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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(First Chamber)

of 26 May 2005

in Case C-301/02 P Carmine Salvatore Tralli v European Central Bank [1]

(Appeal — Staff of the European Central Bank — Recruitment — Extension of the probationary period — Dismissal during the probationary period)

(2005/C 182/01)

(Language of the case: German)

In Case C-301/02 P: appeal under Article 49 of the EC Statute of the Court of Justice, brought on 26 August 2002, Carmine Salvatore Tralli (represented by N. Pflüger, Rechtsanwalt), the other party to the proceedings being the European Central Bank (Agents: V. Saintot and M. Benisch, assisted by B. Wägenbaur, Rechtsanwalt) — the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta (Rapporteur), S. von Bahr and K. Schiemann, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 26 May 2005, in which it:

1. *Dismisses the appeal;*

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

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 2 June 2005

in Case C-394/02: Commission of the European Communities v Hellenic Republic [1]

(Failure of a Member State to fulfil obligations — Directive 93/38/EEC — Public procurement in the water, energy, transport and telecommunications sectors — Contract for the construction of a conveyor-belt system for the thermal-electricity generation plant at Megalopolis — Failure to publish a contract notice — Technical reasons — Unforeseeable event — Extreme urgency)

(2005/C 182/02)

(Language of the case: Greek)

In Case C-394/02: Commission of the European Communities (Agents: M. Nolin and M. Konstantinidis) v Hellenic Republic (Agents: P. Mylonopoulos, D. Tsagkaraki and S. Chala) — action under Article 226 EC for failure to fulfil obligations, brought on 8 November 2002 — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges; F.G. Jacobs, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 2 June 2005, in which it:

1. *Declares that, by reason of the award by the public electricity undertaking Dimosia Epicheirisi Ilektrismoy of the contract for the construction of a conveyor-belt system for the thermal-electricity generation plant at Megalopolis by means of a negotiated procedure without prior publication of a contract notice, the Hellenic Republic has failed to fulfil its obligations under Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 98/4/EC of the European Parliament and the Council of 16 February 1998, and, in particular, under Articles 20(1) and 21 thereof;*

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

(1) OJ C 19 of 25.01.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 31 May 2005

in Case C-438/02: Reference for a preliminary ruling from the Stockholms tingsrätt in criminal proceedings against Krister Hanner (1)

(Articles 28 EC, 31 EC, 43 EC and 86(2) EC — Marketing of medicinal preparations — Establishment of retail traders — National monopoly on the retail of medicinal preparations — Undertaking entrusted with providing a service of general economic interest)

(2005/C 182/03)

(Language of the case: Swedish)

In Case C-438/02: reference for a preliminary ruling under Article 234 EC from the Stockholms tingsrätt (Sweden), made by decision of 29 November 2002, received at the Court on 4 December 2002, in criminal proceedings against Krister Hanner, the Court (Grand Chamber), composed of V. Skouris, President of the Chamber, P. Jann (Rapporteur), C.W.A. Timmermans and A. Rosas, Presidents of Chambers, J-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the, Registrar, gave a judgment on 31 May 2005, the operative part of which is as follows:

Article 31(1) EC precludes a sales regime which grants an exclusive retail right and is arranged in the same way as the sales regime at issue in the main proceedings.

(1) OJ C 31 of 08.02.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 7 June 2005

in Case C-17/03: Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven Vereniging voor Energie, Milieu en Water and Others v Directeur van de Dienst uitvoering en toezicht energie (1)

(Internal market in electricity — Preferential access to the system for cross-border transmission of electricity — Undertaking previously responsible for the operation of services of general economic interest — Long-term contracts existing prior to the liberalisation of the market — Directive 96/92/EC — Principle of non-discrimination — Principles of the protection of legitimate expectation and of legal certainty)

(2005/C 182/04)

(Language of the case: Dutch)

