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I

(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Grand Chamber)

of 10 May 2005

in Case C-400/99: Italian Republic v Commission of the European Communities [1]

(Action for annulment — State aid — Measures regarding maritime transport undertakings — Public service contracts — No aid, existing aid or new aid — Initiation of the procedure under Article 88(2) EC — Obligation to suspend)

(2005/C 171/01)

(Language of the case: Italian)

In Case C-400/99: Italian Republic (Agents: U. Leanza, I. Braguglia assisted by P.G. Ferri and M. Fiorilli) v Commission of the European Communities (Agents: E. De Persio, D. Triantafyllou and V. Di Bucci) — Action for annulment under Article 230 EC, brought on 18 October 1999 — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas, Presidents of Chambers, J.-P. Puissochet (Rapporteur), R. Schintgen, N. Colneric, S. von Bahr and J. N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 10 May 2005, in which it:

1. *Annuls the Commission decision, notified to the Italian authorities by letter SG(99) D/6463, of 6 August 1999, to initiate the procedure under Article 88(2) EC concerning State aid C 64/99 (ex NN 68/99) to the extent to which it entailed, until notification to the Italian authorities of the decision closing the procedure in relation to the undertaking concerned (Commission Decision C(2001) 1684 of 21 June 2001 or Commission Decision C(2004) 470 final of 16 March 2004) suspension of the tax treatment applied for the supply of fuel and lubricating oil to the vessels of Gruppo Tirrenia di Navigazione;*

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

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

[1] OJ C 20 of 22.01.2000.

JUDGMENT OF THE COURT

(Grand Chamber)

of 3 May 2005

in Joined Cases C-387/02, C-391/02 and C-403/02: References for preliminary rulings from the Tribunale di Milano and the Corte d'appello di Lecce in the criminal proceedings against Silvio Berlusconi, Sergio Adelchi, Marcello Dell'Utri and Others [1]

(Company law — Article 5 of the EEC Treaty (subsequently Article 5 of the EC Treaty, in turn Article 10 EC) and Article 54(3)(g) of the EEC Treaty (subsequently Article 54(3)(g) of the EC Treaty, in turn, after amendment, Article 44(2)(g) EC) — First Directive 68/151/EEC, Fourth Directive 78/660/EEC and Seventh Directive 83/349/EEC — Annual accounts — Principle of a true and fair view — Penalties provided for in cases of false information on companies (false accounting) — Article 6 of First Directive 68/151 — Requirement that penalties for breaches of Community law be appropriate)

(2005/C 171/02)

(Language of the cases: Italian)

In Joined Cases C-387/02, C-391/02 and C-403/02: references for preliminary rulings under Article 234 EC from the Tribunale di Milano (C-387/02 and C-403/02) and the Corte d'appello di Lecce (C-391/02) (Italy), made by decisions of 26 October 2002, 29 October 2002 and 7 October 2002, received

at the Court on 28 October 2002, 12 November 2002 and 8 November 2002 respectively, in the criminal proceedings against Silvio Berlusconi (C-387/02), Sergio Adelchi (C-391/02), Marcello Dell'Utri and Others (C-403/02) — the Court (Grand Chamber), composed of V. Skouris, President of the Chamber, P. Jann, C.W.A. Timmermans (Rapporteur), A. Rosas and A. Borg Barthet, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr, M. Ilešič, J. Malenovský, U. Lõhmus and E. Levits, Judges; J. Kokott, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 3 May 2005, the operative part of which is as follows:

In a situation such as that in issue in the main proceedings, First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, cannot be relied on as such against accused persons by the authorities of a Member State within the context of criminal proceedings, in view of the fact that a directive cannot, of itself and independently of national legislation adopted by a Member State for its implementation, have the effect of determining or increasing the criminal liability of those accused persons.

([1]) OJ C 19 of 25.01.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 28 April 2005

in Case C-104/03: Reference for a preliminary ruling from the Gerechtshof te Amsterdam St. Paul Dairy Industries NV v Unibel Exser BVBA ([1])

(Brussels Convention — Provisional, including protective, measures — Hearing of witnesses)

(2005/C 171/03)

(Language of the case: Dutch)

In Case C-104/03: Reference for a preliminary ruling pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters from the Gerechtshof te Amsterdam (Netherlands), made by decision of 12 December 2002, received at the Court on 6 March 2003, in the proceedings between **St. Paul Dairy Industries NV** and **Unibel Exser BVBA** — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, N. Colneric, J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges; D. Ruiz-Jarabo Colomer, Advocate General, M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 28 April 2005, the operative part of which is as follows:

Article 24 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as meaning that a measure ordering the hearing of a witness for the purpose of enabling the applicant to decide whether to bring a case, determine whether it would be well founded and assess the relevance of evidence which might be adduced in that regard is not covered by the notion of 'provisional, including protective, measures'.

([1]) JO C 101, 26.04.2003.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 28 April 2005

in Case C-410/03: Commission of the European Communities v Italian Republic ([1])

(Failure of a Member State to fulfil obligations — Directive 1999/95/EC — Seafarers' hours of work on board ships — Failure to transpose within the prescribed period)

(2005/C 171/04)

(Language of the case: Italian)

In Case C-410/03, Commission of the European Communities (Agents: K. Banks and K. Simonsson) v Italian Republic (Agent: I.M. Braguglia, assisted by A. Cingolo) — action under Article 226 EC for failure to fulfil obligations, brought on 1 October 2003 — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 28 April 2005, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 3 to 7, 8(2) and 9 of Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, the Italian Republic has failed to fulfil its obligations under that directive;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 304 of 13.12.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 28 April 2005

in Case C-31/04: Commission of the European Communities v Kingdom of Spain ([1])

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

(2005/C 171/05)

(Language of the case: Spanish)

In Case C-31/04: Commission of the European Communities (Agents: K. Banks and F. Castillo de la Torre) v Kingdom of Spain (Agent: M. Muñoz Pérez) — Action for failure to fulfil obligations under Article 226 EC, brought on 29 March 2004 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, A. La Pergola, J. Malenovský (Rapporteur) and A. Ó. Caoimh, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 28 April 2005, in which it:

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

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

([1]) OJ C 71 of 20.03.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 12 May 2005

in Case C-42/04: Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven in Maatschap J. B. en R. A. M. Elshof v Minister van Landbouw, Natuur en Voedselkwaliteit ([1])

(Foot and mouth disease — Regulation (EC) No 1046/2001 — Grant of aid for the delivery of animals destined for rendering — Upper limit of aid determined on the basis of the average weight of animals per batch)

(2005/C 171/06)

(Language of the case: Dutch)

In Case C-42/04: reference for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 23 January 2004, received at the Court on 3 February 2004, in the proceedings between Maatschap J. B. en R. A. M. Elshof and Minister van Landbouw, Natuur en Voedselkwaliteit — the Court (Fourth Chamber), composed of K. Lenaerts (Rapporteur), President of the Chamber, N. Colneric and E. Levits, Judges; M. Poiares Maduro, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 12 May 2005, the operative part of which is as follows:

The term 'batch' within the meaning of Article 4(3) of Commission Regulation (EC) No 1046/2001 of 30 May 2001 adopting exceptional support measures for the markets in pigmeat and veal in the Netherlands refers to all calves which are delivered for rendering by a producer on one day in connection with one sales transaction.

([1]) OJ C 85 of 03.04.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 12 May 2005

in Case C-99/04: Commission of the European Communities v Italian Republic ([1])

(Failure by a Member State to fulfil its obligations — Directive 2001/80/EC — Failure to transpose)

(2005/C 171/07)

(Language of the case: Italian)

In Case C-99/04 Commission of the European Communities (Agents: G. Valero Jordana and R. Amorosi) v Italian Republic (Agents: I.M. Braguglia assisted by G. Fiengo) — Action for failure to fulfil obligations under Article 226 EC, brought on 26 February 2004 — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, K. Schiemann and E. Juhász, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 12 May 2005, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, the Italian Republic has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 94 of 17.04.2004

JUDGMENT OF THE COURT

(Fifth Chamber)

of 28 April 2005

in Case C-157/04: Commission of the European Communities v Kingdom of Spain ([1])

(Failure by a Member State to fulfil its obligations — Waste management — Directives 75/442/EEC, 91/689/EEC and 1999/31/EC — Landfills at Punta de Avalos and Olvera)

(2005/C 171/08)

(Language of the case: Spanish)

In Case C-157/04, Commission of the European Communities (Agents: G. Valero Jordana and M. Konstantinidis) v Kingdom of Spain (Agent: L. Fraguas Gadea) — Action for failure to fulfil obligations under Article 226 EC, brought on 29 March 2004 — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, C. Gulmann and J. Klučka (Rapporteur), Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 28 April 2005, in which it:

1. *Declares that, by failing to adopt the measures necessary to ensure the application of Articles 4, 8, 9 and 13 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, Article 2 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, and Article 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the Kingdom of Spain has failed to fulfil its obligations under those directives with respect to the uncontrolled landfill in the Punta de Avalos area of the island of Gomera (Autonomous Community of the Canary Islands).*

2. *Declares that, by failing to adopt the measures necessary to ensure the application of Articles 4, 8, 9 and 13 of Directive 75/442, as amended by Directive 91/156, the Kingdom of Spain has failed to fulfil its obligations under that directive with respect to the uncontrolled landfill in Olvera, Province of Cadiz (Autonomous Community of Andalusia).*

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

([1]) OJ C 106 of 30.04.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 21 April 2005

in Case C-186/04: Reference for a preliminary ruling from the Conseil d'État in Pierre Housieaux v Délégués du conseil de la Région de Bruxelles-Capitale ([1])

(Directive 90/313/EEC — Freedom of access to information on the environment — Request for information — Requirement to give reasons in the event of refusal — Mandatory time-limit — Failure of a public authority to respond within the time-limit for reply — Implied refusal — Fundamental right to effective judicial protection)

(2005/C 171/09)

(Language of the case: French)

In Case C-186/04: reference for a preliminary ruling under Article 234 EC from the Conseil d'État (Belgium), made by decision of 1 April 2004, received at the Court on 22 April 2004, in the proceedings between Pierre Housieaux and Délégués du conseil de la Région de Bruxelles-Capitale interested parties: — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, P. Kūris, G. Arestis and J. Klučka (Rapporteur), Judges; J. Kokott, Advocate General; R. Grass, Registrar, gave a judgment on 21 April 2005, in which it ruled:

1. *The two-month time-limit laid down in Article 3(4) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment is mandatory.*

2. *The decision referred to in Article 4 of Directive 90/313, against which a judicial or administrative review may be sought by the person who made the request for information, is the implied refusal which arises from the failure by the public authority competent to decide on that request to respond within two months.*

3. *Article 3(4) of Directive 90/313, in conjunction with Article 4 thereof, does not preclude, in a situation such as that in the main proceedings, national legislation according to which, for the purposes of granting effective judicial protection, the failure of a public authority to respond within a period of two months is deemed to give rise to an implied refusal which may be the subject of a judicial or administrative review in accordance with the national legal system. However, by virtue of Article 3(4) it is unlawful for such a decision not to be accompanied by reasons when the two-month time-limit expires. In those circumstances, the implied refusal must be regarded as unlawful.*

([1]) OJ C 156 of 12.06.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 4 May 2005

in Case C-335/04: Commission of the European Communities v Republic of Austria ([1])

(Failure of a Member State to fulfil obligations — Directive 2000/43/EC — Failure to transpose within the period prescribed)

(2005/C 171/10)

(Language of the case: German)

In Case C-335/04, **Commission of the European Communities** (Agents: D. Martin and H. Kreppel) v **Republic of Austria** (Agent: E. Riedl) — action for failure to fulfil obligations brought pursuant to Article 226 EC on 30 July 2004 — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, P. Kūris and J. Klučka (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 4 May 2005, in which it:

1. *Declares that, by failing to adopt, within the period prescribed, all the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the Republic of Austria has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 239 of 25.09.2004.

