kruse and A. Falk) – action for failure to fulfil obligations under Article 226 EC, brought on 24 July 2002 – the Court of Justice (Third Chamber), composed of A. Rosas, President of the Chamber, J.-P. Puissochet (Rapporteur), S. von Bahr, U. Lõhmus and A. Ó Caoimh, Judges; D. Ruiz-Jarabo Colomer, Advocate General, R. Grass, Registrar, has given a judgment on 16 December 2004, in which it:

1. *Declares that, by failing, for the years 1995 and 1996:*

   — *to adopt the appropriate implementing measures for using availabilities allocated to it and to proceed with the inspections and other control measures required by the applicable Community rules,*

   — *to adopt all effective measures to prevent availabilities' being exceeded,*

   — *to take all administrative or penal measures which it was required to impose against captains of vessels having violated those rules or against any other person responsible for such a violation,*

   the Kingdom of Sweden has failed to fulfil its obligations under Article 9(2) of Council Regulation No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, 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 Sweden to pay the costs.*

([1]) OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 16 December 2004

in Case C-277/02 (reference for a preliminary ruling from the Oberverwaltungsgericht): *EU-Wood-Trading GmbH* v *Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH ([1])

(Environment — Waste — Regulation (EEC) No 259/93 on shipments of waste — Waste intended for recovery — Objections — Powers of the authority of dispatch — Recovery contravening the requirements of Article 4 of Directive 75/442/EEC or those of national provisions — Power of the authority of dispatch to raise such objections)

(2005/C 45/04)

(Language of the case: German)

In Case C-277/02: reference for a preliminary ruling under Article 234 EC from the Oberverwaltungsgericht

Rheinland-Pfalz (Germany), made by decision of 3 July 2002, received on 29 July 2002, in the proceedings between **EU-Wood-Trading GmbH** and **Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH** Ä the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta, K. Lenaerts and K. Schiemann (Rapporteur), Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 16 December 2004, in which it has ruled:

1. *The first indent of Article 7(4)(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Commission Decisions 98/368/EC of 18 May 1998 and 1999/816/EC of 24 November 1999, is to be interpreted as meaning that the objections to a shipment of waste for recovery which the competent authorities of dispatch and of destination are empowered to raise may be based on considerations connected not only to the actual transport of the waste in each competent authority's area of jurisdiction but also on the recovery planned for that shipment.*

2. *The first indent of Article 7(4)(a) of Regulation No 259/93, as amended by Decisions 98/368 and 1999/816, is to be interpreted as meaning that for the purposes of an objection to a shipment of waste the competent authority of dispatch may, in assessing the effects on health and the environment of the recovery envisaged at the destination, provided it complies with the principle of proportionality, rely on the criteria to which, to avoid such effects, the recovery of waste is subject in the State of dispatch, even where those criteria are stricter than those in force in the State of destination.*

3. *The second indent of Article 7(4)(a) of Regulation No 259/93, as amended by Decisions 98/368 and 1999/816, is to be interpreted as meaning that a competent authority of dispatch may not rely on those provisions to raise an objection to a shipment of waste based on the fact that the planned recovery does not comply with the national laws and regulations for protection of the environment, public order, public safety or health protection.*

([1]) OJ C 200 of 23.08.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 14 December 2004

in Case C-309/02 (reference for a preliminary ruling from the Verwaltungsgericht Stuttgart): Radlberger Getränkegesellschaft mbH & Co., and S. Spitz KG v Land Baden-Württemberg ([1])

(Environment — Free movement of goods — Packaging and packaging waste — Directive 94/62/EC — Deposit and return obligations for non-reusable packaging that depend on the overall percentage of reusable packaging)

(2005/C 45/05)

(Language of the case: German)

In Case C-309/02: reference for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Stuttgart (Germany), made by order of 21 August 2002, received at the Court on 29 August 2002, in the proceedings between **Radlberger Getränkegesellschaft mbH & Co., and S. Spitz KG** and **Land Baden-Württemberg** – the Court (Grand Chamber), composed of V. Skouris, President, P. Jann and K. Lenaerts (Rapporteur), Presidents of Chambers, C. Gulmann, J.-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 14 December 2004, in which it has ruled:

1. *Article 1(2) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste does not preclude the Member States from introducing measures designed to promote systems for the reuse of packaging.*

2. *While Article 7 of Directive 94/62 does not confer on the producers and distributors concerned any right to continue to participate in a given packaging-waste management system, it precludes the replacement of a global system for the collection of packaging waste with a deposit and return system where the new system is not equally appropriate for the purpose of attaining the objectives of that directive or where the changeover to the new system does not take place without a break and without jeopardising the ability of economic operators in the sectors concerned actually to participate in the new system as soon as it enters into force.*

3. *Article 28 EC precludes national rules, such as those laid down in Paragraphs 8(1) and 9(2) of the Verordnung über die Vermeidung und Verwertung von Verpackungsabfällen (Regulation on the Avoidance and Recovery of Packaging Waste), when they announce that a global packaging-waste collection system is to be replaced by a deposit and return system without the producers and distributors concerned having a reasonable transitional period to adapt thereto and being assured that, at the time when the packaging-waste management system changes, they can actually participate in an operational system.*

(1) OJ C 274 of 9.11.2002.

JUDGMENT OF THE COURT

(Grand Chamber)

of 14 December 2004

in Case C-434/02 (reference for a preliminary ruling from the Verwaltungsgericht Minden): Arnold André GmbH & Co. KG v Landrat des Kreises Herford (1)

(Directive 2001/37/EC — Manufacture, presentation and sale of tobacco products — Article 8 — Prohibition of placing on the market of tobacco products for oral use — Validity)

(2005/C 45/06)

(Language of the case: German)

In Case C-434/02: reference for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Minden (Germany), made by decision of 14 November 2002, received at the Court on 29 November 2002, in the proceedings between **Arnold André GmbH & Co. KG** and **Landrat des Kreises Herford** – the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans and K. Lenaerts, Presidents of Chambers, C. Gulmann, J.-P. Puissochet, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, and subsequently M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 14 December 2004, in which it has ruled:

Consideration of the question referred has not disclosed any factor of such a kind as to affect the validity of Article 8 of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products.

(1) OJ C 44 of 22.2.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 9 December 2004

in Case C-460/02: Commission of the European Communities v Italian Republic (1)

(Air transport — Groundhandling — Directive 96/67/EC)

(2005/C 45/07)

(Language of the case: Italian)

In Case C-460/02: action under Article 226 EC for failure to fulfil obligations, brought on 19 December 2002, between **Commission of the European Communities** (Agents: A. Aresu and M. Huttunen) and **Italian Republic** (Agents: I.M. Braguglia and O. Fiumara) – the Court (First Chamber), composed of P. Jann, President of the Chamber, R. Silva de Lapuerta (Rapporteur), K. Lenaerts, S. von Bahr and K. Schiemann, Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 9 December 2004, in which it:

1. *Declares that in so far as Legislative Decree No 18 of 13 January 1999 applying Directive 96/67/EC on access to the groundhandling market at Community airports incorporates, at Article 14, a social measure which is incompatible with Article 18 of Council Directive 96/67/EC of 15 October 1996 and sets out, at Article 20, interim provisions which are not authorised under the directive, the Italian Republic has failed to fulfil its obligations under the directive;*

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

(1) OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT OF JUSTICE

(Fourth Chamber)

of 16 December 2004

in Case C-24/03: Italian Republic v Commission of the European Communities [1]

(EAGGF — Partial annulment of Commission Decision 2002/881/EC — Financial corrections — Fruit and vegetable and public grain storage sector)

(2005/C 45/08)

(Language of the case: Italian)

In Case C-24/03: **Italian Republic** (Agent: M. Fiorilli) against **Commission of the European Communities** (Agents: C. Cattabriga and L. Visaggio) – action for annulment under Article 230 EC, brought on 15 January 2003 – the Court of Justice (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, J.N. Cunha Rodrigues and K. Schiemann (Rapporteur), Judges; L.A. Geelhoed, Advocate General, R. Grass, Registrar, has given a judgment on 16 December 2004, in which it:

1. *Dismisses the action.*

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

[1] OJ C 70 of 22.03.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 9 December 2004

in Case C-36/03 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)): The Queen, on the application of: Approved Prescription Services Ltd, v Licensing Authority [1]