In Case C-17/03: reference for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands), made by decision of 13 November 2002, received at the Court on 16 January 2003, in the proceedings between **Vereniging voor Energie, Milieu en Water**, **Amsterdam Power Exchange Spotmarket BV**, **Eneco NV** and **Directeur van de Dienst uitvoering en toezicht energie**, intervening party: **Nederlands Elektriciteit Administratiekantoor BV**, previously Samenwerkende Elektriciteits Produktiebedrijven NV — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas (Rapporteur), Presidents of Chambers, J.-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr, M. Ilešič, J. Malenovský and U. Lõhmus, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the, Registrar, gave a judgment on 7 June 2005, the operative part of which is as follows:

1. *Articles 7(5) and 16 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity are not limited to covering technical rules but must be construed as applying to all discrimination.*

2. *Those articles preclude national measures that grant an undertaking preferential capacity for the cross-border transmission of electricity, whether those measures derive from the system operator, the controller of system management or the legislature, in the case where such measures have not been authorised within the framework of the procedure set out in Article 24 of Directive 96/92.*

(1) OJ C 70 of 2.03.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 26 May 2005

in Case C-20/03: Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brugge in the criminal proceedings against Marcel Burmanjer, René Alexander Van Der Linden, Anthony De Jong [1]

(Free movement of goods — Article 28 EC — Measures having equivalent effect — Itinerant sale — Conclusion of contracts for subscriptions to periodicals — Prior authorisation)

(2005/C 182/05)

(Language of the case: Dutch)

In Case C-20/03: reference for a preliminary ruling under Article 234 EC from the Rechtbank van eerste aanleg te Brugge (Belgium), made by decision of 17 January 2003, received at the Court on 21 January 2003, in the criminal proceedings against Marcel Burmanjer, René Alexander Van Der Linden, Anthony De Jong — the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas (Rapporteur), K. Lenaerts, S. von Bahr and K. Schiemann, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, Registrar, gave a judgment on 26 May 2005, the operative part of which is as follows:

Article 28 EC does not preclude national rules under which a Member State makes an offence of the itinerant sale within its territory, without prior authorisation, of subscriptions to periodicals, where such rules apply, without distinction based on the origin of the products in question, to all the economic operators concerned carrying on their activity within that State, provided that such rules affect in the same manner, in law and in fact, the marketing of products originating in that State and that of products from other Member States.

It is for the referring court to determine, having regard to the facts of the main proceedings, whether the application of national law is such as to ensure that those rules affect in the same manner, in law and in fact, the marketing of domestic products and that of products from other Member States, and, if that is not the case, to establish whether the rules in question are justified by an objective in the general interest within the meaning which the Court's case-law gives to that expression and whether they are proportional to that objective.

[1] OJ C 70 of 22.03.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 31 May 2005

in Case C-53/03: Reference for a preliminary ruling from the Epitropi Antagonismou in Synetairismos Farmakopoion Aitolias & Akarnanias (Syfait) and Others v GlaxoSmithKline plc and Others [1]

(Admissibility — Meaning of court or tribunal of a Member State — Abuse of a dominant position — Refusal to supply pharmaceutical products to wholesalers — Parallel trade)

(2005/C 182/06)

(Language of the case: Greek)

In Case C-53/03: reference for a preliminary ruling under Article 234 EC from the Epitropi Antagonismou (Greece), made by decision of 22 January 2003, received at the Court on 5 February 2003, in the proceedings between Synetairismos Farmakopoion Aitolias & Akarnanias (Syfait) and Others, Panellinios syllogos farmakapothikarion, Interfarm, A. Agelakos & Sia OE and Others, K.P. Marinopoulos Anonymos Etairia emporias kai dianomis farmakeftikon proïonton and Others and GlaxoSmithKline plc, GlaxoSmithKline AEVE, formerly Glaxowellcome AEVE — the Court (Grand Chamber), composed of V. Skouris, President of the Chamber, P. Jann, C.W.A. Timmermans, A. Rosas and R. Silva de Lapuerta, Presidents of Chambers, C. Gulmann (Rapporteur), R. Schintgen, N. Colneric and S. von Bahr, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 31 May 2005, in which it ruled:

The Court of Justice of the European Communities has no jurisdiction to answer the questions referred by the Epitropi Antagonismou by decision of 22 January 2003.