Action brought on 14 April 2005 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-167/05)

(2005/C 171/11)

(Language of the case: Swedish)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 14 April 2005 by the Commission of the European Communities, represented by L. Ström van Lier and K. Gross, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by applying internal taxes by which beer mainly produced in Sweden is protected indirectly to against wine mainly imported from other Member States, the Kingdom of Sweden has failed to fulfil its obligations under the second paragraph of Article 90 EC;

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

Pleas in law and main arguments

Alcoholic beverages are sold to the individual consumer in Sweden via a State-owned retail trade monopoly, Systembolaget AB. Strong beer, in other words beer containing more than 3.5 % alcohol by volume, and wines are sold through Systembolaget AB. Lighter wines in the middle price range are regarded as being interchangeable with strong beer.

Beer is subject to an alcohol tax which is on average and as a percentage is significantly lower than the equivalent tax on wine. No ground has been put forward which justifies that difference in that selective purchase tax. The difference in the tax affects the price of the respective products. The difference in price is increased by the application of VAT at the rate of 25 % to the products.

The effect of the tax on the price of the respective products is likely to distort competition between goods and the internal selective purchase taxes are such as to strengthen domestic patterns of consumption, reduce potential consumption of wine and thus they are likely to afford indirect protection to beer to the detriment of wine.

Action brought on 22 April 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-180/05)

(2005/C 171/12)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 22 April 2005 by the Commission of the European Communities, represented by Wouter Wils, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to apply the provisions on public lending right provided for in Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property ([1]), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 1 and 5 of the directive;

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

Pleas in law and main arguments

As long as the Grand Ducal regulation implementing Article 65 of the Law of 18 April 2001 on copyright has not been adopted and has not come into force, the remuneration for public lending, required by Article 5(1) of Directive 92/100 as a condition for permitting derogation from the exclusive right laid down in Article 1 of Directive 92/100, is not paid. Articles 1 and 5 of Directive 92/100 have therefore not been correctly applied.

([1]) OJ 1992 L 346, p. 61

Action brought on 22 April 2005 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-181/05)

(2005/C 171/13)

(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 22 April 2005 by the Commission of the European Communities, represented by U. Wölker and M. Konstantinidis, with an address for service in Luxembourg.

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

— declare that by not correctly implementing the necessary provisions in German law, the Federal Republic of Germany has failed to fulfil its obligations under Articles 3(4), 5(4) and 4(2)(a) of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles; ([1])

— order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

The first sentence of Paragraph 1(3) of the Federal Republic of Germany's End-of-life Vehicle Regulations does not comply with the provisions of Directive 2000/53/EC, since Article 3(1) of the directive — in conjunction with Article 2(1) — applies to all vehicles designated as category M1 or N1 and also to special-purpose vehicles. In contrast, the provisions of the German End-of-life Vehicle Regulations apply to special-purpose vehicles only up to a maximum permissible weight of 3.5 tons. Article 3(4) of the directive exempts special-purpose vehicles from the reuse and recovery provisions, but not from the prohibited substances. Accordingly, it is clear from the relevant provisions that it is the characteristics of the end product which determine the area of application: thus, if a special-purpose vehicle, after adaptation, has the characteristics associated with category M1 it falls unconditionally within the area of application of Directive 2000/53. Therefore, the restriction by reference to total weight infringes the directive.

The third sentence of Paragraph 1(3) of the German End-of-life Vehicle Regulations exempts 'instruments, components and other equipment required for special purpose of the vehicles' from the prohibited substances. This exception is not provided for in the directive, since its relevant provisions apply to all materials and components principally included for use in vehicles covered by the directive, including materials and components which are required for the special purpose.

In accordance with Paragraph 3(4) of the End-of-life Vehicle Regulations the principle that end-of life vehicles be collected free of charge does not apply if the end-of-life vehicle is not registered or was not last registered in compliance with the provisions of the German registration procedure, if the end-of-life vehicle has been registered in accordance with the provisions of the German registration procedure for less than one month prior to its retirement, if the vehicle registration book was not surrendered or if the end-of-life vehicle is a category M1 or N1 vehicle which was not produced and approved in series and in a single-stage process. These exceptions are not provided for in the directive.

Paragraph 8(2) of the End-of-life Vehicle Regulations restricts the prohibition of certain substances under Article 4(2)(a) of the directive to vehicles put on the market after 1 July 2003 and to materials and components for those vehicles. Since, however, the prohibition of certain substances under the directive covers all materials and components put on the market after 1 July 2003, the End-of-life Vehicle Regulation's provision is not in compliance with the directive. The fact that, with decisions 2002/525 and 5006/63, exceptions for spare parts additional to those currently listed in Annex II to the directive were foreseen cannot justify an alternative interpretation of Article 4(2)(a) of the directive, as the necessity of those exceptions became apparent only after adoption of the directive. The

abovementioned conflict as regards the German Regulations will be revived when the temporally-limited exceptions expire. The directive's aims — to minimise the impact of end-of-life vehicles on the environment and to prevent waste as far as possible — could be best achieved by interpreting Article 4(2)(a) as strictly as possible.

(1) OJ No L 269, 21.10.2000, p. 34.

Action brought on 25 April 2005 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-186/05)

(2005/C 171/14)

(Language of the case: Swedish)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 25 April 2005 by the Commission of the European Communities, represented by L. Ström van Lier and S. Pardo Quintillán, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by obstructing the private import of alcoholic beverages by independent agents or commercial transporters, which cannot be regarded as justified under Article 30 EC, the Kingdom of Sweden has infringed Article 28 of the Treaty establishing the European Communities;

2. order Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The Commission takes the view that Article 28 EC does not permit Sweden, generally, to obstruct the private import of alcoholic drinks by independent agents or commercial carriers. The Commission further takes the view that the obstacle to trade cannot be justified under Article 30 EC on the ground of protection of public health with reference to the following underlying reasons: (1) to limit private profits, (2) to limit access to alcoholic drinks or (3) the need to maintain age checks; in each case the measure is neither necessary nor proportional to the aim stated. The fact that the retail trade monopoly alone has the right to deal with private imports at the client's request is regarded by the Commission as an obstacle to trade, which should be assessed in the light of Articles 28 EC and 30 EC. The Swedish Government, for its part, considers that the prohibition on private import is a part of the retail trade monopoly's existence and operating method and should be assessed in accordance with Article 31 EC and that as such it cannot be regarded as discriminatory or likely to distort competition between Member States and, in the alternative, that it is appropriate and proportional.

References for a preliminary ruling from the Arios Pagos by orders of that court of 17 March 2005 in G. Agorastoudis and Others (Case C-187/05), I. Panos and Others (Case C-188/05), K. Kotsampougioukis and Others (Case C-189/05) and G. Akritopouolos and Others (Case C-190/05) v Goodyear Ellas AVEE

(Cases C-187/05, C-188/05, C-189/05 and C-190/05)

(2005/C 171/15)

(Language of the case: Greek)

References have been made to the Court of Justice of the European Communities by orders of the Arios Pagos (Supreme Court of Cassation) (Greece) of 17 March 2005, received at the Court Registry on 27 April 2005, for a preliminary ruling in the proceedings brought by G. Agorastoudis and Others, I. Panos and Others, K. Kotsampougioukis and Others and G. Akritopouolos and Others against Goodyear Ellas AVEE on the following question:

Given that Greek (national) law does not provide for a prior judicial decision where an undertaking or establishment is closed down definitively on the sole initiative of the employer, under Article 1(2)(d) of Council Directive 75/129/EEC (1) does that directive apply to collective redundancies caused by the definitive termination of the operation of an undertaking or establishment which has been decided on voluntarily by the employer without a prior judicial decision on the matter?

(1) OJ No L 48, 22.2.1975, p. 29.

Action brought on 10 May 2005 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-204/05)

(2005/C 171/16)

(Language of the case: French)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 10 May 2005 by the Commission of the European Communities, represented by B. Stromsky and F. Simonetti, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that; the Kingdom of Belgium has failed to fulfil its obligations under Articles 28 and 30 of the EC Treaty, by requiring Class 1 distributors of medical equipment, established in other States of the Community, to be approved in Belgium and, by requiring doctors, psychologists, paramedical staff and social workers, in so far as they are attached to a specialist centre, to obtain supplies of sterile material from pharmacists, distributors, wholesaler trader, importers and manufacturers approved by the Belgian Ministry of Public Health;

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

Pleas in law and main arguments

The Commission challenges the legislation in force in Belgium, which requires distributors to be approved where they wish to sell sterile material bearing the EC marking to doctors, nurses, psychologists, paramedical staff or social workers. That obligation is imposed indiscriminately on distributors established in Belgium or in another Member State. However, it impedes the sale of medical equipment to that specific public by distributors established outside Belgium.

Reference for a preliminary ruling from the Sozialgericht Berlin by order of that court of 11 April 2005 in ITC Innovative Technology Center GmbH v Bundesagentur für Arbeit

(Case C-208/05)

(2005/C 171/17)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Sozialgericht Berlin (Germany) of 11 April 2005, received at the Court Registry on 12 May 2005, for a preliminary ruling in the proceedings between ITC Innovative Technology Center GmbH and Bundesagentur für Arbeit on the following questions:

1. To what extent are rules of Community law protecting freedom of movement, particularly Articles 18 EC and 39 EC and Articles 3 and 7 of Regulation (EEC) No 1612/68, ([1]) infringed by an interpretation of the second sentence of paragraph 421(g)(1) of Book III of the Sozialgesetzbuch-Arbeitsförderung (Social Law Code provisions on the promotion of employment) ('SGB III') to the effect that employment covered by compulsory social security means only employment that comes within the scope of application of the Sozialgesetzbuch?

2. a) To what extent is it possible and necessary to interpret the provision in conformity with European law so as to avoid an infringement as described in Question 1?

   b) If an interpretation in conformity with Community law should not be possible or necessary, to what extent does the second sentence of paragraph 421(g)(1) of SGB III infringe rules of Community law protecting freedom of movement?