(Medicinal products — Marketing authorisation — Procedures for essentially similar products)

(2005/C 45/09)

(Language of the case: English)

In Case C-36/03: reference for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom), made by order of 23 December 2002, received at the Court on 3 February 2003, in the proceedings between **The Queen**, on the application of: **Approved Prescription Services Ltd,** and **Licensing Authority**, acting by the Medicines and Healthcare products Regulatory Agency, interested party: **Eli Lilly & Co. Ltd**, – the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, N. Colneric and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 9 December 2004, in which it has ruled:

An application for marketing authorisation for a Product C may be made under Article 10(1)(a)(iii) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use where the application seeks to demonstrate that Product C is essentially similar to a Product B, in circumstances where:

— *Product B is a new pharmaceutical form of Product A, and*

— *Product A, but not Product B, has been authorised for marketing in the Community for at least the six or ten year period stipulated therein.*

[1] OJ C 83 of 5.4.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 16 December 2004

in Case C-62/03: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland [1]

(Waste — Directives 75/442/EEC and 91/156/EEC — Transposition)

(2005/C 45/10)

(Language of the case: English)

In Case C-62/03, action under Article 226 EC for failure to fulfil obligations, brought on 14 February 2003, between the **Commission of the European Communities** (Agents: X. Lewis and M. Konstantinidis) and **United Kingdom of Great Britain and Northern Ireland** (Agents: K. Manji and by D. Wyatt QC) – the Court (Third Chamber), composed of: A. Rosas, President of the Chamber, A. Borg Barthet, J. P. Puissochet (Rapporteur), J. Malenovský and U. Lõhmus, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 16 December 2004, in which it:

1. *Declares that, by failing to take the measures necessary to comply with the obligations under Articles 1(a), (e) and (f), 2(1)(b), 3, 4, 5, 7(1), 8, 12, 13 and 14 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and, most recently, by Commission Decision 96/350/EC of 24 May 1996, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 101 of 26.4.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 9 December 2004

in Case C-79/03: Commission of the European Communities v Kingdom of Spain ([1])

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Hunting)

(2005/C 45/11)

(Language of the case: Spanish)

In Case C-79/03: Action under Article 226 EC for failure to fulfil obligations, brought on 21 February 2003, between **Commission of the European Communities** (Agent: G. Valero Jordana) and **Kingdom of Spain** (Agent: N. Díaz Abad) – the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J. Makarczyk, P. Kūris and J. Klučka, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 9 December 2004, in which it:

1. *Declares that, by allowing hunting using limed twigs in the Community of Valencia by means of the method known as 'parany', the Kingdom of Spain has failed to fulfil its obligations under Articles 8(1) and 9(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;*

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

([1]) OJ C 101 of 26.4.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 9 December 2004

in Case C-123/03 P: Commission of the European Communities v Greencore Group plc ([1])

(Application for annulment of a letter of the Commission — Refusal to pay interest on a sum refunded — Concept of act confirming an earlier act — Payment of the principal sum without interest — No earlier decision to refuse)

(2005/C 45/12)

(Language of the case: English)

In Case C-123/03 P: appeal under Article 56 of the Statute of the Court of Justice, lodged on 19 March 2003, by the **Commission of the European Communities** (Agents: K. Wiedner), the other party to the proceedings being: **Greencore Group plc**, established in Dublin (Ireland), (Represented by: A. Böhlke) – the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, N. Colneric and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 9 December 2004, in which it:

1. *Sets aside the order of the Court of First Instance of the European Communities of 7 January 2003 in Case T-135/02 Greencore Group v Commission;*

2. *Rejects the plea of inadmissibility raised by the Commission of the European Communities;*

3. *Reserves the costs.*

([1]) OJ C 112 of 10.5.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 9 December 2004

in Case C-177/03: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil obligations — Directive 89/618/Euratom — Informing the general public in the event of a radiological emergency — Non-transposition)

(2005/C 45/13)

(Language of the case: French)

In Case C-177/03: action under Article 141 EA for failure to fulfil obligations, brought on 16 April 2003, between **Commission of the European Communities** (Agents: J. Grunwald and B. Stromsky) and **French Republic** (Agents: G. de Bergues and E. Puisais) – the Court (First Chamber), composed of: P. Jann, President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 9 December 2004, in which it:

1. *Declares that, by failing to take by 27 October 2000 all the measures needed to comply with Articles 2, 3, 6 and 7 of Council Directive 89/618/Euratom of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency, the French Republic has failed to fulfil its obligations under that Directive;*

2. *For the rest, dismisses the application;*

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

[1] OJ C 146 of 21.6.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 14 December 2004

in Case C-210/03 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)): The Queen, on the application of: Swedish Match AB, Swedish Match UK Ltd v Secretary of State for Health [1]

(Directive 2001/37/EC — Manufacture, presentation and sale of tobacco products — Article 8 — Prohibition of placing on the market of tobacco products for oral use — Validity — Interpretation of Articles 28 EC to 30 EC — Compatibility of national legislation laying down the same prohibition)

(2005/C 45/14)

(Language of the case: English)

In Case C-210/03: reference for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), made by decision of 17 April 2003, received at the Court on 15 May 2003, in the proceedings between **The Queen**, on the application of: **Swedish Match AB, Swedish Match UK Ltd** and **Secretary of State for Health** – the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans and K. Lenaerts, Presidents of Chambers, C. Gulmann, J.-P. Puissochet, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues (Rapporteur), Judges; L.A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, and subsequently M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 14 December 2004, in which it has ruled:

1. *Consideration of the second question has not disclosed any factor of such a kind as to affect the validity of Article 8 of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products.*

2. *Where a national measure prohibits the marketing of tobacco products for oral use in accordance with the provisions of Article 8 of Directive 2001/37, there is no need to ascertain separately whether that national measure complies with Articles 28 EC and 29 EC.*

[1] OJ C 171 of 19.7.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 December 2004

in Case C-272/03 (reference for a preliminary ruling from the Bundesfinanzhof): Hauptzollamt Neubrandenburg v Jens Christian Siig [1]

(Community Customs Code — Incurrence of a customs debt — Temporary admission procedure — Change of the tractor of a semi-trailer)

(2005/C 45/15)

(Language of the case: German)

In Case C-272/03: reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 13 May 2003, received at the Court on 24 June 2003, in the proceedings between Hauptzollamt Neubrandenburg and Jens Christian Siig, trading as 'Internationale Transport' Export-Import – the Court: (Fifth Chamber) composed of R. Silva de Lapuerta, President of the Chamber, C. Gulmann and R. Schintgen, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 15 December 2004, in which it rules:

Articles 718(3)(d) and 670(p) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code must be interpreted as meaning that those provisions prohibit the use of a road tractor registered outside the customs territory of the Community to transport a semi-trailer from a place within the customs territory of the Community, where the semi-trailer is loaded with goods, to another place within the customs territory of the Community, where the semi-trailer is merely parked with a view to being transported subsequently by another road tractor to the consignee of the goods, who is established outside the customs territory of the Community.

[1] OJ C 213 of 06.09.2003

JUDGMENT OF THE COURT

(Second Chamber)

of 16 December 2004

in Case C-293/03 (reference for a preliminary ruling from the Tribunal du travail de Bruxelles): Gregorio My v Office national des pensions (ONP) [1]

(Community officials — Transfer of pension rights — Article 11 of Annex VIII to the Staff Regulations — Early retirement pension — Reckoning of periods of employment with the European Community — Article 10 EC)

(2005/C 45/16)

(Language of the case: French)

In Case C-293/03: REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal du travail de Bruxelles (Belgium), made by decision of 20 May 2003, received at the Court on 4 July 2003, in the proceedings between **Gregorio My** and **Office national des pensions (ONP)** – the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), G. Arestis and J. Klučka, Judges; A. Tizzano, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 16 December 2004, in which it has ruled:

Article 10 EC, in conjunction with the Staff Regulations of Officials of the European Communities, must be interpreted as meaning that national legislation which does not permit years of employment completed by a Community citizen in the service of a Community institution to be taken into account for the purposes of entitlement to an early retirement pension under the national scheme is contrary to those provisions.

[1] OJ C 251 of 8.10.2003.