[1] OJ C 101 of 26.04.2003.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 2 June 2005

in Case C-83/03 Commission of the European Communities v Italian Republic [1]

(Failure of a Member State to fulfil obligations — Environment — Directive 85/337/EEC — Assessment of the effects of projects on the environment — Construction of a marina at Fossacesia)

(2005/C 182/07)

(Language of the case: Italian)

In Case C-83/03 Commission of the European Communities (Agents: R. Amorosi and A. Aresu) v Italian Republic (Agent: I.M. Braguglia, assisted by M. Fiorilli, avocat) — action under Article 226 EC for failure to fulfil obligations, brought on 26 February 2003 — the Court (Sixth Chamber), composed of A. Borg Barthet, President of the Chamber, J.-P. Puissochet (Rapporteur) and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 2 June 2005, in which it:

1. *Declares that, since the Abruzzo Region did not properly determine whether the project for the construction of a marina at Fossacesia (Chieti) — a project covered by the list in Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment — had characteristics requiring it to be made subject to a procedure to assess its effects on the environment, the Italian Republic has failed to fulfil its obligations under Article 4(2) of that directive;*

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

[1] OJ C 112 of 10.05.2003

JUDGMENT OF THE COURT

(Second Chamber)

of 12 May 2005

in Case C-112/03: Reference for a preliminary ruling from the Cour d'Appel, Grenoble Société financière et industrielle du Peloux v Axa Belgium and Others [1]

(Brussels Convention — Jurisdiction in respect of contracts of insurance — Agreement conferring jurisdiction between a policy-holder and an insurer both domiciled in the same Contracting State — Enforceability of a jurisdiction clause against an insured who did not approve that clause — Insured domiciled in another Contracting State)

(2005/C 182/08)

(Language of the case: French)

In Case C-112/03: reference for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, from the Cour d'Appel, Grenoble (France), made by decision of 20 February 2003, received at the Court on 13 March 2003, in the proceedings between Société financière et industrielle du Peloux and Axa Belgium and Others, Gerling Konzern Belgique SA, Établissements Bernard Laiterie du Chatelard, Calland Réalisations SARL, Joseph Calland, Maurice Picard, Abeille Assurances Cie, Mutuelles du Mans SA, SMABTP, Axa Corporate Solutions Assurance SA, Zurich International France SA — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, J. Makarczyk, P. Kūris and J. Klučka (Rapporteur), Judges; A. Tizzano, Advocate General, K. Sztranc, Administrator, for the, Registrar, gave a judgment on 12 May 2005, the operative part of which is as follows:

A jurisdiction clause conforming with Article 12(3) 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, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, 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, cannot be relied on against a beneficiary under that contract who has not expressly subscribed to that clause and is domiciled in a Contracting State other than that of the policy-holder and the insurer.

[1] OJ C 112 of 10.05.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 2 June 2005

in Case C-136/03: Reference for a preliminary ruling from the Verwaltungsgerichtshof Georg Dörr v Sicherheitsdirektion für das Bundesland Kärnten and Ibrahim Ünal v Sicherheitsdirektion für das Bundesland Vorarlberg [1]

(Free movement of persons — Public policy — Directive 64/221/EEC — Articles 8 and 9 — Refusal of residence permit and deportation order on criminal grounds — Appeal only on the legality of the measure ending the right of residence of the claimant — Appeal having no suspensory effect — Right of the claimant to submit observations on appropriateness before a body liable to give an opinion — EEC-Turkey Association Agreement — Free movement of workers — Articles 6(1) and 14(1) of Decision No 1/80 of the Association Council)