3. To what extent are rules of Community law protecting competition and freedom to provide services, particularly Articles 49 EC, 50 EC and 87 EC in conjunction with Articles 81 EC, 85 EC and 86 EC, or other rules of Community law, infringed by an interpretation of the second sentence of paragraph 421(g)(1) of SGB III to the effect that employment covered by compulsory social security means only employment that comes within the scope of application of the Sozialgesetzbuch?

4. a) To what extent is it possible and necessary to interpret the provision in conformity with European law so as to avoid an infringement as described in Question 3?

   b) If an interpretation in conformity with Community law should not be possible or necessary, to what extent does the second sentence of paragraph 421(g)(1) of SGB III infringe Community law inasmuch as the free movement of workers is not protected?

([1]) OJ, English Special 1968(II), p. 475.

Action brought on 13 May 2005 by the Commission of the European Communities against the Republic of Austria

(Case C-209/05)

(2005/C 171/18)

(Language of the case: German)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 13 May 2005 by the Commission of the European Communities, represented by Maria Condou and Wolfgang Bogensberger, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

(a) declare that, when rejecting visa applications in relation to nationals of third countries who are members of the families of citizens of the Union exercising their right to freedom of movement,

   — by not stating precise, sufficiently detailed and complete reasons, even though there are no public security grounds preventing their disclosure, and

   — by not granting the parties concerned the same legal remedies in respect of the decisions rejecting their visa applications as are available to nationals of the State concerned in respect of acts of the administration,

   the Republic of Austria has failed to fulfil its obligations under Articles 6 and 8 of Directive 64/221/EEC; ([1])

(b) order the defendant, the Republic of Austria, to pay the costs of the proceedings.

Pleas in law and main arguments

Directive 64/221/EEC imposes various obligations on the Member States in relation to the measures adopted, for persons falling within their personal scope, on the grounds of public policy, public security or public health, in particular as regards the reasons on which decisions are based and legal remedies available against decisions. Pursuant to Article 6 of the directive the person concerned is to be informed of the grounds of public policy, public security, or public health upon which the refusal to issue a visa to a member of the family of a citizen of the Union is based. Article 8 of the directive stipulates that the person whose visa application was rejected must have at least the same legal remedies against the decision as are available to nationals of the State concerned in respect of acts of the administration.

The Commission is of the view that certain provisions of the Austrian Fremdengesetz (Law on Aliens) do not correspond to the aforementioned Community law requirements contained in the directive.

Pursuant to Paragraph 93(2) of the Fremdengesetz, a written decision is to be given only on application in writing or by protocol by the party concerned and it is sufficient, in the statement of reasons of the decision, to state only the relevant legal provisions. Under Article 6 of the directive, however, the Member States are under an automatic duty to state reasons: the stating of reasons may not be dependant on urgency, nor on the applications of the person concerned. The mere indication of the legal provisions applied does not, furthermore, satisfy the requirements demanded of a statement of reasons: mere reference to the legal provisions applied in reaching a negative decision does not amount to adequate information on the grounds of rejection. The Court's case-law also shows that a precise, sufficiently detailed and complete statement of reasons for a decision is required so that the person concerned can challenge the decision made against him and protect his interests accordingly.

Paragraph 94(2) of the Austrian Fremdengesetz does not allow for appeals against refusals or declarations of invalidity of visas. This provision infringes the obligation under Article 8 of the directive, according to which the person concerned must have the same legal remedies as are available to nationals of the State concerned in respect of acts of the administration, regardless of whether these are remedies submitted to administrative authorities or the courts. The Commission considers incorrect the Republic of Austria's arguments that the refusal of legal remedies in this connection is justified by the fact that neither refusals nor declarations of invalidity of visas have any consequential effect beyond the individual act in question and that submitting a new application is a quicker means of reaching one's goal than pursuing a legal remedy against the decision. Submitting a renewed application entails the risk that the objectively incorrect decision may simply be repeated.

(1) OJ, English Special Edition 1963-1964, p. 117.

Action brought on 20 May 2005 by the Commission of the European Communities against the Republic of Austria

(Case C-226/05)

(2005/C 171/19)

(Language of the case: German)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 20 May 2005 by the Commission of the European Communities, represented by Dr Bernhard Schima, acting as Agent with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that the Republic of Austria has failed to fulfil its obligation to completely implement Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (1) in that

   — contrary to Article 24(1), it has failed to enact any provisions to implement the directive as regards the Federal Government's law on mineral raw materials, its law on blasting supplies and explosives and the law of the *Land* of Salzburg relating to electricity production;

   — it has failed to implement Article 11 as regards external emergency plans in the *Länder* of Burgenland, Salzburg, Styria and Tyrol;

   — it has failed to implement Article 12 of the directive in the *Land* of Upper Austria;

   — it has failed to implement Article 8(2)(b) of the directive in the *Länder* of Burgenland, Upper Austria, Salzburg, Tyrol and Vorarlberg;

   or that the Republic of Austria has failed to inform the Commission of any implementing measures in all these instances;

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

Pleas in law and main arguments:

According to Article 24(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, the directive should be implemented in national law by the Member States not later than 24 months after its entry into force, that is to say, by 3 February 1999. The implementation of the directive in Austria rests partly with the Federal Government and partly with the *Länder*.

The Commission is of the opinion that the implementation of the directive in the Republic of Austria is incomplete or insufficient: there are gaps as regards implementation in areas of importance and the implementing measures partly fall short of the requirements of the directive.

At the Federal law level, implementation in the areas of the law on mineral raw materials and the law on blasting supplies and explosives is still outstanding. At the level of the *Länder*, implementation of the directive in the area of the Salzburg law relating to electricity production is still outstanding.

Article 11(1) of the directive — the drawing up of an external emergency plan for measures to be taken outside the establishment — has not been implemented in the *Länder* of Burgenland, Salzburg, Styria and Tyrol.

Article 12 of the directive lays a duty on Member States to take the objectives of preventing major accidents and limiting the consequences of such accidents into account in their land-use policies and/or other relevant policies. Member States have a duty to control the siting of new establishments and to set up appropriate consultation procedures to facilitate the implementation of the policies. However, the Commission has received no implementing measure in respect of Article 12 for the *Land* of Upper Austria.

With regard to the so-called 'domino effect' establishments, Article 8(2)(b) of the directive requires Member States to make provision for cooperation in informing the public and in supplying information to the competent authority for the preparation of external emergency plans. This provision has not, as yet, been implemented in the *Länder* of Burgenland, Upper Austria, Salzburg, Tyrol and Vorarlberg.

([1]) OJ L 10, 14.1.1997, p. 13.

Action brought on 26 May 2005 by the Commission of the European Communities against the French Republic

(Case C-232/05)

(2005/C 171/20)

(Language of the case: French)

An action against the French Republic was brought before the Court of Justice of the European Communities on 26 May 2005 by the Commission of the European Communities, represented by Christophe Giolito, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to execute, within the prescribed period, the Commission decision of 12 July 2000 on the State aid granted by the French Republic to Scott Paper SA Kimberly-Clark (State aid CR 38/1998, ex NN 52/1998) (OJ 2002 L 12, p. 1), the French Republic has failed to fulfil its obligations under the fourth paragraph of Article 249 of the EC Treaty and Articles 2 and 3 of that decision;

2. order the French Republic to pay the costs.

Pleas in law and main arguments

The French authorities have not done what is necessary to ensure the correct, immediate and effective execution of the decision in accordance with national procedures, contrary to Article 14(1) and (3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([1]) which provides that the Member State is to take all necessary measures to recover the aid from the beneficiary. The decision of the national court runs counter to its obligation to give practical effect to Community law, and under French law it is not possible to take interim measures to offset the automatic effect of the stay of proceedings.

The position of the French authorities appears to be contrary to the duty to cooperate in good faith as defined in Article 10 EC. France did not reply to the Commission's letter of 21 November 2003 despite three reminders and a meeting held between the Commission's DG Competition and the French authorities to go over the French cases of recovery of State aid. In particular, in spite of the fact that the Commission asked France several times for a copy of the order staying the proceedings, it never obtained one. The Commission therefore remains uncertain with regard to the exact progress of the recovery proceedings. That doubt is moreover increased by the fact that information obtained from unofficial sources in July 2004 by the Commission shows that the order staying the proceedings was never made, contrary to the assertions of the French authorities. In those circumstances, the Commission is unable to deal with the recovery in a spirit of cooperation in good faith as defined by the case-law of the Court.

([1]) OJ L 83 of 27.03.1999, p. 1.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 May 2005

in Joined Cases T-111/01 and T-133/01, Saxonia Edelmetalle GmbH and Zeitzer Maschinen, Anlagen Geräte (ZEMAG) GmbH v Commission of the European Communities ([1])

(State aid — Restructuring — Misuse of State aid — Recovery of aid — Article 88(2) EC — Regulation (EC) No 659/1999)

(2005/C 171/21)

(Language of the case: German)

In Joined Cases T-111/01 and T-133/01, Saxonia Edelmetalle GmbH, established in Haslbrücke (Germany), represented by P. von Woedtke, lawyer, and J. Riedemann as receiver of the company ZEMAG GmbH, in liquidation, established in Zeitz (Germany), represented by U. Vahlhaus, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agents: V. Kreuschitz and V. Di Bucci, with an address for service in Luxembourg) application for annulment of Commission Decision 2001/673/EC of 28 March 2001 on State aid implemented by Germany for EFBE Verwaltungs GmbH & Co. Management KG, now Lintra Beteiligungsholding GmbH, together with Zeitzer Maschinen, Anlagen Geräte GmbH, LandTechnik Schlüter GmbH, ILKA MAFA Kältetechnik GmbH, SKL Motoren- und Systembautechnik GmbH, SKL Spezialapparatebau GmbH, Magdeburger Eisengießerei GmbH, Saxonia Edelmetalle GmbH and Gothaer Fahrzeugwerk GmbH (OJ 2001 L 236, p. 3) the Court of First Instance (First Chamber, Extended Composition), composed of B.§ Westerdorf, President, M. Jaeger, P. Mengozzi, M.E. Martins Ribeiro and F. Dehousse, Judges; D. Christensen, Administrator, acting for the Registrar, has given a judgment on 11 May 2005, in which it:

1 *Annuls Article 3 of Commission Decision 2001/673/EC of 28 March 2001 on State aid implemented by Germany for EFBE Verwaltungs GmbH &Co. Management KG (now Lintra Beteiligungsholding GmbH, together with Zeitzer Maschinen, Anlagen Geräte GmbH; LandTechnik Schlüter GmbH; ILKA MAFA Kältetechnik GmbH; SKL Motoren- und Systembautechnik GmbH; SKL Spezialapparatebau GmbH; Magdeburger Eisengießerei GmbH; Saxonia Edelmetalle GmbH and Gothaer Fahrzeugwerk GmbH) in so far as it requires the Federal Republic of Germany to recover an amount of DEM 3 195 559, including the appurtenant interest from the company Saxonia Edelmetalle GmbH and a total aid amount of DEM 6 496 271, including the appurtenant interest, from the company Zeitzer Maschinen, Anlagen Geräte (ZEMAG) GmbH;*