JUDGMENT OF THE COURT OF JUSTICE

(Fifth Chamber)

of 16 September 2004

in Case C-516/03: Commission of the European Communities v Italian Republic [1]

(Failure to fulfil obligations — Environment — Waste management — Campolungo (Ascoli Piceno) waste plant — Directive 75/442/EEC amended by Directive 91/156/EEC — Articles 4 and 8)

(2005/C 45/17)

(Language of the case: Italian)

In Case C-516/03: **Commission of the European Communities** (Agents: R. Amorosi and M. Konstantinidis) against **Italian Republic** (Agent: I.M. Braguglia, assisted by M. Fiorilli) – action for failure to fulfil obligations under Article 226 EC, brought on 9 December 2003 – the Court of Justice (Fifth Chamber), composed of C. Gulmann, acting as President of the Fifth Chamber, R. Schintgen, J. Klučka (Rapporteur), Judges; C. Stix-Hackl, Advocate General, R. Grass, Registrar, has given a judgment on 16 December 2004, in which it:

1. *Declares that, by failing to take the measures necessary to ensure that the waste deposited in the Campolungo waste plant, situated in the commune of Ascoli Piceno (Italy), is recovered or disposed of without endangering human health and without using procedures or methods which are likely to harm the environment, and by failing to take the measures necessary to ensure that any holder of waste deposited in that waste plant has it handled by a private or public collector or by an undertaking which carries out the operations listed in Annex II A or B to Council Directive of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, or recovers or disposes of it himself, the Italian Republic has failed to fulfil its obligations under Articles 4 and 8 of that directive.*

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

[1] OJ C 59 of 06.03.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 16 December 2004

in Case 520/03 (reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana): José Vicente Olaso Valero v Fondo de Garantía Salarial (Fogasa) [1]

(Social policy — Protection of workers in the event of the insolvency of their employer — Directive 80/987/EEC — Scope — Definition of 'claims' — Definition of 'pay' — Compensation payable in the event of unfair dismissal)

(2005/C 45/18)

(Language of the case: German)

In Case C-520/03: reference for a preliminary ruling under Article 234 EC from the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain), made by decision of 27 November 2003, received at the Court on 15 December 2003, in the proceedings between **José Vicente Olaso Valero** and **Fondo de Garantía Salarial (Fogasa)** – the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Lenaerts, N. Colneric (Rapporteur), K. Schiemann and E. Juhász, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 16 December 2004, in which it has ruled that:

1. *It falls to the national court to determine whether the word 'pay', as defined by national law, includes compensation for unfair dismissal. If it does, such compensation falls within the ambit of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as it stood before it was amended by Directive 2002/74/EC of the European Parliament and the Council of 23 September 2002 amending Directive 80/987.*

2. *Where, according to the national legislation in question, claims corresponding to compensation for unfair dismissal, awarded by judgment or administrative decision, fall within the definition of 'pay', identical claims, established in a conciliation procedure such as that in question in the circumstances of this case, must be regarded as employees' claims arising from contracts of employment or employment relationships and as relating to pay for the purposes of Directive 80/987. The national court must set aside domestic legislation which, in breach of the principle of equality, excludes the latter claims from the definition of 'pay' under that legislation.*

[1] OJ C 59 of 06.03.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 9 December 2004

in Case C-523/03: Commission of the European Communities v Biotrast SA ([1])

(Arbitration clause — Recovery of moneys advanced — Interest — Default procedure)

(2005/C 45/19)

(Language of the case: Greek)

In Case C-523/03 the **Commission of the European Communities** (Agents: D. Triantafyllou and N. Korogiannakis) v **Biotrast S.A.**, established in Thessaloniki (Greece) – action under Article 238 EC, brought on 15 December 2003 – the Court (Fourth Chamber), composed of K. Lenaerts (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues and K. Schiemann, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 9 December 2004, in which it:

1) *Orders Biotrast SA to pay to the Commission of the European Communities a capital sum of EUR 661 838.82 plus interest at the rate of 4.77 % per year from 31 December 2001 until 31 December 2002, at the rate of 6.77 % per year from 1 January 2003 until the date of the present judgment, and at an annual rate applied under Greek law, now Article 3(2) of Law 2842/2000 on the replacement of the Drachma by the Euro, up to a maximum rate of 6.77 % per year, from the date of the present judgment until the payment of the debt in full.*

2) *Orders Biotrast S.A. to pay the costs.*

([1]) OJ C 59 of 6.3.2004

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 December 2004

in Case C-528/03: Commission of the European Communities v Kingdom of the Netherlands ([1])

(Failure by a Member State to fulfil its obligations — Directive 2002/35/EC — Maritime transport — Safety of fishing vessels)

(2005/C 45/20)

(Language of the case: Dutch)

In Case C-528/03: Commission of the European Communities (Agents: W. Wils and K. Simonsson) v Kingdom of the Netherlands (Agents: H.G. Sevenster and C.A.H.M. ten Dam) – action for failure to fulfil obligations under Article 226 EC, brought on 18 December 2003 – the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, J. Makarczyk and P. Kÿris (Rapporteur), Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 16 December 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply fully with Commission Directive 2002/35/EC of 25 April 2002 amending Council Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 59 of 06.03.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 9 December 2004

in Case C-88/04: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland [1]

(Failure of 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 implement within the period prescribed)

(2005/C 45/21)

(Language of the case: English)

In Case C-88/04: action under Article 226 EC for failure to fulfil obligations, brought on 23 February 2004, between Commission of the European Communities (Agent: K. Banks) and United Kingdom of Great Britain and Northern Ireland (Agents: R. Caudwell and K. Manji) – the Court (Sixth Chamber), composed of A. Borg Barthet, President of Chamber, J.-P. Puissochet and J. Malenovský (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 9 December 2004 in which it:

1. *Declares that by failing to adopt all 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 United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

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

[1] OJ C 106 of 30.4.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 16 December 2004

in Case C-172/04: Commission of the European Communities v French Republic [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose — Directive 1999/31/EC — Waste management — Landfill of waste — Inert waste from building and public works)

(2005/C 45/22)

(Language of the case: French)

In Case C-172/04: Commission of the European Communities (Agents: C.-F Durand and M. Konstantinidis) v French Republic (Agents: G. de Bergues and C. Mercier) – action under Article 226 EC for failure to fulfil obligations, brought on 7 April 2004 – the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, C. Gulmann and J. Kluÿka (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 16 December 2004, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the French Republic has failed to fulfil its obligations under that directive.*

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

[1] OJ C 106 of 30.04.2004.

ORDER OF THE COURT

(Sixth Chamber)

of 14 October 2004

in Case C-238/03 P: Maja Srl v Commission of the European Communities ([1])

(Appeal — Community financial aid — Discontinuation of aid granted for the modernisation of an agricultural production unit)

(2005/C 45/23)

(Language of the case: Italian)

In Case C-238/03 P: Maja Srl, formerly Ca' Pasta Srl (lawyers: P. Piva, R. Mastroianni and G. Arendt) v Commission of the European Communities (Agents: C. Cattabriga and L. Visaggio, assisted by A. Dal Ferro, lawyer) – appeal under Article 56 of the Statute of the Court of Justice, the Court (Sixth Chamber), composed of A. Borg Barthet (Rapporteur), President of the Chamber, J. Malenovský and U. Lõhmus, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, made an order on 14 October 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Maja Srl is ordered to pay the costs.*

([1]) OJ C 213 of 06.09.2003.

Action brought on 29 October 2004 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-459/04)

(2005/C 45/24)

(Language of the case: Swedish)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 29 October 2004 by the Commission of the European Communities, represented by H. Kreppel and J. Enegren, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that the Kingdom of Sweden has failed to fulfil its obligations under Article 7(8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work 1 by failing to define the necessary capabilities and aptitudes required of persons designated to organise preventive and protective services related to health and safety and

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

Pleas in law and main arguments

Article 7(8) of the directive does not provide for complete harmonisation in the different Member States of the definition of capabilities and aptitudes required of persons carrying out activities related to protective and preventive services, but gives the Member States discretion to define the knowledge required to comply with the provision. The definitions in the national legislation must, however, be above a certain minimum level so that the directive may be implemented in an acceptable manner.