(2005/C 182/09)

(Language of the case: German)

In Case C-136/03: reference for a preliminary ruling under Article 234 EC from the Verwaltungsgerichtshof (Higher Administrative Court) (Austria), made by decision of 18 March 2003, received at the Court on 26 March 2003, in the proceedings **Georg Dörr** v **Sicherheitsdirektion für das Bundesland Kärnten** and **Ibrahim Ünal** v **Sicherheitsdirektion für das Bundesland Vorarlberg** — the Court (Third Chamber) composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, S. von Bahr, J. Malenovský and U. Lõhmus, Judges; M. Poiares Maduro, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 2 June 2005, the operative part of which is as follows:

1. *Article 9(1) of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health is to be interpreted as precluding legislation of a Member State under which appeals brought against a decision to expel a national of another Member State from the territory of that first Member State have no suspensory effect and, at the time of examination of such appeal, the decision to expel can be the subject only of an assessment as to its legality, inasmuch as no competent authority within the meaning of that provision has been established.*

2. *The procedural guarantees set out in Articles 8 and 9 of Directive 64/221 apply to Turkish nationals whose legal status is defined by Article 6 or Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association.*

[1] OJ C 135, 7.6.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 26 May 2005

in Case C-212/03: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil obligations — Measures having equivalent effect — Prior authorisation procedure for personal imports of medicinal products — Medicinal products for human consumption — Homeopathic medicinal products)

(2005/C 182/10)

(Language of the case: French)

In Case C-212/03: **Commission of the European Communities** (Agents: H. Støvlbæk and B. Stromsky) v **French Republic** (Agents: G. de Bergues, C. Bergeot-Nunes and R. Loosli-Surrans) — action under Article 226 EC for failure to fulfil obligations, brought on 15 May 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, J. Makarczyk and J. Klučka, Judges; L.A. Geelhoed, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 26 May 2005, in which it:

1. *Declares that, by applying:*

— *a prior authorisation procedure to personal imports, not effected by personal transport, of medicinal products lawfully prescribed in France and authorised under Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, as amended by Council Directive 93/39/EEC of 14 June 1993, both in France and in the Member State where they are purchased;*

— *a prior authorisation procedure to personal imports, not effected by personal transport, of homeopathic medicinal products lawfully prescribed in France and registered in a Member State pursuant to Council Directive 92/73/EEC of 22 September 1992 widening the scope of Directives 65/65/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products and laying down additional provisions on homeopathic medicinal products; and*

— *a disproportionate prior authorisation procedure to personal imports, not effected by personal transport, of medicinal products lawfully prescribed in France and not authorised in that Member State but only in the Member State where they are purchased,*

the French Republic has failed to fulfil its obligations under Article 28 EC;

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

([1]) OJ C 158 of 05.07.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 24 May 2005

in Case C-244/03: French Republic v European Parliament and Council of the European Union ([1])

(Cosmetic products — Testing on animals — Directive 2003/15/EC — Partial annulment — Article 1(2) — Non-severability — Inadmissibility)

(2005/C 182/11)

(Language of the case: French)

In Case C-244/03: **French Republic** (Agents: F. Alabrune, C. Lemaire and G. de Bergues, and subsequently the latter, J. L. Florent and D. Petrausch) v **European Parliament** (Agents: J.L. Rufas Quintana and M. Moore, and subsequently the latter and K. Bradley) and **Council of the European Union** (Agents: J.-P. Jacqué and M.C. Giorgi Fort) — Action for annulment under Article 230 EC, brought on 3 June 2003 — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann and C.W.A. Timmermans, Presidents of Chambers, C. Gulmann, A. La Pergola, J.-P. Puissochet, R Schintgen, K. Schiemann (Rapporteur), J. Makarczyk, P. Kūris, U. Lõhmus, E. Levits and A. Ó Caoimh, Judges; L.A. Geelhoed, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 24 May 2005, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 171 of 19.07.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 2 June 2005

in Case C-266/03: Commission of the European Communities v Grand Duchy of Luxembourg ([1])