2 *Dismisses the remainder of the action.*

3 *Orders the Commission to pay the costs, including those relating to the interim proceedings in Case T-111/01.*

([1]) OJ C 227 of 11.8.2001

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 May 2005

in Joined Cases T-160/02 to T-162/02, Naipes Heraclio Fournier, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Proceedings in relation to invalidity — Article 51(1)(a) of Regulation (EC) No 40/94 — Figurative mark comprising the representation of a sword in a pack of cards — Figurative mark comprising the representation of a knight of clubs in a pack of cards — Figurative mark comprising the representation of a king of swords in a pack of cards — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation No 40/94)

(2005/C 171/22)

(Language of the case: Spanish)

In Joined Cases T-160/02 to T-162/02: Naipes Heraclio Fournier, SA, established in Vitoria (Spain), represented by E. Armijo Chávarri, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: J. Crespo Carrillo, and subsequently by O. Montalto and I. de Medrano Caballero), the other party to the proceedings before

the Board of Appeal of OHIM, intervener before the Court of First Instance, being France Cartes SAS, established in Saint Max (France), represented by C. de Haas, lawyer — ACTION brought against three decisions of the Second Board of Appeal of OHIM of 28 February 2002 (Cases R 771/2000 2, R 770/2000-2 and R 766/2000 2), relating to invalidity proceedings between Naipes Heraclio Fournier, SA, and France Cartes SAS, — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, V. Tiili and O. Czúcz, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 11 May 2005, in which it:

1. *Dismisses the applications;*

2. *Dismisses the intervener's claim that the applicant be ordered to pay the costs as inadmissible in respect of the costs incurred before the Cancellation Division;*

3. *Orders the applicant to pay the costs of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and the remainder of the intervener's costs;*

4. *Dismisses the remainder of the intervener's claims.*

([1]) OJ C 180, 27.7.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 4 May 2005

in Case T-359/02 Chum Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Word mark STAR TV — Opposition of the owner of the international figurative mark STAR TV — Refusal to register)

(2005/C 171/23)

(Language of the case: English)

In Case T-359/02: Chum Ltd, established in Toronto (Canada), represented by M.J. Gilbert, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: P. Bullock and S. Laitinen), the other party to the proceedings before the Board of Appeal of OHIM having been Star TV AG, established in Schlieren (Switzerland) — action brought against the decision of the Second Board of Appeal of OHIM of 17 September 2002 (Case R 1146/2000-2), relating to opposition proceedings between Chum Ltd and Star TV AG — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Mengozzi and I. Wiszniewska-Białecka, Judges; H. Jung, Registrar, gave a judgment on 4 May 2005, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 19 of 25.1.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 May 2005

in Case T-25/03, Marco de Stefano v Commission of the European Communities ([1])

(Community officials — Open competition — Non-admission to tests — Required diplomas)

(2005/C 171/24)

(Language of the case: French)

In Case T-25/03, Marco de Stefano, official of the Commission of the European Communities, residing in Brussels (Belgium), represented by G. Vandersanden and G. Verbrugge, lawyers, v Commission of the European Communities (Agents: H. Tserepa-Lacombe and L. Lozano Palacios, with an address for service in Luxembourg) — action for annulment of the selection board's decision of 8 April 2002 rejecting the applicant's candidature in competition EUR/A/166/01, held for the purpose of constituting a reserve for recruitment of A7/A6 administrators in the area of auditing and, in the alternative, a claim for damages — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Mengozzi and I. Wiszniewska-Białecka, Judges; M. I. Natsinas, Administrator, for the Registrar, has given a judgment on 11 May 2005, in which it:

1 *Dismisses the action.*

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

([1]) OJ C 83 of 5.4.2003

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 May 2005

in Case T-31/03 Grupo Sada PA SA v Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Application for a figurative Community trade mark containing the verbal element 'GRUPO SADA' — Earlier figurative national trade mark including the verbal element 'sadia' — Refusal in part to register — Article 8(1)(b) of Regulation (EC) No 40/94)

(2005/C 171/25)

(Language of the case: Spanish)

In Case T-31/03: Grupo Sada PA SA, established in Madrid, Spain, represented by A. Aguilar De Armas and J. Marrero Ortega, lawyers, against the Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM) (Agents: J. García Murillo and G. Schneider), the other party to the proceedings before the Board of Appeal of the OHIM, intervening before the Court of First Instance, being Sadia SA, established at Concordia (Brazil), represented by J. García del Santo and P. García Cabrerizo, lawyers — application for annulment of the decision of the First Board of Appeal of the OHIM of 20 November 2002 (case R 567/2001-1) — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Mengozzi and I. Wiszniewska-Bialecka, Judges; B. Pastor, Registrar, has given a judgment on 11 May 2005, in which it:

1. *Dismisses the action.*

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

[1] OJ C 70 of 22 March 2003

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 26 April 2005

in Joined Cases T-110/03, T-150/03 and T-405/03 Jose Maria Sison v Council of the European Union [1]

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to Council decisions concerning the fight against terrorism — Exceptions relating to the protection of the public interest — Public security — International relations — Partial access — Statement of reasons — Rights of the defence)

(2005/C 171/26)

(Language of the case: English)

In Joined Cases T-110/03, T-150/03 and T-405/03: Jose Maria Sison, residing in Utrecht (Netherlands), represented by J. Fermon, A. Comte, H. Schultz and D. Gurses, lawyers, against Council of the European Union, represented by M. Vitsentzatos, M. Bauer and M. Bishop — applications for annulment of the three Council decisions of 21 January, 27 February and 2 October 2003 refusing access to documents relating to Council Decisions 2002/848/EC, 2002/974/EC and 2003/480/EC of 28 October 2002, 12 December 2002 and 27 June 2003 respectively implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2002/460/EC, 2002/848/EC and 2002/974/EC respectively — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges; J. Plingers, Administrator, for the Registrar, gave a judgment on 26 April 2005, in which it:

1. *Dismisses the applications in Cases T-110/03 and T-150/03 as unfounded;*

2. *Dismisses part of the application in Case T-405/03 as inadmissible and the remainder as unfounded;*

3. *Orders the applicant to pay the costs in Cases T-110/03, T-150/03 and T-405/03.*

[1] OJ C 146 of 21.6.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 14 April 2005

in Case T-141/03, Sniace SA v Commission of the European Communities ([1])

(State Aid — Equity loan — Legal interest in bringing proceedings — Inadmissibility)

(2005/C 171/27)

(Language of the case: Spanish)

In Case T-141/03: Sniace SA, established in Madrid (Spain), represented by J. Baró Fuentes, lawyer, supported by Kingdom of Spain, (Agent: N. Díaz Abad, with an address for service in Luxembourg) against the Commission of the European Communities (Agents: F. Santaolalla Gadea and J. Buendía Sierra, with an address for service in Luxembourg) — application for partial annulment of Commission Decision 2003/284/EC of 11 December 2002 on the State aid implemented by Spain for Sniace SA (OJ 2003 L 108, p. 35) — the Court of First Instance (Third Chamber, Extended Composition), composed of J. Azizi, President, M. Jaeger, F. Dehousse, E. Cremona and O. Czúcz, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Dismisses the action as inadmissible;*

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

3. *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 171 of 19.7.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 4 May 2005

in Case T-144/03, Nadine Schmit v Commission of the European Communities ([1])

(Community officials — Mental harassment — Duty to assist — Obligation to state reasons — Non-inclusion of documents in personnel file)

(2005/C 171/28)

(Language of the case: French)

In Case T-144/03, Nadine Schmit, official of the Commission of the European Communities, residing in Ispra (Italy), represented by P.-P. Van Gehuchten and P. Jadoul, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agents: J. Currall and L. Lozano Palacios, assisted by D. Waelbroeck and U. Zinsmeister, lawyers, with an address for service in Luxembourg), — action for annulment of the Commission's decision of 11 July 2002 refusing to withdraw certain allegedly defamatory documents from the applicant's personnel file, denying the existence of libellous statements about her and denying any harm resulting from the staff reports and promotion years and, if necessary, action for annulment of the Commission's decision of the same day refusing to register the applicant's 'pre-litigation claim' lodged by the applicant on 28 June 2002 — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, J. Azizi and E. Cremona, Judges, H. Jung, Registrar, has given a judgment on 4 May 2005, in which it:

1 *Dismisses the action.*

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

([1]) OJ C 171 of 19.7.2003

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 May 2005

in Case T-193/03, Giuseppe Piro v Commission of the European Communities [1]

(Officials — Action for annulment — Staff report — Statement of reasons — Action for damages — Non-material damage)

(2005/C 171/29)

(Language of the case: French)

In Case T-193/03, Giuseppe Piro, an official of the Commission of the European Communities, residing in Wezembeek Oppem (Belgium), represented by S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal and X. Martin Membiela, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis-Kayser and H. Tserepa-Lacombe, with an address for service in Luxembourg) — application for annulment of the Commission's decision adopting the applicant's definitive staff report for the period 1999/2001 and for damage — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, M.E. Martins Ribeiro and K. Jürimäe, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 10 May 2005, in which it:

1. *Orders the Commission to pay the applicant one euro as compensation for the non-material damage suffered;*

2. *Dismisses the remainder of the action;*

3. *Orders the Commission to bear its own costs and to pay half of the applicant's. The applicant is ordered to bear half of his own costs.*

[1] OJ C 184 of 2.8.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 11 May 2005

in Case T-390/03 CM Capital Markets Holding SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Earlier figurative mark including the expression 'capital markets CM' — Application for Community figurative mark including the element 'CM' — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2005/C 171/30)

(Language of the case: Spanish)

In Case T-390/03: CM Capital Markets Holding SA, established in Madrid (Spain), represented initially by N. Moya Fernández and J. Calderón Chavero, and subsequently by J. Calderón Chavero and T. Villate Consonni, lawyers, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: O. Montalto and I. de Medrano Caballero), the other party to the proceedings before the Board of Appeal of OHIM having been Caja de Ahorros de Murcia, established in Murcia (Spain) — Action against a decision of the First Board of Appeal of OHIM of 17 September 2003 (Case R 244/2003-1), relating to opposition proceedings between CM Capital Markets Holding SA and Caja de Ahorros de Murcia — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, V. Tiili and O. Czúcz, Judges; B. Pastor, Deputy Registrar, for the Registrar, gave a judgment on 11 May 2005, in which it:

1. *Dismisses the application;*

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

[1] OJ C 21 of 24.1.2004.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 26 April 2005

in Case T-395/03 Sophie Van Weyenbergh v Commission of the European Communities ([1])