The national legislation must include, as a minimum, a reference to an objective means of establishing that the person in question has undergone the required training and actually has the necessary experience and knowledge.

Neither the regulation nor the guidelines issued by the Arbetsmiljöverket (Work Environment Authority) include the definition of the capabilities or aptitudes required of persons carrying out activities relating to the work environment that is necessary for the correct transposition of Article 7(8).

Reference for a preliminary ruling by the Verwaltungsgericht Sigmaringen by order of that court of 28 September 2004 in the case of Alexander Jehle and Weinhaus Kiderlen against Land Baden-Württemberg

(Case C-489/04)

(2005/C 45/25)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht (Administrative Court) Sigmaringen (Fourth Chamber) (Germany) of 28 September 2004, received at the Court Registry on 29 November 2004, for a preliminary ruling in the case of Alexander Jehle and Weinhaus Kiderlen against Land Baden-Württemberg on the following questions:

1. Are Articles 1 to 12 of Commission Regulation (EC) No 1019/2002 [1] of 13 June 2002 on marketing standards for olive oil (OJ 2002 L 155, p. 27), amended by Commission Regulation (EC) No 1176/2003 of 1 July 2003 (OJ 2003 L 164, p. 12), to be construed as meaning that those provisions also lay down rules governing the presentation of unpackaged olive oils and olive-pomace oils to final consumers?

2. Is the first paragraph of Article 2 of Commission Regulation (EC) No 1019/2002 of 13 June 2002 on marketing standards for olive oil (OJ 2002 L 155, p. 27), amended by Commission Regulation (EC) No 1176/2003 of 1 July 2003 (OJ 2003 L 164, p. 12), to be construed as containing a prohibition of the presentation of unpackaged olive oils and olive-pomace oils to final consumers?

3. If relevant, is the first paragraph of Article 2 of Commission Regulation (EC) No 1019/2002 of 13 June 2002 on marketing standards for olive oil (OJ 2002 L 155, p. 27), amended by Commission Regulation (EC) No 1176/2003 of 1 July 2003 (OJ 2003 L 164, p. 12), to be construed restrictively as meaning that, while it does contain a prohibition of the presentation of unpackaged olive oils and olive-pomace oils to the final consumer, that prohibition does not apply to the sale of unpackaged olive oils and olive-pomace oils effected under the 'Bag in the Box procedure'?

[1] OJ L 155, p. 27.

Action brought on 29 November 2004 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-490/04)

(2005/C 45/26)

(Language of the case: German)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 29 November 2004 by the Commission of the European Communities, represented by Enrico Traversa and Horstpeter Kreppel, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by providing that

   (a) foreign undertakings are obliged to pay contributions to the German holiday pay fund for their posted workers, even if they enjoy an essentially similar level of protection under the law of the State where their employer is established (Paragraph 1(3) of the Arbeitnehmerentsendegesetz (Law on the Posting of Workers) ('the AEntG');

   (b) foreign undertakings are obliged to have the employment contract (or the documents required, pursuant to Directive 91/533/EEC, under the law of the State where the employee is resident), pay slips, time sheets, proof of payment of wages, and all other documents required by the German authorities, translated into German (Paragraph 2 of the AEntG);

   (c) foreign employment agencies are obliged not only to give prior notification each time a worker is posted to a user of the worker's services in Germany, but also each time a worker starts a new job on a building site at the request of the user of his services (Paragraph 3(2) of the AEntG);

   the Federal Republic of Germany has failed to fulfil its obligations under Article 49 EC;

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

Pleas in law and main arguments

The Commission contends that furthermore certain provisions of the AEntG which transposed Directive 96/71/EC on the posting of workers into national law do not comply with certain provisions of that directive.

Rules relating to the obligation of employers established in a Member State other than Germany to pay contributions to the German holiday pay fund

In the Commission's view, the obligation to pay contributions to the German holiday pay fund constitutes an inadmissible restriction on the freedom to provide services, within the meaning of Article 49 EC, where employers who post their workers grant them the same paid holiday entitlement as that laid down by the German rules contained in the collective agreements and, under the legal system in the State from which they are posted, such workers enjoy the same or similar protection with respect to holiday pay as is guaranteed in Germany.

Rules relating to the obligation of employers established in a Member State other than Germany to translate documents

In the Commission's view, the requirement for documents to be translated is appropriate to meeting Germany's monitoring needs. However, having regard to the cooperation on information provided for by Article 4 of the Directive on the posting of workers, the obligation to translate all documents is no longer necessary and is therefore too far-reaching.

Rules relating to the obligation of employment agencies established in a Member State other than Germany to notify the competent authorities of the change before each transfer of a posted worker from one building site to another one.

Even if the obligation of employment agencies established outside Germany to notify each change has been slightly amended, the Commission is of the view that there is still unequal treatment, as, in the case of employment agencies established in Germany, the obligation to notify each change falls on the user of the worker's services, while in the case of employment agencies established outside Germany that obligation falls in principle on the supplier of labour and can be transferred to the user of the worker's services only by means of a contractual agreement. This unequal treatment constitutes an inadmissible restriction on the freedom to provide services within the meaning of Article 49 EC.

Reference for a preliminary ruling by the VAT and Duties Tribunals, Manchester Tribunal Centre, by direction of that court dated 24 November 2004, in the case of Dollond and Aitchison Ltd against Commissioners of Customs and Excise.

(Case C-491/04)

(2005/C 45/27)

(Language of procedure: English)

Reference has been made to the Court of Justice of the European Communities by a direction of the VAT and Duties Tribunals, Manchester Tribunal Centre dated 24 November 2004, which was received at the Court Registry on 29 November 2004, for a preliminary ruling in the case of Dollond and Aitchison Ltd and Commissioners of Customs and Excise, on the following questions:

1. Is that part of the payment which is made by a customer to D&A Lenses Direct Limited for the supply of specified services by Dolland & Aitchison Ltd or by its franchisees to be included in the total payment for the specified goods so as to be part of the price paid or payable for the specified good within the meaning of Article 29 of Council Regulation no 92/2913 ([1]) in circumstances where the customer is a private consumer and importer on whose behalf D&A Lenses Direct Ltd accounts for VAT on importation?

   The specified goods are:

   i) Contact lenses

   ii) Cleaning Solutions

   iii) Soaking cases

   The specified services are:

   iv) A contact lens examination

   v) A contact lens consultation

   vi) Any on-going aftercare required by a customer

2. If the answer to 1 above is No, may the amount of the payment for the specified goods nonetheless be calculated under Article 29 or is it necessary to make such calculation under Article 30 of the said Regulations?

3. In view of the fact that the Channel Islands are part of the customs territory of the Community but are not part of the VAT territory for the purposes of the Sixth Council Directive 77/388/EEC ([2]), does any of the guidance set out in Case C-349 Card Protection Plan Limited v Commissioners of Customs and Excise apply for the purposes of determining which part or parts of the transaction comprising the provision of specified services and specified goods fall to be valued for the purposes of applying the Customs Tariff of the European Communities?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, OJ L 302, 19.10.1992, p. 1

([2]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, OJ L 145, 13.06.1977, p. 1

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by decision of that court of 26 November 2004 in the case of Heintz van Landewyck SARL against Staatssecretaris van Financiën)

(Case C-494/04)

(2005/C 45/28)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 26 November 2004 received at the Court Registry on1 December 2004, for a preliminary ruling in the case of Heintz van Landewyck SARL against Staatssecretaris van Financiën on the following questions:

1. Must the Excise Duty Directive ([1]) be interpreted as requiring the Member States to enact a statutory provision under which they must reimburse or offset amounts by way of excise duty due or paid at the time excise labels are requested in a case in which the requesting party (the holder of an authorisation to operate a tax warehouse) has not used, nor will be able to use, labels which disappeared before they were affixed to products subject to excise duty, and third parties cannot have made and will not be able to make lawful use of the labels even though it cannot be ruled out that they have used, or will use, the labels by affixing them to tobacco products which have been put on the market in an irregular manner?

2 (a) Must the Sixth Directive, ([2]) and in particular Article 27(1) and (5) thereof, be interpreted as meaning that the fact that the Netherlands Government notified the Commission at a date later than that laid down in Article 27(5) of the Sixth Directive, as amended by the Ninth Directive, that it wished to maintain the special procedure for charging tax on tobacco products means that if an individual invokes the failure to observe the time-limit, after the date when notification was in fact made, this special procedure for charging tax must be disapplied also after the making of the notification?