(Officials — Re-opening of an internal competition — Non-inclusion in the list of suitable candidates)

(2005/C 171/31)

(Language of the case: French)

In Case T-395/03: Sophie Van Weyenbergh, residing in Tervuren (Belgium), represented by C. Mourato, lawyer, against Commission of the European Communities (Agent: H. Tserepa-Lacombe and H. Kraemer, with an address for service in Luxembourg) — application for, firstly, annulment of the decision of the selection board of internal competition COM/TB/99 not to include the application in the list of suitable candidates following that competition and, secondly, damages — the Court of First Instance (sole judge: J. Pirrung), I. Natsinas, Administrator, for the Registrar, gave a judgment on 26 April 2005, in which it:

1. *Rejects the application;*

2. *Orders the Commission to bear its own costs and half of the costs incurred by the applicant; the applicant is to bear the other half of her own costs.*

([1]) OJ C 59, 6.3.2004.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 4 May 2005

in Case T-398/03, Jean-Pierre Castets v Commission of the European Communities ([1])

(Officials — Article 78 of the Staff Regulations — Invalidity pension — Calculation of the amount of the pension — Reference salary)

(2005/C 171/32)

(Language of the case: French)

In Case T-398/03, Jean-Pierre Castets, a former official of the Commission of the European Communities, residing in Saint-Victor-des-Oules (France), represented by G. Crétin, lawyer, against Commission of the European Communities (Agent: J. Currall, assisted by B. Wägenbaur, lawyer, with an address for service in Luxembourg) — application for annulment of the Commission's decision specifying the applicant's rights to an invalidity pension — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Mengozzi and I. Wiszniewska-Białecka, Judges; C. Kristensen, Administrator, for the Registrar, gave a judgment on 4 May 2005, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to bear his own costs and those incurred by the Commission in attending the hearing;*

3. *Orders the Commission to bear its own costs save those which it incurred in attending the hearing.*

([1]) OJ C 35 of 7.2.2004.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 26 April 2005

in Case T-431/03: Liam O'Bradaigh v Commission of the European Communities ([1])

(Public service — Reopening of an internal competition — Non-entry on the list of suitable candidates)

(2005/C 171/33)

(Language of the case: French)

In Case T-431/03: Liam O'Bradaigh, a member of the temporary staff of the European Economic and Social Committee (ECOSOC), residing in Mechelen (Belgium), represented by J.-N. Louis, S. Orlandi, A. Coolen and E. Marchal, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall and H. Kraemer, with an address for service in Luxembourg) — application for annulment of the decision of the selection board for internal competition COM/TB/99 awarding the applicant, for his oral test, a mark insufficient for his name to be entered on the list of suitable candidates drawn up following the competition, the Court of First Instance (Single Judge: J. Pirrung); I. Natsinas, Administrator, for the Registrar, gave a judgment on 26 April 2005 in which it:

1. *Dismisses the application;*

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

([1]) OJ No C 47 of 21.02.04.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 4 May 2005

in Case T-22/04: Reemark Gesellschaft für Markenkooperation mbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community Trade Mark — Opposition proceedings — Application for Community word mark Westlife — Earlier national mark West — Likelihood of confusion — Similarity of the signs)

(2005/C 171/34)

(Language of the case: English)

In Case T-22/04: Reemark Gesellschaft für Markenkooperation mbH, established in Hamburg (Germany), represented by P. Koch Moreno, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: S. Laitinen), the other party to the proceedings before the Board of Appeal of OHIM being Bluenet Ltd, established in Limerick (Ireland) — application for annulment of the decision of the Second Board of Appeal of OHIM of 17 November 2003 (Case R 238/2002-2) relating to opposition proceedings brought by the holder of the mark West against the application for the mark Westlife — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges; B. Pastor, Assistant Registrar, for the Registrar, gave a judgment on 4 May 2005, in which it:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 17 November 2003 (Case R 238/2002-2);*

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

([1]) OJ C 94, 17.4.2004.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 4 May 2005

in Case T-30/04 João Andrade Sena v European Aviation Safety Agency ([1])

(AESA staff — Rejection of candidature for the post of Executive Director — Recruitment procedure — Statement of reasons — Manifest error of assessment — Principle of good administration)

(2005/C 171/35)

(Language of the case: French)

In Case T-30/04: João Andrade Sena, residing in Rhode-Saint-Genèse (Belgium), represented by G. Vandersanden, L. Levi and A. Finchelstein, lawyers, with an address for service in Luxembourg, against European Aviation Safety Agency (AESA) (Agent M. Junkkari assisted by D. Waelbroeck and I. Antypas, lawyers) — application for annulment of AESA's decisions to reject the

applicant's candidature for the post of Executive Director and appoint another candidate to that post and also application for the payment of damages in respect of material and non-material damage — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Lindh and V. Vadapalas, Judges; I. Natsinas, Registrar, gave a judgment on 4 May 2005, in which it:

1. *Dismisses the application;*

2. *Orders AESA to pay the costs.*

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(1) OJ C 94, 17.4.2004.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 March 2005

in Joined Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00, T-271/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00, Gruppo ormeggiatori del porto di Venezia Soc. coop. rl, and Others v Commission of the European Communities (1)

(State aid — Commission decision declaring incompatible with the common market unlawful aid schemes and requiring repayment of incompatible aid — National procedure for repayment precluded — Action for annulment — No legal interest in bringing proceedings — Inadmissibility)

(2005/C 171/36)

(Language of the case: Italian)

In Joined Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00, T-271/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00, Gruppo ormeggiatori del porto di Venezia Soc. coop. rl, established in Venice (Italy), represented by F. Munari, lawyer, with an address for service in Luxembourg, applicant in Case T-228/00, Gruppo ormeggiatori del porto di Chioggia Piccola Soc. coop. rl, established in Venice, represented by S. Carbone, A. Taramasso and F. Munari, lawyers, with an address for service in Luxembourg, applicant in Case T-229/00, Compagnia lavoratori portuali Soc. coop. rl, Società cooperativa lavoratori portuali San Marco Venezia Soc. coop. rl, established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg, applicants in Case T-242/00, Portabagagli del porto di Venezia Soc. coop. rl, established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg, applicant in Case T-243/00, Abibes SpA, established in Venice, represented by G. Orsoni, G. Simeone and A. Schmitt, lawyers, with an address for service in Luxembourg, applicant in Case T-245/00, Fluvio Padana Srl, established in Venice, represented by G. Orsoni, G. Simeone and A. Schmitt, lawyers, with an address for service in Luxembourg, applicant in Case T-246/00, Serenissima motoscafi Srl, established in Venice, represented by G. Orsoni, A. Pavanini and A. Schmitt, lawyers, with an address for service in Luxembourg, applicant in Case T-247/00, Integrated Shipping Co. SpA (ISCO), established in Venice, represented by G. Orsoni, G. Simeone and A. Schmitt, lawyers, with an address for service in Luxembourg, applicant in Case T-248/00, Società cooperativa veneziana motoscafi, Soc. coop. rl, Cooperativa 'San Marco' motoscafi in servizio pubblico Soc. coop. rl, Cooperativa serenissima taxi Soc. coop. rl, established in Venice, represented by G. Orsoni, A. Pavanini and A. Schmitt, lawyers, with an address for service in Luxembourg, applicants in Case T-250/00, Cooperativa ducale fra gondolieri di Venezia, Soc. coop. rl, Gondolieri Bauer Soc. coop. rl, established in Venice, represented by M. Giantin, lawyer, with an address for service in Luxembourg, applicants in Case T-252/00, Sacra Srl, established in Venice, represented by M. Marinoni, G.M. Roberti and F. Sciaudone, lawyers, with an address for service in Luxembourg, applicant in Case T-256/00, Fondamente nuove servizio taxi e noleggio, Soc. coop. rl, Bucintoro motoscafi servizio taxi e noleggio Soc. coop. rl, established in Venice, represented by R. Vianello, A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg, applicants in Case T-257/00, Multiservice Srl, established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg, applicant in Case T-258/00, Veneziana di navigazione SpA, established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg, applicant in Case T-259/00, Cooperativa traghetto S. Lucia Soc. coop. rl, established in Venice, represented by A. Bortoluzzi, C. Montagner and F. Stivanello Gussoni, lawyers, with an address for service in Luxembourg, applicant in Case T-265/00, Comitato 'Venezia vuole vivere', established in Venice, represented, in Cases T-265/00 and T-267/00, by A. Bortoluzzi, C. Montagner and F. Stivanello Gussoni and, in Cases T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00, by A. Bianchini, lawyers, with an address for service in Luxembourg, applicant in Cases T-265/00, T-267/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00, Cooperativa Daniele Manin fra gondolieri di Venezia Soc. coop. rl, established in Venice, represented by A. Bortoluzzi, C. Montagner and F. Stivanello Gussoni, lawyers, with an address for service in Luxembourg, applicant in Case T-267/00, Conepo servizi Soc. coop. rl, established in Venice, represented by A. Biagini, S. Scarpa and P. Pettinelli, lawyers, with an address for service in Luxembourg, applicant in Case T-268/00, Ligabue Catering SpA, established in Venice, represented by

A. Vianello, M. Merola and A. Sodano, lawyers, with an address for service in Luxembourg, applicant in Case T-271/00, Verde sport SpA, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg, applicant in Case T-274/00, Cooperativa carico scarico e trasporti scalo fluviale Soc. coop. rl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg, applicant in Case T-275/00, Cipriani SpA, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg, applicant in Case T-276/00, Cooperativa trasbagagli Soc. coop. rl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg, applicant in Case T-281/00, Cooperativa fra portabagagli della stazione di Venezia Srl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg, applicant in Case T-287/00, Cooperativa braccianti mercato ittico 'Tronchetto' Soc. coop. rl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg, applicant in Case T-296/00, supported, in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-247/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00 and T-271/00, by the Italian Republic, represented by U. Leanza, acting as agent, with an address for service in Luxembourg, intervener, against Commission of the European Communities (agent: V. Di Bucci, and A. Dal Ferro, lawyer, with an address for service in Luxembourg) — action for annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50) — the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, A.W.H. Meij, N.J Forwood, I. Pelikánová, S. Papasavvas, Judges; H. Jung, Registrar, made an order on 10 March 2005, the operative part of which is as follows:

1. *Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00, T-271/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00 are joined for the purposes of the remainder of the proceedings.*

2. *The actions in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-267/00, T-268/00, T-271/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00 are dismissed as inadmissible.*

3. *The actions in Cases T-265/00 and T-274/00 are dismissed in part as inadmissible in so far as they were brought by the Cooperativa traghetto S. Lucia Soc. coop. rl (Case T-265/00) and Verde sport SpA (Case T-274/00).*

4. *In Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-268/00 and T-271/00, the applicants, on the one hand, and the Commission, on the other, are to bear their own costs.*