(b) If the answer to Question 2(a) is in the negative, must the Sixth Directive, and in particular Article 27(1) and (5) thereof, be interpreted as meaning that the special procedure for charging tax on tobacco products laid down in Article 28 of the Wet op de Omzetbelasting must be disapplied on the grounds that it is incompatible with the conditions laid down by the abovementioned provisions of the directive?

(c) If the answer to Question 2(b) is in the negative, must the Sixth Directive, and in particular Article 27(1) and (5) thereof, be interpreted as meaning that failure to reimburse turnover tax in circumstances such as those referred to in Question 1 is contrary thereto?

([1]) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, OJ 1992 L 76, p. 1.

([2]) 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.

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

(Case C-503/04)

(2005/C 45/29)

(Language of the case: German)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 7 December 2004 by the Commission of the European Communities, represented by Bernhard Schima, acting as Agent, with an address for service in Luxembourg.

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

1. Declare that the Federal Republic of Germany has failed to fulfil its obligations under Article 228(1) of the Treaty establishing the European Community inasmuch as it has not taken the necessary measures to comply with the judgment of the European Court of Justice of 10 April 2003 in Joined Cases C-20/01 and C-28/01 *Commission* v *Germany* ([1]) regarding the award of a contract for the collection of waste water by the Municipality of Bockhorn and of a contract for waste disposal by the City of Braunschweig;

2. Order the Federal Republic of Germany to pay to the Commission's own resources account of the European Community a daily penalty payment

of EUR 31 680 for each day of delay in implementing the measures necessary to comply with the abovementioned judgment in respect of the award of a contract for the collection of waste water by the Muncipality of Bockhorn and

of EUR 126 720 for each day of delay in implementing the measures necessary to comply with the abovementioned judgment in respect of the award of a contract for waste disposal by the City of Braunschweig,

in each case from the date of delivery of that judgment until the measures are implemented;

3. Order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

In its judgment of 10 April 2003 the Court of Justice declared that:

— since the Municipality of Bockhorn (Germany) failed to invite tenders for the award of the contract for the collection of its waste water and failed to publish notice of the results of the procedure for the award of the contract in the Supplement to the *Official Journal of the European Communities*, the Federal Republic of Germany, at the time of the award of that public service contract, failed to fulfil its obligations under Article 8 in conjunction with Article 15(2) and Article 16(1) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts;

— since the City of Braunschweig (Germany) awarded a contract for waste disposal by negotiated procedure without prior publication of a contract notice, although the criteria laid down in Article 11(3) of Directive 92/50 for an award by privately negotiated procedure without a Community-wide invitation to tender had not been met, the Federal Republic of Germany, at the time of the award of that public service contract, failed to fulfil its obligations under Article 8 and Article 11(3)(b) of Directive 92/50.

The Commission takes the view that fulfilment of the obligations of the Federal Republic of Germany which flow from that judgment and from Article 228 EC requires that the contracts concluded in breach of public procurement law be terminated.

The measures notified by the Federal Republic of Germany so far do not, however, appear to be sufficient to bring an end to the infringement of the Treaty established by the Court of Justice.

In the event that the Federal Republic of Germany does not take the measures necessary to bring an end to that infringement of the Treaty before the judgment requested in the present action is given, the Commission requests the imposition of a daily penalty payment which it proposes should be calculated in accordance with the principles observed by it in the past.

([1]) [2003] ECR I-3609.

Action brought on 8 December 2004 by the Commission of the European Communities against the Republic of Austria

(Case C-507/04)

(2005/C 45/30)

(Language of the case: German)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 8 December 2004 by the Commission of the European Communities, represented by Michael Van Beek and Bernhard Schima, acting as Agents, assisted by Matthias Lang, Rechtsanwalt, with an address for service in Luxembourg.

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

1. declare that, by failing to implement correctly and fully in Austrian law Articles 1(1) and (2), 5, 6(1), 7(1) and (4), 8, 9(1) and (2) and 11 of Council Directive 79/409/EEC of 2 April 1979 ([1]) on the conservation of wild birds, the Republic of Austria has failed to fulfil its obligation to transpose that directive fully and correctly;

2. order the Republic of Austria to bear the costs of the proceedings.

Pleas in law and main arguments

By the present action the Commission takes issue with the defective transposition in Austrian law of Directive 79/409/EEC by way of the relevant legal provisions of the *Länder* of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna which were notified to the Commission or which the Commission understands to have been adopted.

In the view of the Commission, the following were not fully and/or not correctly implemented for the territory of individual federal *Länder*: the provisions concerning the scope of Directive 79/409 (Article 1(1) and (2) of the Directive); the general rules governing the protection of bird species (Article 5 of the Directive); the ban on trade (Article 6(1) of the Directive); the provisions governing hunting of the species listed in Annex II (Article 7(1) of the Directive); the rules governing the preservation of populations (Article 7(4) of the Directive); the rules governing prohibited methods and equipment for hunting and capturing wild birds (Article 8 of the Directive); the criteria governing derogations from Articles 5 to 8 (Article 9(1) and (2) of the Directive); and the provisions on the introduction of wild bird species (Article 11 of the Directive).

([1]) OJ 1979 L 103, p. 1.

Action brought on 8 December 2004 by the Commission of the European Communities against the Republic of Austria

(Case C-508/04)

(2005/C 45/31)

(Language of the case: German)

An action against the **Republic of Austria** was brought before the Court of Justice of the European Communities on 8 December 2004, by the **Commission of the European Communities**, represented by M. Van Beek and B. Schima acting as Agents, assisted by M. Lang, lawyer, with an address for service in Luxembourg.

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

1. Declare that the Republic of Austria has failed to fulfil its obligation to transpose, correctly and completely, Council Directive 92/43/EEC of 21 May 1992 ([1]) on the conservation of natural habitats and of wild fauna and flora by not transposing, correctly and completely, Articles 1, 6(1) to (4), 7, 11, 12, 13, 15, 16(1) and 22(b) of that directive into Austrian law.

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

Pleas in law and main arguments

By this application the Commission is challenging the defective transposition into Austrian law of Directive 92/43/EEC by means of the relevant legal provisions of the provinces of Carinthia, Niederösterreich, Oberösterreich, Salzburg, Steiermark, Tyrol and Vorarlberg notified to the Commission or to its knowledge adopted.

In the Commission's view, the following provisions concerning individual federal provinces have not been completely or correctly transposed: Definitions (Article 1 of the directive); necessary conservation measures (Article 6(1)); prohibition on deterioration (Article 6(2)); plans or projects which could have serious implications for special areas of conservation (Article 6(3) and (4)); in regard to the system of protection under the 'wild birds' Directive 79/409/EEC (Article 7); surveillance of conservation status (Article 11); system of protection for animal species listed in Annex 1V(a) (Article 12); system of protection for plant species listed in Annex IV(b) (Article 13); prohibited means of capture and killing (Article 15); criteria for derogation from Articles 12 to 15 (Article 16(1)); deliberate introduction of non-native species (Article 22(b)).

([1]) OJ 1992 L 206, p. 7.

Action brought on 14 December 2004 by the Commission of the European Communities against the Portuguese Republic

(Case C-511/04)

(2005/C 45/32)

(Language of the case: Portuguese)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 14 December 2004 by the Commission of the European Communities, represented by R. Vidal Puig, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, by failing to adopt the laws, regulations and administrative provisions needed to implement Commission Directive 2000/56/EC ([1]) of 14 September 2000, which amends Council Directive 91/439/EEC on driving licences, and in any event by failing to give notice thereof to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of Directive 2000/56/EC expired on 30 September 2003.

([1]) OJ L 237 of 21.9.2000, p. 45.

Appeal brought on 15 December 2004 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG against the judgment delivered on 6 October 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-356/02 between Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG and the Office for Harmonisation in the Internal Market (Trade Marks and Designs), supported by Krafft SA

(Case C-512/04 P)

(2005/C 45/33)

(Language of the case: German)

An appeal against the judgment delivered on 6 October 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-356/02 between Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG and the Office for Harmonisation in the Internal Market (Trade Marks and Designs), supported by Krafft SA, was brought before the Court of Justice of the European Communities on 15 December 2004 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG, represented by Dr Ulrich Sander, Eisenführ, Speiser & Partner, Martinistrasse 24, D-28195 Bremen.