5. *In Cases T-267/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00, Cooperativa Daniele Manin fra gondolieri di Venezia Soc. coop. rl, Cooperativa carico scarico e trasporti scalo fluviale Soc. coop. rl, Cipriani SpA, Cooperativa trasbagagli Soc. coop. rl, Cooperativa fra portabagagli della stazione di Venezia Srl and Cooperativa braccianti mercato ittico 'Tronchetto' Soc. coop. rl are to bear their own costs. In those cases the Commission is to bear the costs which it has incurred in connection with the actions in so far as they were brought by those companies. The Comitato ' Venezia vuole vivere' is to pay, in addition to its own costs, those incurred to date by the Commission in connection with the actions in Cases T-267/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00, in so far as they were brought by the Comitato 'Venezia vuole vivere'.*

6. *The applicants in Case T-265/00, Cooperativa traghetto S. Lucia, and in Case T-274/00, Verde sport, are to bear their own costs. In those two cases the Commission is to bear the costs it has incurred to date in connection with the actions brought by those two companies.*

7. *The Italian Republic is to bear its own costs in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-247/00, T-250/00, T-252/00, T-256/00 to T-259/00, -T-267/00, T-268/00 and T-271/00, and the costs which it has incurred in Case T-265/00 in connection with the action brought by the Cooperativa traghetto S. Lucia.*

8. *The remainder of the costs are reserved in Cases T-265/00 and T-274/00.*

([1]) OJ C 302 of 21.10.2000.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 27 April 2005

in Case T-34/05 R Makhteshim-Agan Holding BV and Others v Commission of the European Communities

(Interlocutory proceedings — Interim measures — Action for failure to act — Admissibility — Directive 91/414/EEC)

(2005/C 171/37)

(Language of the case: English)

In Case T-34/05 R: Makhteshim-Agan Holding BV and Others, established in Amsterdam (Netherlands), represented by C. Mereu and K. Van Maldegen, lawyers, against Commission of the European Communities (Agent: B. Doherty, with an address for service in Luxembourg) — application for an order for interim measures concerning the evaluation of Endosulfan with a view to its possible inclusion in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) — the President of the Court of First Instance made an order on 27 April 2005, the operative part of which is as follows:

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

2. *Costs are reserved.*

Action brought on 21 March 2005 by Robert Benkö and Others against the Commission of the European Communities

(Case T-122/05)

(2005/C 171/38)

(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 21 March 2005 by Robert Benkö, Kohfidisch (Austria), Nikolaus Draskovich, Güssing (Austria), Alexander Freiherr von Kottwitz-Erdödy, Kohlfidisch (Austria), Peter Masser, Schwanberg (Austria), Alfred Prinz von und zu Liechtenstein, Deutschlandsberg (Austria), Marenzi Privatstiftung, Ebergassing (Austria), Marktgemeinde Götzendorf an der Leitha (Austria), Gemeinde Ebergassing (Austria), Ernst Harrach, Bruck an der Leitha (Austria), Schlossgut Schönbühel-Aggstein AG, Vaduz, and Heinrich Rüdiger Fürst Starhemberg'sche Familienstiftung, Vaduz, represented by M. Schaffgotsch, lawyer.

The applicants claim that the Court should:

1. annul the contested Commission decision in its entirety or, should that form of order not be granted, in the alternative,

2. annul the contested decision in respect of all the Austrian sites of Community importance (code AT in Annex 1 to the contested decision) or, should that form of order not be granted, in the alternative,

3. annul the inclusion of sites AT 1114813, AT 2242000, AT 1220000, AT 1205A00, AT 3122000 and AT 3120000 in the contested Commission decision or, should that form of order not be granted, in the alternative,

4. annul the inclusion of sites specified in Annex 1 to the contested decision as sites of Community importance for habitats and species with a degree of representativity and global assessment of B, C and D (in the alternative, C and D or, in the further alternative, D only) in accordance with the standard data sheets of the Member States, in respect of

   (a) all the sites included in the contested decision (as listed in Annex 1) or, in the alternative

   (b) all the Austrian sites (code AT in Annex 1) or, in the alternative

   (c) only sites AT 1114813, AT 2242000, AT 1220000, AT 1205A00, AT 3122000 and AT 3120000,

5. in any event, however, order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

Under Commission Decision C(2004) 4031 of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, [1] the list of sites of Community importance for the Continental biogeographical region, [2] properties belonging to the applicants fall under the protective regime established by that directive.

The applicants claim inter alia that the contested decision was not based on the necessary weighing of benefits as between the higher public interests and the rights of the citizen and the regional authority, who are directly affected.

The applicants submit that the contested decision is at variance with Directive 92/43/EEC since the necessary bases for estimating the required cost of financing were not properly drawn up, and since the action framework to be adopted pursuant to Article 8 of the directive was not drawn up and would not have been sufficient.

The applicants further complain that, because of the division of jurisdiction in Austria, the coherence of the network of areas of conservation called for by Directive 92/43/EEC is not guaranteed, and that in practically all cases the areas of conservation actually end at *Land* frontiers, which in the applicants' view is wrong both under Community law and from the technical point of view of nature conservation.

The applicants also submit that the Commission failed, in the contested decision, to state expressly and specifically for which species and habitats the sites now listed as sites of Community importance are actually of Community importance.

Finally, the applicants claim that, as far as the sites affecting the applicants are concerned, inaccurate technical bases were turned into the substance of the decision, and that the sites were therefore incorrectly declared to be sites of Community importance for certain species and habitats.

[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

[2] OJ 2004 L 382, p. 1.

Action brought on 18 March 2005 by Société des Plantations de Mbanga 'SPM' against the Council of the European Union and Commission of the European Communities

(Case T-128/05)

(2005/C 171/39)

(Language of the case: French)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 March 2005 by Société des Plantations de Mbanga 'SPM', established at Douala (Cameroun), represented by Pierre Soler-Couteaux, lawyer.

The applicant claims that the Court should:

1. order the Commission and the Council jointly and severally to pay compensation for the damage suffered in the amount of EUR 15 163 825 together with interest at the statutory rate;

2. order the Commission and the Council to pay the costs.

Pleas in law and main arguments

The applicant produces, processes, and markets bananas for export in the Republic of Cameroon and in other countries. In order to market its bananas within the Community, the applicant is required to obtain import licences from importer operators, because it is not an operator, for the purpose of the Community legislation, and it is not part of a European or multinational group.

The applicant claims that importer operators misuse the Community provisions governing the Community system of banana imports for their own benefit by reintroducing, by means of an excessive and disproportionate charge on import licences, duty on banana imports from ACP States normally subject to a zero duty.

The applicant submits that, by failing to take account of a very distinct category of economic operators in the banana sector, the 'independent' ACP producers, which are neither operators nor part of large European or multinational groups and, by failing to adopt the appropriate measures to remedy the consequences arising from that, although the Commission is bound to avoid disrupting normal commercial relations between persons at different levels of the commercial chain, the Council and the Commission have conducted themselves in such a manner as to incur non-contractual liability.

The applicant also pleads a manifest disregard for the limits of the discretion of the Council and the Commission, relying on five pleas alleging:

— introduction of a law which favours anti-competitive practices;

— absence of measures intended to counter those anti-competitive effects;

— infringement of the principles of the protection of legitimate expectations and legal certainty;

— infringement of the principle of non-discrimination and

— infringement of the principle of freedom to pursue a trade or profession.

The applicant further relies on an infringement of Articles 81 EC and 82 EC by the operators.

Action brought on 14 April 2005 by Nederlandse Vakbond Varkenshouders and Others v Commission of the European Communities

(Case T-151/05)

(2005/C 171/40)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought on 14 April 2005 by the Nederlandse Vakbond Varkenshouders (Netherlands Association of pig breeders), established in Lunteren (Netherlands); Marius Schep, residing in Lopik (Netherlands) and the Nederlandse Bond van Handelaren in Vee (Netherlands association of livestock dealers), established in the Hague (Netherlands), represented by Johannes Kneppelhout and Monique Charlotte van der Kaden.

The applicants claim that the Court should:

— Declare the application for annulment admissible and well founded;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicants seek annulment of the Commission Decision of 21 December 2004 declaring a concentration compatible with the common market (Case No IV/M.3605 — SOVION/HMG).

The applicants submit that the Commission has infringed Articles 2, 6 and 8 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1] (the EC Merger Regulation). In the applicants' view, the Commission unlawfully decided that the proposed concentration gave rise to no problems for competition on the market for the purchase of live pigs and sows for slaughter and that no dominant position arose on the relevant market. In that connection the applicants claim that in certain recitals to the contested decision the Commission applied a distorted definition of the relevant product market by including the market for sows in the market for pigs. In the applicants' view the Commission defined the geographical market incorrectly.

The applicants also claim an infringement of the duty to provide a statement of reasons and of due care. According to the applicants the Commission gave the applicants insufficient opportunity to clarify their views and disregarded the information supplied by them.

[1] OJ 2004 L 24, p. 1.

Action brought on 25 April 2005 by Deutsche Telekom AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-157/05)

(2005/C 171/41)

(Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 25 April 2005 by Deutsche Telekom AG, established in Bonn (Germany), represented by J.-C. Gaedertz, lawyer.

PCS Systemtechnik GmbH, established in Munich (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 9 February 2005 in appeal proceedings R 248/2004-2;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant
Community trade mark concerned:	Word mark 'T-PCS' for goods and services in Classes 9, 16, 36, 38, 41 and 42 (application no 1077304).
Proprietor of mark or sign cited in the opposition proceedings:	PCS Systemtechnik GmbH
Mark or sign cited in opposition:	Word mark 'PCS' for goods and services in Classes 9, 37 and 42 (Community trade mark No 628149).
Decision of the Opposition Division:	Opposition allowed and application no 1077304 refused.
Decision of the Board of Appeal:	Appeal dismissed.
Pleas in law:	The decision of the Board of Appeal infringes the final half-sentence of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, there being no likelihood of confusion between the marks being compared.

Action brought on 22 April 2005 by Trek Bicycle Corporation against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-158/05)

(2005/C 171/42)

(Language of the application: 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 22 April 2005 by Trek Bicycle Corporation, Waterloo, Wisconsin (United States of America), represented by J. Kroher and A. Hettenkofer, lawyers.

The other party before the Board of Appeal was AUDI AG, Ingolstadt (Germany).

The applicant claims that the Court should:

— set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Decision R 587/2004-4);

— set aside Decision No 1716/2004 of the Opposition Division of 26 May 2004 on Opposition No B 435828 in so far as the opposition concerning the goods 'vehicles and parts therefor' was rejected;

— refuse registration of Community trade mark No 1910256 'ALLTREK' concerning the goods 'vehicles and parts therefor';

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	AUDI AG.
Community trade mark sought:	The word mark 'ALLTREK' for goods and services in Classes 9, 12 and 42 (Registration No 1910256).
Proprietor of mark or sign cited in the opposition proceedings:	The applicant.
Mark or sign cited in opposition:	The German word mark 'TREK' for goods in Classes 6, 9, 11, 12 and 21 (No 2 092 896).
Decision of the Opposition Division:	Partial rejection of the opposition (as regards Class 12).
Decision of the Board of Appeal:	Dismissal of the appeal.
Pleas in law:	Misapplication of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark. There is a likelihood of confusion between the two opposing marks, since they are extremely similar and the older mark has special distinctive character.