The appellant claims that the Court should:

Set aside the judgment delivered on 6 October 2004 by the Court of First Instance (Second Chamber) in Case T-356/02, 1 in so far as the decision was to the appellant's detriment.

Pleas and main arguments

The question to be decided in the present case is that of the likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 of 20 December 1993 on the Community trade mark. The Court of First Instance found that there was a likelihood of confusion on the part of the Spanish public between the marks 'KRAFFT' (Spanish national marks) cited in opposition and 'VITAKRAFT', the Community trade mark applied for. The Court of First Instance expressly based its decision on its own earlier decision in Case T-6/01 *Matratzen Concord* v *OHIM – Hukla Germany* (*MATRATZEN*) (upheld by order of the Court of Justice on 28 April 2004 in Case 3/03 P). However, in the appellant's view, that case concerned an entirely different situation and cannot be compared to the present case. The *Matratzen* case concerned a (conflicting) mark composed of three separate words, 'Matratzen Markt Concord', which in the view of the Court of First Instance was likely to be confused (also by the Spanish public) with the Spanish national mark 'MATRATZEN', the distinguishing element in the case being that the earlier Spanish mark 'MATRATZEN' was registered for the goods 'mattresses'; the German word 'Matratzen' (mattresses) was therefore monopolised in Spain as a mark, because the German clearly was not perceived as descriptive by the Spanish consumer. According to the appellant, however, such trade mark rights should, in a harmonised Europe, be granted only restricted protection in opposition proceedings against an application for a Community trade mark and, therefore, the appellant, first of all, fundmentally challenges the bias of the approach taken in the '*MATRATZEN*' decision.

Furthermore, the appellant sets out the differences between the marks cited in opposition in the present case and those in the '*MATRATZEN*' case, since in the case of the application for the Community trade mark 'VITAKRAFT' the Spanish consumer would have to separate, mentally or in terms of the typography or of the sound, the prefix 'VITA' from the whole mark 'VITAKRAFT' and there is no clear reason why this should be done. Finally, the appellant considers the problems for the free movement of goods which might conceivably arise if the bias of the '*MATRATZEN*' decision is not properly adjusted.

Removal from the register of Case C-410/02 ([1])

(2005/C 45/34)

(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-410/02: Commission of the European Communities v Ireland.

([1]) OJ C 7 of 11.1.03.

Removal from the register of Case C-50/03 [1]

(2005/C 45/35)

(Language of the case: German)

By order of 9 November 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-50/03 (reference for a preliminary ruling from the Oberlandesgericht Rostok): 1. Simrad GmbH & Co, KG, 2. Kongsberg Simrad AS v Ministerium für Bildung, Wissenschaft und Kultur Macklenburg-Vorpommern.

[1] OJ C 112 of 10.5.03.

Removal from the register of Case C-95/03 [1]

(2005/C 45/36)

(Language of the cas: French)

By order of 8 November 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-95/03 (reference for a preliminary ruling from the Tribunal du travail de Bruxelles): Vincenzo Piliego v Centre public d'aide sociale de Bruxelles (CPAS).

[1] OJ C 101 of 26.4.03.

Removal from the register of Case C-146/03 P [1]

(2005/C 45/37)

(Language of the case: English)

By order of 17 November 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-146/03 P: Philip Morris International Inc. v Commission of the European Communities.

[1] OJ C 146 of 21.06.2003.

Removal from the register of Case C-194/03 [1]

(2005/C 45/38)

(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-194/03 (reference for a preliminary ruling from the Finanzgericht Hamburg): Georg Friedrich Baur Jr., executor of the estate of Georg Friedrich Baur Sr. v Hauptzollamt Kiel.

[1] OJ C 213 of 6.9.03.

Removal from the register of Case C-345/03 [1]

(2005/C 45/39)

(Language of the case: French)

By order of 29 November 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-345/03: Commission of the European Communities v Kingdom of Belgium.

[1] OJ C 226, de 20.9.03.

Removal from the register of Case C-35/04 [1]

(2005/C 45/40)

(Language of the case: French)

By order of 24 September 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-35/04: Commission of the European Communities v Grand-Duchy of Luxembourg.

[1] OJ C 71 of 20.03.2004.

Removal from the register of Case C-50/04 [1]

(2005/C 45/41)

(Language of the case: Portuguese)

By order of 18 November 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-50/04: Commission of the European Communities v Republic of Portugal.

[1] OJ C 71 of 20.03.2004.

Removal from the register of Case C-106/04 [1]

(2005/C 45/42)

(Language of the case: French)

By order of 29 November 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-106/04: Commission of the European Communities v Kingdom of Belgium.

[1] OJ C 94 of 17.04.2004.

Removal from the register of Case C-163/04 [1]

(2005/C 45/43)

(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-163/04 (reference for a preliminary ruling from the Bundesfinanzhof): Franz Werner v Finanzamt Cloppenburg.

[1] OJ C 118 of 30.4.04.

Removal from the register of Case C-238/04 [1]

(2005/C 45/44)

(Language of the case: French)

By order of 2 December 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-238/04: Commission of the European Communities v French Republic.

[1] OJ C 190, de 24.7.04.

Removal from the register of Case C-263/04 [1]

(2005/C 45/45)

(Language of the case: French)

By order of 2 December 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-263/04: Commission of the European Communities v French Republic.

[1] OJ C 201 of 7.8.04.

Removal from the register of Case C-382/04 [1]

(2005/C 45/46)

(Language of the case: French)

By order of 18 November 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-382/04: Commission of the European Communities v Grand-Duchy of Luxembourg.

[1] OJ C 262 23.10.2004.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 December 2004

In Case T-240/02: Koninklijke Coöperatie Cosun UA v Commission of the European Communities [1]

(Agriculture — Common organisation of the markets — Sugar — Sum due for C Sugar disposed of on the internal market — Customs duty — Application for remission — Relief clause in Article 13 of Regulation (EEC) No 1430/79 — Concept of import or export duties — Principles of equality and legal certainty — Fairness)

(2005/C 45/47)

(Language of the case: Dutch)

In Case T-240/02: Koninklijke Coöperatie Cosun UA, established in Breda (Netherlands), represented by M. Slotboom, N. Helder and J. Coumans, lawyers, against Commission of the European Communities (Agent: X. Lewis, assisted by F. Tuytschaever, lawyer, with an address for service in Luxembourg) – application for annulment of Commission Decision REM 19/01 of 2 May 2002, rejecting as inadmissible an application, submitted by the Kingdom of the Netherlands, for remission of import duties in favour of the applicant – the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and K. Jürimaäe, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 7 December 2004, in which it:

1. *Dismisses the action;*

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

[1] OJ C 247 of 12.10.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 December 2004

In Case T-251/02, E v Commission of the European Communities [1]

(Officials — Pay — Expatriation allowance — Daily subsistence allowance — Installation allowance — Reimbursement of travel expenses on taking up functions, and removal expenses — Place of recruitment — Articles 4, 5, 7, 9 and 10 of Annex VII to the Staff Regulations — Language of the case: French — In Case T-251/02: E, residing in Brussels (Belgium), represented by G. Vandersanden and L. Levi, lawyers, against Commission of the European Communities (Agent: J. Currall, assisted by D. Waelbroeck, lawyer, with an address for service in Luxembourg))

(2005/C 45/48)

(Language of the case: French)

application, first, for annulment of the Appointing Authority's decision of 29 August 2001 fixing the applicant's place of origin and of recruitment as Brussels and refusing to grant her the expatriation allowance, installation allowance, daily subsistence allowance, and travel and removal expenses relating to her taking up her functions and, secondly, payment of compensation and interest for late payment 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 13 December 2004, in which it:

1. *Dismisses the action;*

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

[1] OJ C 247 of 12.10.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 14 December 2004

in Case T-317/02: Fédération des industries condimentaires de France (FICF), Confédération générale des producteurs de lait de brebis and des industriels de Roquefort, Comité économique agricole régional 'fruits et légumes de la région Bretagne' (Cerafel) and Comité national interprofessionnel des palmipèdes à foie gras (CIFOG) v Commission of the European Communities [1]

(Common commercial policy — World Trade Organisation (WTO) — Regulation (EC) No 3286/94 — Obstacles to trade — Prepared mustard — Termination of the examination procedure in relation to obstacles to trade — Community interest)

(2005/C 45/49)

(Language of the case: French)

In Case T-317/02, Fédération des industries condimentaires de France (FICF), established in Paris (France), Confédération générale des producteurs de lait de brebis and des industriels de Roquefort, established in Millau (France), Comité économique agricole régional 'fruits and légumes de la région Bretagne' (Cerafel), established in Morlaix (France), Comité national interprofessionnel des palmipèdes à foie gras (CIFOG), established in Paris (France), represented by O. Prost and M.-J. Jacquot, lawyers, against the Commission of the European Communities (Agents: P-J. Kuijper and G. Boudot, with an address for service in Luxembourg) – action for annulment of Commission Decision 2002/604/EC of 9 July 2002 terminating the examination procedures concerning obstacles to trade within the meaning of Council Regulation (EC) No 3286/94, consisting of trade practices maintained by the United States of America in relation to imports of prepared mustard (OJ 2002 L 195, p. 72) – the Court of First Instance (First Chamber, Extended Composition), composed of B. Vesterdorf, President, P. Mengozzi, M. E. Martins Ribeiro, F. Dehousse and I. Labucka, Judges; H. Jung, Registrar, gave a judgment on 14 December 2004, in which it:

1. *Dismisses the action.*

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

[1] OJ C 323 of 21.12.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 14 December 2004

in Case T-332/02: Nordspedizionieri di Danielis Livio & C. Snc, Livio Danielis and Domenico D'Alessandro v Commission of the European Communities [1]

(Customs Union — Community transit operation — Fraud — Cigarette smuggling — Remission of import duties — Regulation (EEC) No 1430/79 — Article 13: equitable provision — Meaning of 'special situation')

(2005/C 45/50)

(Language of the case: Italian)

In Case T-332/02: Nordspedizionieri di Danielis Livio & C. Snc, established in Trieste (Italy), Livio Danielis, residing in Trieste, and Domenico D'Alessandro, residing in Trieste, represented by G. Leone, Lawyer, against Commission of the European Communities (Agents: initially X. Lewis and R. Amorosi, and subsequently X. Lewis assisted by G. Bambara, lawyer, with an address for service in Luxembourg) – application, principally, for annulment of Commission Decision REM 14/01 of 28 June 2002 refusing to accede to the Italian Republic's application for a remission of import duties in favour of the applicants and, in the alternative, for a declaration of remission of part of the customs debt corresponding to those duties – the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 14 December 2004, in which it:

1. *Dismisses the action;*

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

[1] OJ C 7 of 11.1.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 November 2004

in Case 376/02, O v Commission of the European Communities [1]

(Officials — Article 78 of the Staff Regulations — Invalidity pension — Invalidity Committee — Membership — Occupational disease)

(2005/C 45/51)

(Language of the case: French)

In Case T-376/02: O, a former official of the Commission of the European Communities, residing in Brussels, represented by J. Van Rossum and J.-N. Louis, lawyers, against Commission of the European Communities (Agents: J. Currall) – action for annulment of the decision of the Commission of 14 January 2002 awarding the applicant an invalidity pension set in accordance with the provisions of the third paragraph of Article 78 of the Staff Regulations of Officials of the European Communities – the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 23 November 2004, in which it:

1. *Annuls the decision of the Commission of 14 January 2002 awarding the applicant an invalidity pension.*

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

---

[1] OJ C 44 of 22.2.03.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 December 2004

in Case T-8/03 El Corte Inglés, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Figurative mark EMILIO PUCCI — Opposition by the proprietor of the national figurative marks EMIDIO TUCCI — Partial refusal to register)

(2005/C 45/52)

(Language of the case: Italian)

In Case T-8/03: El Corte Inglés, SA, established in Madrid (Spain), represented by J. Rivas Zurdo, lawyer, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: P. Bullock and O. Montalto), the other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court, being Emilio Pucci Srl, established in Florence (Italy), represented by P.L. Roncaglia, G. Lazzeretti and M. Boletto, lawyers – action brought against the decision of the Fourth Board of Appeal of OHIM of 3 October 2002 (Joined Cases R 700/2000-4 and R 746/2000-4) relating to the opposition entered by the proprietor of the national figurative marks EMIDIO TUCCI against registration of the figurative mark EMILIO PUCCI as a Community trade mark – the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N. Forwood, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 13 December 2004, in which it:

1. *Dismisses the action;*

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

---

[1] OJ C 70 of 22.3.2003

Action brought on 12 October 2004 by Luciano Lavagnoli against the Commission of the European Communities

(Case T-422/04)

(2005/C 45/53)

(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 12 October 2004 by Luciano Lavagnoli, residing in Berchem (Luxembourg), represented by Gilles Bounéou and Frédéric Frabetti, lawyers.

The applicant claims that the Court should:

1. annul the list of officials promoted in the 2003 promotions procedure in so far as that list does not include the name of the applicant and annul the preparatory measures for that decision;

2. in the alternative annul the award of promotion points in the 2003 promotions procedure as regards the applicant;

3. order the Commission to pay the costs.

Pleas in law and main arguments:

In support of his application the applicant relies on pleas alleging a breach of Article 45 of the Staff Regulations, a breach of the general implementing provisions for Article 45, a breach of the administrative guide to appraisal and promotion of officials and a breach of the principle of non-discrimination. The applicant also relies on the prohibition on arbitrary procedures and alleges a breach of the duty to state reasons and misuse of powers. He also alleges a breach of the principle of legitimate expectations and of the 'patere legem quam ipse fecisti' rule and, finally, a breach of the duty to have regard for the welfare of officials.

Action brought on 5 November 2004 by Eurohypo AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-439/04)

(2005/C 45/54)

(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 5 November 2004 by Eurohypo AG, Eschborn (Germany), represented by M. Kloth, Hamburg (Germany), lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 August 2004 (Case R-829/2002-4), in so far as it dismisses the appeal;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark	The applicant
The trade mark applied for:	The word mark EUROHYPO for services in Class 36 (financial affairs; monetary affairs; real estate affairs; provision of financial services; financing; financial analysis; investment affairs; insurance affairs)
Decision of the examiner:	Rejection of the application in respect of all services
Decision of the Board of Appeal:	Annulment of the contested decision with regard to the services financial analysis, investment affairs, insurance affairs in Class 36. Dismissal of the remainder of the appeal.
Pleas in law:	Infringement of the first sentence of Article 74(1) of Regulation (EC) No 40/94 Misinterpretation of Article 7(1)(b)

Action brought on 8 November 2004 by Éditions Odile Jacob SAS against the Commission of the European Communities

(Case T-452/04)

(2005/C 45/55)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 November 2004 by Éditions Odile Jacob SAS, established in Paris, represented by Wilko van Weert and Olivier Fréget, lawyers.

The applicant claims that the Court should:

— annul the contested decision on the ground that it repeated the failure to comply with the conditions and undertakings imposed on Lagardère in the decision of 7 January 2004;

— order the defendant to pay the costs.

Pleas in law and main arguments:

The applicant contests the Commission Decision of 30 July 2004 concerning the approval of Wendel Investissement as the acquirer of the assets sold by Lagardère, in accordance with the Commission Decision of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the EEA Agreement ([1]) ('the Compatibility Decision'). The concentration was authorised subject to the sale by Lagardère of certain assets, namely Editis. The applicant submitted an offer to purchase Editis but was unsuccessful.

In support of its action the applicant claims, in the first place, that the contested decision was adopted on the basis of the report of a trustee who was not appointed in accordance with the conditions laid down by paragraph 15 of Annex II to the Compatibility Decision. The applicant argues that the trustee in question was not independent, particularly of Editis, contrary to the duty incumbent on Lagardère in consequence of the Compatibility Decision.