Action brought on 22 April 2005 by unipor-Ziegel Marketing GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-159/05)

(2005/C 171/43)

(Language of the application: 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 22 April 2005 by unipor-Ziegel Marketing GmbH, Munich (Germany), represented by A. Beschorner and B. Glaser, lawyers.

The other party before the Board of Appeal was Ewald Dörken AG, Herdecke (Germany).

The applicant claims that the Court should:

— set aside the decision of 18 February 2005 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market — R 491/04-2-DELTA;

— order the Office for Harmonisation to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity is sought:	The word mark 'DELTA' for goods in Classes 6 and 19 (Community trade mark No 683458).
Proprietor of the Community trade mark:	Ewald Dörken AG.
Applicant for a declaration of invalidity of the Community trade mark:	The applicant.
Decision of the Cancellation Division:	Rejection of the application for a declaration of invalidity.
Decision of the Board of Appeal:	Dismissal of the appeal.

Pleas in law:

— The contested decision infringes Article 7(1)(a) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, since the registered trade mark lacks the properties required of a Community trade mark;

— The contested decision infringes Article 7(1)(b) of Regulation (EC) No 40/94, since the registered trade mark is devoid of any distinctive character;

— The contested decision infringes Article 7(1)(c) of Council Regulation (EC) No 40/94, since the registered trade mark needs to be kept free for trade and its registration constitutes an impermissible monopolisation.

Action brought on 14 April 2005 by Dag Johansson and Others against Commission of the European Communities

(Case T-160/05)

(2005/C 171/44)

(Language of the case: French)

An action against against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 14 April 2005 by Dag Johansson, residing in Brussels, and three other officials, represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decisions to appoint the applicants as officials of the European Communities in that they fix their grade on recruitment pursuant to Article 12 of Annex XIII to the Staff Regulations;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments put forward are the same as those in Case T-130/05 and similar to those in Case T-58/05.

Action brought on 18 April 2005 by Dirk Grijseels and Ana Lopez García against the European Economic and Social Committee

(Case T-162/05)

(2005/C 171/45)

(Language of the case: French)

Anaction against the European Economic and Social Committee was brought before the Court of First Instance of the European Communities on 14 April 2005 by Dirk Grijseels, residing in Ternat (Belgium), and Ana Lopez García, residing in Brussels, represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decisions to appoint the applicants as officials of the European Communities in that they fix their grade on recruitment pursuant to Article 12 of Annex XIII to the Staff Regulations;

— order the European Economic and Social Committee to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments put forward are the same as those in Cases T-130/05 and T-160/05 and similar to those in Case T-58/05.

Action brought on on 13 April 2005 by Johan de Geest against Council of the European Union

(Case T- 164/05)

(2005/C 171/46)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 13 April 2005 by Johan de Geest, residing in Rhode-St-Genèse (Belgium), represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision to appoint him as an official of the European Communities in that it fixes his grade on recruitment at A*6, pursuant to Article 12 of Annex XIII to the Staff Regulations;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant was a candidate in internal competition CONSEIL/A/273 held to fill a post as doctor in grade A6 or A7. The applicant was successful in the competition and was appointed in grade A*6. The applicant contests that decision, claiming that he should have been appointed in grade A*8, A*9 or A*10, which, under the new system, correspond to the former grades referred to in the notification of competition.

In support of his action, the applicant claims that the Council fixed his grade on recruitment without having regard to the notification of vacancy and, accordingly, breached Articles 29 and 31 of the Staff Regulations and also the principle of legitimate expectations. In that context, the applicant also claims that article 12 of Article XIII to the Staff Regulations, which the Council applied when fixing his grade on recruitment, unlawfully alters the framework of legality of the recruitment procedure.

Action brought on 25 April 2005 by Arkema against the Commission of the European Communities

(Case T-168/05)

(2005/C 171/47)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 April 2005 by Arkema, having its registered office in Paris, represented by Michel Debroux, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Articles 1(d), 2(c) and 4(9) of Commission Decision C(2004) 4876 final of 19 January 2005, in so far as they concern Elf Aquitaine and impose a fine on it, because of errors of law and an infringement of essential procedural requirements and, consequently, amend Article 2(c) and (d) of the decision in so far as it imposed an excessive fine on Arkema and determine a lesser amount;

— or, in the alternative, amend Article 2(c) and (d) of the decision in so far as it imposed an excessive fine on Arkema and on Elf Aquitaine and reduce the amount of the fine;

— in both alternatives, order the Commission to pay its own costs and those of the applicant in these proceedings.

Pleas in law and main arguments

In the contested decision the Commission imposed first, on the applicant and its parent company, Elf Aquitaine SA, jointly and severally, and second, on the applicant alone, fines of EUR 45 000 000 and EUR 13 500 000 respectively for their involvement along with ten other undertakings in a cartel in the Monochloroacetic acid sector.

In support of its action the applicant submits, first, that the Commission made several errors in law in attributing the applicant's practices, the materiality and classification of which are not disputed, to Elf Aquitaine. The Commission thus misinterpreted the rules governing a parent company's liability for practices carried out by a subsidiary in making a *de facto* irrebuttable presumption of accountability deriving from its majority shareholding in its subsidiary and consequently, in not showing how the parent company was actually involved in the practices in question. According to the applicant, this irrebuttable presumption infringes the principle of legal and commercial autonomy of the subsidiary, the principle of personal liability for breaches of competition law and the principle of non-discrimination between undertakings on the basis of their legal organisation. Moreover, the applicant claims that the Commission did not respect the essential procedural requirements in so far as no reasons were given at all for applying the irrebuttable presumption.

Second, the applicant submits that the fine imposed was excessive, disproportionate and discriminatory. In support of this submission it pleads infringement of the proportionality principle in determining the initial amount of the fine, in determining the factor applied to make the fine a sufficient deterrent and in determining the multiplying factor based on the duration of the breach.

In the alternative, the applicant submits that should Elf Aquitaine not be exonerated, its pleas regarding infringement of the proportionality principle are still well-founded. In addition, the applicant submits that the Commission took Arkema's turnover into account twice in its method of calculation, thus imposing a double penalty for the same fact.

Action brought on 20 April 2005 by Jean-Louis Giraudy against the Commission of the European Communities

(Case T-169/05)

(2005/C 171/48)

(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 20 April 2005 by Jean-Louis Giraudy, residing in Paris, represented by Dominique Voillemot, lawyer.

The applicant claims that the Court should:

— annul the Commission's decision of 21 February 2005 inasmuch as it does not acknowledge the faults of the Press D-G and rejects his complaint;

— declare that those faults have caused actual and quantifiable damage, and that there is a causal link between those faults and the damage;

— declare lawful, in consequence, financial compensation for the damage suffered by the applicant and fix the compensation for the non-material damage suffered at the sum of EUR 500 000;

— order the Commission to pay the costs.

Pleas in law and main arguments

At the material time, the applicant was Head of the Commission's Office in France. As a result of allegations made against him concerning supposed irregularities adversely affecting the European Union's budget, the European Anti-Fraud Office (the OLAF) carried out an operation at the headquarters of the Commission's Office on 18 November 2002. The next day the applicant was transferred to Brussels and forbidden all contact within the Commission or without.

The applicant also claims that a press release issued by the Commission on 21 November 2002 and widely circulated gave rise to considerable publicity unfavourable to him in the media. According to the applicant, the OLAF's report of 6 May 2003 concluded that the allegations against him were groundless.

By this action the applicant seeks to obtain compensation for the damage caused him by those acts. In support of his action he claims that he was transferred unlawfully, without justification and in breach of the presumption of innocence. He also claims that the Commission's spokesman did not observe the confidential nature of the inquiry and made public statements liable to damage his reputation. Finally, he claims that certain allegations concerning him were made by the Director General of the Press Directorate-General, of the flimsiness of which the latter must have been aware.

Action brought on 21 April 2005 by Renate AMM and 14 others against European Parliament

(Case T-170/05)

(2005/C 171/49)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 21 April 2005 by Renate AMM, residing in Brussels, and 14 other officials, represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decisions to appoint the applicants as officials of the European Communities in that they fix their grade on recruitment pursuant to Article 12 or the second paragraph of Article 13 of Annex XIII to the Staff Regulations;

— order the Parliament to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments put forward are the same as those in Cases T-130/05, T-160/05 and T-162/05 and similar to those in Cases T-58/05 and T-164/05.

Action brought on 29 April 2005 by Armacell Enterprise GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-172/05)

(2005/C 171/50)

(Language in which the application was lodged: English)

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 29 April 2005 by Armacell Enterprise GmbH, established in Münster, (Germany), represented by O. Spuhler, lawyer.

NMC, Société Anonyme established in Raeren (Belguim) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the defendant dated 23 February 2005 in Case R 552/2004-1;

— order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	Armacell Enterprises GmbH
Community trade mark concerned:	The word mark ARMAFOAM for goods in class 20 (Foam goods made of elastomers, thermoplastics or thermosets as system component or as end use application) — application No 2 487 338
Proprietor of mark or sign cited in the opposition proceedings:	NMC S.A.
Trade mark or sign cited in opposition:	The Community word mark NOMAFOAM for goods and/or services in classes 17, 19, 20, 27 and 28 (Products in semi-processed plastic materials; polyethylene foam; building materials (non metallic); …) Community trade mark No 672 816
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Annulment of the appealed decision and rejection of the Community trade mark application
Pleas in law:	Infringement of Article 43(5), second sentence, and Article 8(1)(b) of Council Regulation No 40/94 in that there is no likelihood of confusion between the trademarks and goods in question.

Action brought on 27 April 2005 by Elf Aquitaine against the Commission of the European Communities

(Case T-174/05)

(2005/C 171/51)

(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 27 April 2005 by Elf Aquitaine, having its registered office in Courbevoie (France), represented by Eric Morgan de Rivery and Evelyne Friedel, lawyers.