Second, the applicant claims that the Commission failed in its duty to supervise the sale of Editis, allowing a selection procedure for purchasers to be put in place which was discriminatory and anti-competitive. According to the applicant, the Commission should have required the organisation of a call for prospective purchasers which was transparent, objective and non-discriminatory. Furthermore, the Commission should not have approved the terms of the confidentiality agreement between Lagardère and the potential purchasers, which included the applicant, preventing them from bringing an action. The Commission should have taken steps to rectify the procedure when the applicant drew its attention to the failures to comply with the competition rules in the EC Treaty. Finally, the Commission denied the applicant the minimum protection to which it considered it was entitled as an interested third party.

Third, the applicant relies on a manifest error by the Commission in its assessment of whether the conditions laid down in respect of the purchaser by the Compatibility Decision were complied with. The applicant argues that the purchaser is not an operator capable of restoring a situation of effective competition.

Finally, the applicant relies on a breach of the duty to state reasons.

([1]) Case COMP/M.2978 – Lagardère/Natexis/VUP (OJ 2004 L 125, p. 54)

Action brought on 22 November 2004 by Au Lys de France against the Commission of the European Communities

(Case T-458/04)

(2005/C 45/56)

(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 22 November 2004 by Au Lys de France, a company established in Le Raincy (France), represented by G. Lesourd, lawyer.

The applicant claims that the Court should:

— annul the Commission's decision of 17 September 2004 and all its legal consequences.

Pleas in law and main arguments:

The applicant was carrying on a retail business in the terminal at Paris/Charles de Gaulle airport. It lodged a complaint with the Commission relating to abuse of a dominant position within the meaning of Article 82 EC by the public undertaking, Aéroports de Paris, on the commercial concessions market in the public airport sector.

By the contested decision, the Commission notified the applicant that there was no sufficient Community interest in the complaint to justify the opening of a formal investigation.

In support of its action, the applicant relies, first, on error of law and manifest error of assessment in the decision as to the lack of a sufficient Community interest. According to the applicant, the Commission was mistaken in finding the absence of a sufficient interest to pursue the investigation of the case and in deciding that there was sufficient protection of the applicant's rights before the national courts.

Secondly, the applicant pleads an insufficient statement of reasons in breach of Article 253 EC because the Commission did not deal with various elements of the applicant's arguments.

Thirdly, the applicant pleads breach of Article 82 EC, because the Commission refused to investigate the complaint whereas, according to the applicant, there is abuse of a dominant position.

Action brought on 22 November 2004 by Jorge Manuel Pinheiro de Jesus Ferreira against the Commission of the European Communities

(Case T-459/04)

(2005/C 45/57)

(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 22 November 2004 by Jorge Manuel Pinheiro de Jesus Ferreira, residing in Brussels, represented by Georges Vandersanden, lawyer.

The applicant claims that the Court should:

— annul the decision of the Commission of 18 March 2004 classifying the applicant in Grade A5, step 3;

— order the Commission to pay the difference between the salary corresponding to the applicant's classification in Grade A5, step 3, and the salary corresponding to classification in a higher grade, with default interest of 5.75 % per annum from 1 December 2002;

— order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant, a Commission official, applied for a post at A5/A4 level in the field of taxation and customs. He was selected and appointed at Grade A5, step 3. The applicant contests that decision, arguing that he is a particularly highly qualified candidate with exceptional qualifications and that he should, therefore, have been appointed at Grade A4. On that basis, the applicant raises a plea of manifest error of assessment in the application of Article 31 of the Staff Regulations.

The applicant also raises a plea of breach of the right to a fair hearing alleging that the defendant did not give him an opportunity to present his point of view before the contested decision was taken.

Finally, the applicant relies on a plea of breach of Article 253 EC, pointing out that no reasons were stated for the contested decision, or in the alternative, that inadequate reasons were stated.

Action brought on 6 December 2004 by Cristina Asturias Cuerno against the Commission of the European Communities

(Case T-473/04)

(2005/C 45/58)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 December 2004 by Cristina Asturias Cuerno, residing in Brussels, represented by Ramon García-Gallardo and Alicia Sayagués Torres, lawyers.

The applicant claims that the Court should:

1. annul the decision of the Commission of 26 August 2004 rejecting her complaint of 27 April 2004;

2. recognise the applicant's entitlement to the expatriation allowance and other related allowances;

3. order the Commission to pay all the costs.

Pleas in law and main arguments:

The applicant in these proceedings contests the decision of the administration that she is not entitled to receive the expatriation allowance.

In support of her application she relies on the following pleas in law:

— Error of law in the assessment of the facts in that the contested decision does not take account of the fact that the applicant's work as an assistant to a Member of the European Parliament must be considered to be work done for an international organisation which, under the Staff Regulations, does not count towards the reference period.

— Manifest error of assessment of the facts and, specifically, of the personal situation of the applicant, in that her reference period in Brussels was calculated wrongly, given that it amounted to only four years and 11 months.

— Breach of the principle of non-discrimination. In that connection, it is claimed that the failure to recognise work done as a parliamentary assistant as work done for an international organisation is contrary to the practice of the other Community institutions. The principle of equal treatment has also been infringed by the Commission in that the work done by the applicant for the European Mortgage Federation was not recognised as work done for an international organisation, although the Commission itself had recognised it as such in the past.

Action brought on 10 December 2004 by Pergan GmbH against the Commission of the European Communities

(Case T-474/04)

(2005/C 45/59)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 December 2004 by Pergan GmbH, Bocholt (Germany), represented by M. Klusmann and F. Wiemer, lawyers.

The applicant claims that the Court should:

1. annul Decision SG-Greffe (2004) D/204343 of 1 October 2004 in so far as the applicant's request for removal of all references to the applicant in the definitively published version of the Commission's decision of 10 December 2003 imposing fines in Case COMP/E-2/37.857 – Organic Peroxides was refused;
2. order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission refused in part the applicant's request of 13 July 2004 for removal of all references to conduct of the applicant allegedly contrary to cartel law in the definitively published version of the Commission's decision of 10 December 2003 imposing fines in Case COMP/E-2/37.857 – Organic Peroxides.

In support of its action, the applicant claims, first, that, under Article 21 of Regulation No 17/62, the published version of a decision imposing fines for an infringement may name only the participating undertakings. Since the applicant was not the addressee of the decision imposing fines, the Commission is prohibited from publishing its findings in respect of the applicant. Moreover, it was impermissible for the Commission to assume that a decision finding an infringement on the part of the applicant would be adopted. In the applicant's view, the Commission has no competence under Regulation No 17/92 to adopt such a decision and is unable to establish a legitimate interest in doing so. Finally, the applicant alleges infringement of the right to an effective legal remedy laid down in the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union. In that connection, the applicant argues that, although the Commission alleges that it is guilty of comprehensive breaches of cartel law, it omitted to address the decision imposing fines to it and thus restricted its ability to avail itself of a legal remedy.

Action brought on 23 December 2004 by Bodegas Franco-Españolas S.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM))

(Case T-501/04)

(2005/C 45/60)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 23 December 2004 by Bodegas Franco-Españolas S.A., of Logrono (Spain), represented by María Emilia López Camba, of the Madrid Bar,

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of OHIM of 25 October 2004, in Case R 513/2002-1;

— order OHIM to pay the costs.

Pleas in law and main arguments:

Applicant for the Community mark:	The applicant
Community mark applied for:	Word mark Royal, for goods in Class 33 (alcoholic beverages, except beers).
Holder of the mark or sign relied on in the opposition proceedings:	Compañía General da Agricultura das Vinhas do Alto Douro S.A.
Opposing mark or sign:	Portuguese figurative mark ROYAL BRANDE, No 122 170, Community word mark ROYAL FEITORIA, No 418.301 and international word mark ROYAL OPORTO WINE COMPANY (PORTUGAL), No 174 788, for goods in Class 33.
Decision of the Opposition Division:	Opposition upheld on the basis of Community mark No 418 301 and application for registration dismissed.
Decision of the Board of Appeal:	Appeal dismissed.
Grounds:	Incorrect interpretation of Article 8(1)(b) of Regulation (EC) No 40/94.

III

(Notices)

(2005/C 45/61)

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

OJ C 31, 5.2.2005

Past publications

OJ C 19, 22.1.2005

OJ C 6, 8.1.2005

OJ C 314, 18.12.2004

OJ C 300, 4.12.2004

OJ C 273, 6.11.2004

OJ C 262, 23.10.2004

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