The applicant claims that the Court should:

— annul Article 1(d) of Commission Decision C(2004) 4876 final of 19 January 2005, in so far as it determines that Elf Aquitaine infringed Article 81 EC between 1 January 1984 and 7 May 1999 and Article 53 EEA between 1 January 1994 and 7 May 1999;

— consequently, annul (i) Article 2(c) of Commission Decision C(2004) 4876 final of 19 January 2005, in so far as it imposes a fine of EUR 45 million on Elf Aquitaine and Atofina jointly and severally, (ii) Article 3 of that same decision, in so far as it orders Elf Aquitaine to put an end to the infringements of Article 81 EC and of Article 53 EEA, and (iii) Article 4(9) of that decision, in so far as it addresses the decision to Elf Aquitaine;

— in the alternative, annul Article 2(c) of Commission Decision C(2004) 4876 final of 19 January 2005, in so far as it imposes a fine of EUR 45 million on Elf Aquitaine and Atofina jointly and severally;

— in the further alternative, amend Article 2(c) of Commission Decision C(2004) 4876 final of 19 January 2005, in so far as it imposes a fine of EUR 45 million on Elf Aquitaine and Atofina jointly and severally and reduce the fine imposed to an appropriate amount;

— in any event, order the Commission to pay the costs in their entirety.

Pleas in law and main arguments

In the contested decision the Commission found that the applicant was involved in a concerted practice consisting of allocating production quotas and customers, agreeing price increases, setting up a compensation mechanism, exchanging information on sales volumes and prices, meeting regularly and being involved in other forms of contact, in order to agree on and implement the restrictions described. The Commission imposed a fine on the applicant as a result of these infringements.

The applicant submits that the contested decision imposes a fine on it for an infringement committed by its subsidiary and claims that it should be annulled. It relies on the following pleas:

In its first plea the applicant alleges infringement of its right to a fair hearing. It alleges that the Commission did not set out its arguments in its statement of objections clearly, that it did not discharge the burden of proof as it should have and that it did not take the facts resulting from the administrative procedure into account.

In its second plea the applicant alleges lack of reasoning for the contested decision, in the light of the alleged novelty of holding the applicant liable for the actions of its subsidiary and the alleged failure to respond to the applicant's rebuttals.

In its third plea the applicant submits that it is inconsistent to hold the applicant liable for the infringement and at the same time acknowledge that the subsidiary's involvement was minimal when it was put to an end.

In its fourth plea the application alleges infringement of the rules governing the liability of a parent company for infringements committed by one of its subsidiaries.

In its fifth plea the applicant claims that the contested decision infringes several essential principles that are recognised by all of the Member States and form an integral part of the Community legal order, namely the principle of the individual nature of penalties, the principle of legality and the general principle of presumption of innocence.

Its sixth plea the applicant alleges several irregularities committed by the Commission during the procedure leading to the adoption of the contested decision, which the applicant considers as infringements of the principle of good administration.

The applicant also submits, in its seventh plea, that the novelty of the criterion for holding parent companies liable for infringements committed by their subsidiaries, as applied in the contested decision, infringes the principle of legal certainty.

As regards the two subsequent pleas, the applicant alleges that the Commission distorted the documentary evidence submitted and that the contested decision amounts to a misuse of powers.

In the alternative, the applicant claims that the fine should be annulled on the ground that the Commission's reasoning for its calculation is completely incoherent.

In the further alternative, the applicant claims that the amount of the fine should be reduced.

Action brought on 27 April 2005 by Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel AB, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB and Eka Chemicals AB against the Commission of the European Communities

(Case T-175/05)

(2005/C 171/52)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 April 2005 by Akzo Nobel NV, established in Arnhem (Netherlands), Akzo Nobel Nederland BV, established in Arnhem (Netherlands), Akzo Nobel AB, established in Stockholm (Sweden), Akzo Nobel Chemicals BV, established in Amersfoort (Netherlands), Akzo Nobel Functional Chemicals BV, established in Amersfoort (Netherlands), Akzo Nobel Base Chemicals AB, established in Skoghall (Sweden), and Eka Chemicals AB, established in Bohus (Sweden), represented by C. R. A. Swaak and A. Kayhko, lawyers.

The applicants claim that the Court should:

— review, under Article 230 EC, the legality of the Decision C(2004)4876 final of the Commission;

— annul, under Article 231 EC, the contested decision;

— or, in the alternative, reduce the amount of the fine;

— in both alternatives, order the Commission to pay its own costs and those of the applicants in these proceedings.

Pleas in law and main arguments

The applicants contest the Commission's Decision of 19 January 2005 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/E-1/37.773 — MCAA), finding that the applicants were involved in a complex of agreements and concerted practices consisting of price fixing, market sharing and agreed actions against competitors in the Monochloroacetic acid sector in the EEA and imposing a fine on the applicants.

In support of their application, the applicants submit a manifest error of appreciation and a violation of Article 23(2) of Regulation 1/2003 ([1]) in that the Commission wrongly attributed the responsibility for the infringement also to Akzo Nobel NV, the top holding company of the Akzo Nobel group, as well to Akzo Nobel AB. According to the applicants, Akzo Nobel NV did not have a decisive influence over the commercial policy of its subsidiaries.

The applicants furthermore submit that the amount of the fine imposed jointly and severally on the applicants exceeded, for the Swedish companies in the MCAA business, the 10 % turnover limit set by Regulation 1/2003.

The applicants also contend a violation of the obligation to state reasons under Article 253.

In the alternative, the applicants submit that the Commission made various errors in relation to the calculation of the fine. According to the applicants, the Commission erred in classification of the companies when assessing the gravity of the infringement for the purposes of determining the basic amount of the fine, violated the principle of proportionality in applying an erroneous multiplier factor and the principle of equal treatment in misapplying the 1996 Leniency Notice ([2]).

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, p.1).

([2]) Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ C 207, 18/07/1996, p. 4).

Action brought on 10 May 2005 by Citicorp and Citibank, N.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-181/05)

(2005/C 171/53)

(Language in which the application was lodged: English)

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 10 May 2005 by Citicorp, established in New York (USA), and Citibank, N.A., established in New York (USA), represented by V. v. Bomhard, A. Renck and A. Polhmann, lawyers.

Citi, S.L. established in Algete, Madrid (Spain), was also a party to the proceedings before the Board of Appeal.

The applicant claim that the Court should:

— annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and designs) of 1 March 2005 in case R 173/2004-1;

— order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments:

Applicant for Community trade mark:	Citi, S.L.
Community trade mark concerned:	The figurative mark CITI for services in class 36 (customs agencies, property valuers, real estate agents, evaluation and administration of house contents)- application No 1 430 750
Proprietor of mark or sign cited in the opposition proceedings:	Citicorp and Citibank N.A.
Trade mark or sign cited in opposition:	Their respective national and Community, word and figurative marks for services in class 36 (financial services and real estate services)
Decision of the Opposition Division:	Rejection of the Community trade mark application
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division, acceptance of the opposition in respect of 'property valuers, real estate agents, evaluation and administration of house contents' and rejection of the opposition in respect of 'customs agencies'
Pleas in law:	Violation of Article 73 of Council Regulation No 40/94 and the right to be heard, Violation of Article 73 and 74(1) of Council Regulation No 40/94 and violation of Article 8(5) of Council Regulation No 40/94.

Action brought on on 4 May 2005 by Julie Samnadda against Commission of the European Communities

(Case T-183/05)

(2005/C 171/54)

(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 4 May 2005 by Julie Samnadda, residing in Brussels, represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision to appoint the applicant as an official of the European Communities in that it fixes her grade on recruitment pursuant to Article 12 of Annex XIII to the Staff Regulations;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments put forward are the same as those in Cases T-130/05, T-160/05, T-162/05 and T-170/05 and similar to those in Cases T-58/05 and T-164/05.

Action brought on 9 May 2005 by The Sherwin-Williams Company against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-190/05)

(2005/C 171/55)

(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 9 May 2005 by The Sherwin-Williams Company, represented by Enrique Armijo Chavarri and Antonio Castán Pérez-Gómez, lawyers.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of OHIM of 22 February 2003 (Case R 755/2004-2);

— order OHIM to pay the costs.

Pleas in law and main arguments:

Community trade mark sought:	Word mark TWIST & POUR — Application No 3.071.041, for goods in Class 21 (hand held plastic containers sold as an integral part of a liquid paint containing storage and pouring device)
Decision of the examiner contested before the Board of Appeal:	Dismissal of the application
Decision of the Board of Appeal:	Dismissal of the appeal
Pleas in law:	Incorrect application of Article 7(1)(b) of Regulation (EC) No 40/94

Action brought on 9 May 2005 by Teletech Holdings Inc., against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-194/05)

(2005/C 171/56)

(Language in which the application was lodged: English)

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 9 May 2005 by Teletech Holdings Inc., established in Englewood, Colorado (USA), represented by A. M. Gould, Solicitor.

Teletech International S.A. established in Paris (France), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— Annul the Decision the First Board of Appeal of the OHIM, of 3 March 2005, in case R 497/2004-1;

— Remit the matter to the Opposition Division for it to consider and rule on TeleTech's US opposition to Community trade mark 2 168 409 in the name of Teletech International SA based on its Community trade mark No. 134 908 TELETECH GLOBAL VENTURES;

— Order the Office to pay TeleTech's US's costs relating to its proceedings both in the Court of First Instance and before the Board of Appeal.

Pleas in law and main arguments

Applicant for Community trade mark:	TELETECH INTERNATIONAL S.A.
Community trade mark concerned:	Word mark TELETECH INTERNATIONAL for services in classes 35, 38 and 42
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Trade mark or sign cited in opposition:	National mark 'TELETECH' and Community trade mark 'TELETECH GLOBAL VENTURES'
Decision of the Opposition Division:	Registration refused
Decision of the Board of Appeal:	Declares the appeal inadmissible
Pleas in law:	The applicant contends that the Court of First Instance's judgment of 16 September 2004 in case T-342/02, Metro-Goldwyn-Mayer Lion / OHMI declaring an appeal brought in similar circumstances inadmissible, was wrongly decided; in the alternative, it submits that this judgment could be distinguished; finally, it submits that its position in the USA has been seriously prejudiced by the decision of the Opposition Division and that, therefore, its appeal against the latter's decision should have been declared admissible.

Removal from the Register of Case T-398/02 ([1])

(2005/C 171/57)

(Language of the case: Italian)

By order of 2 May 2005, the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-398/02, Linea GIG S.r.l. in liquidation v Commission of the European Communities.

([1]) OJ C 44 of 22.2.2003.

Removal from the Register of Case T-441/03 ([1])

(2005/C 171/58)

(Language of the case: Dutch)

By order of 28 April 2005, the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-441/03, N.V. Firma Léon Van Parys and Others v Commission of the European Communities.

([1]) OJ C 59 of 6.3.2004.

Removal from the Register of Case T-244/04 ([1])

(2005/C 171/59)

(Language of the case: Dutch)

By order of 4 May 2005, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-244/04, Elisabeth Saskia Smit v Europese Politiedienst (Europol).

([1]) OJ C 217 of 28.8.2004.

III

(Notices)

(2005/C 171/60)

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

OJ C 155, 25.6.2005

Past publications

OJ C 143, 11.6.2005

OJ C 132, 28.5.2005

OJ C 115, 14.5.2005

OJ C 106, 30.4.2005

OJ C 93, 16.4.2005

OJ C 82, 2.4.2005

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