(Failure of a Member State to fulfil its obligations — Negotiation, conclusion, ratification and implementation of bilateral agreements by a Member State — Transport of goods or passengers by inland waterway — External competence of the Community — Article 10 EC — Regulations (EEC) No 3921/91 and (EC) No 1356/96)

(2005/C 182/12)

(Language of the case: French)

In Case C-266/03: Commission of the European Communities (Agents: C. Schmidt and W. Wils) v Grand Duchy of Luxembourg (Agent: S. Schreiner) — action under Article 226 EC for failure to fulfil obligations, brought on 18 June 2003 — the Court (First Chamber), composed of P. Jann, President of the Chamber, R. Silva de Lapuerta (Rapporteur), K. Lenaerts, S. von Bahr and K. Schiemann, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 2 June 2005, in which it:

1. *Declares that, by negotiating, concluding, ratifying and arranging for the entry into force of*

— *the agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Czech and Slovak Federative Republic on inland waterway transport, signed in Luxembourg on 30 December 1992;*

— *the agreement between the Government of the Grand Duchy of Luxembourg and the Government of Romania on inland waterway transport, signed in Bucharest on 10 November 1993; and*

— *the agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Poland on inland waterway transport, signed in Luxembourg on 9 March 1994,*

without having cooperated or consulted with the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 10 EC;

2. *Dismisses the remainder of the action;*

3. *Orders the Commission of the European Communities and the Grand Duchy of Luxembourg to bear their own costs.*

(1) OJ C 200 of 23.08.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 May 2005

in Case C-278/03: Commission of the European Communities v Italian Republic (1)

(Failure of a Member State to fulfil obligations — Freedom of movement for workers — Competition for the recruitment of teaching staff in Italian State schools — Failure to take account of or insufficient account taken of professional experience acquired in other Member States — Article 39 EC — Article 3 of Regulation (EEC) No 1612/68)

(2005/C 182/13)

(Language of the case: Italian)

In Case C-278/03: Commission of the European Communities (Agent: M.-J. Jonczy) v Italian Republic (Agent: I.M. Braguglia, assisted by G. De Bellis, avvocato dello Stato) — action under Article 226 EC for failure to fulfil obligations, brought on 26 June 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, R. Schintgen, G. Arestis and J. Klučka,, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 12 May 2005, in which it:

1. *Declares that the Italian Republic has failed to fulfil its obligations under Article 39 EC and Article 3(1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community inasmuch as for the purposes of participation by Community nationals in competitions to recruit teaching staff in Italian State schools professional teaching experience acquired by those nationals is not taken into account, or at least not taken into account in the same way, depending on whether the teaching was carried out in Italy or in other Member States;*

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

(1) OJ C 213 of 6.9.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 26 May 2005

in Case C-283/03: Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven A.H. Kuipers v Productschap Zuivel (1)

(Common organisation of the markets — Milk and milk products — Regulation (EEC) No 804/68 — National scheme under which dairies withhold deductions from the price payable to dairy farmers or pay price supplements to them according to the quality of the milk supplied — Incompatibility)

(2005/C 182/14)

(Language of the case: Dutch)

In Case C-283/03: reference for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Adminstrative Court for Trade and Industry) (Netherlands), made by dcision of 27 June 2003, received at the Court on 30 June 2003, in the proceedings between A.H. Kuipers and Productschap Zuivel — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues, K. Schiemann (Rapporteur) and M. Ilešič, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 26 May 2005, the operative part of which is as follows:

The common pricing system which forms the basis of the common organisation of the market in milk and milk products instituted by Regulation No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products, as amended by Council Regulation (EC) No 1538/95 of 29 June 1995, prohibits Member States from unilaterally adopting provisions affecting the machinery of price formation at the production and marketing stages established under the common organisation. That is the case with regard to a system such as that at issue in the main proceedings, which, whatever its alleged or stated objective may be, institutes a mechanism under which:

— *on the one hand, dairies are required to withhold deductions from the price of milk delivered to them when that milk does not meet certain quality criteria and,*

— *on the other hand, the amount thus withheld over a given period by all the dairies is aggregated before being redistributed, after possible financial adjustments between the dairies, in the form of supplements identical in amount paid by each dairy, per 100 kilogrammes of milk delivered to it during that period, to those dairy farmers alone who have delivered milk meeting those quality criteria.*

(1) OJ C 213 of 06.09.2003.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 May 2005

in Case C-315/03: Commission of the European Communities v Huhtamaki Dourdan SA (1)

(Arbitration clause — Repayment of an advance paid in the course of performance of a research contract — Non-justification of part of the costs)

(2005/C 182/15)

(Language of the case: French)

In Case C-315/03 **Commission of the European Communities** (Agent: C. Giolito) v **Huhtamaki Dourdan SA**, established in Dourdan (France), (Lawyers: F. Puel and L. François-Martin) — action under Article 238 EC, brought on 23 July 2003 — the Court (Sixth Chamber), composed of A. Borg Barthet, President of the Chamber, J.-P. Puissochet (Rapporteur) and S. von Bahr, Judges; L. M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 12 May 2005, in which it:

1. *Orders Huhtamaki Dourdan SA to pay the Commission of the European Communities the sum of EUR 151 533,47 representing the total capital of the repayment of part of the advance paid to it in the context of contract No BRST-CT 98 5422, the sum of EUR 23 583,63 representing the interest due at the date of the present judgment, and interest at the rate of 4.81 % on the total capital still to be repaid with effect from the day after this judgment and until its debt has been fully repaid;*

2. *Orders Huhtamaki Dourdan SA to pay the costs.*

(1) OJ C 213 of 6.9.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 26 May 2005

in Case C-332/03: Commission of the European Communities v Portuguese Republic (1)

(Failure of a Member State to fulfil obligations — Fishing — Conservation and management of resources — Regulations (EEC) Nos 3760/92 and 2847/93 — Measures of control of fishing activities)

(2005/C 182/16)

(Language of the case: Portuguese)

In Case C-332/03 Commission of the European Communities (Agents: T. van Rijn and A.-M. Alves Vieira) v Portuguese Republic (Agents: L. Fernandes and M.J. Policarpo) — action for failure to fulfil obligations under Article 226 EC, brought on 29 July 2003 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J.-P. Puissochet (Rapporteur), S. von Bahr, J. Malenovský and U. Lõhmus, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 26 May 2005, in which it:

1. *Declares that, by failing, in respect of the fishing years 1994 to 1996,*

   — *to adopt appropriate rules for the use of the quotas allocated to it,*

   — *to ensure compliance with Community legislation in the field of conservation, by means of sufficient supervision of fishing activities and adequate inspection of the fishing fleet and of the unloading and recording of catches,*

— *to impose a provisional prohibition of fishing by vessels flying its flag or registered in its territory when the quota allocated to it was deemed to be exhausted, and by having finally prohibited fishing only when its quota had already been greatly exceeded,*

— *to ensure the effective operation of a validation system including verification by cross-checking data and monitoring of data by means of a computerised database,*

the Portuguese Republic has failed to fulfil its obligations concerning the management and control of the above fishing quotas relating to the years 1994, 1995 and 1996, under Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture and Articles 2, 19(1) and (2) and 21(1) and (2) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy;

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 135 of 7.6.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 May 2005

in Case C-347/03: Reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio Regione autonoma Friuli-Venezia Giulia and Agenzia regionale per lo sviluppo rurale (ERSA) v Ministero delle Politiche Agricole e Forestali ([1])

(External relations — EC-Hungary Agreement on the reciprocal protection and control of wine names — Protection in the Community of a name relating to certain wines originating in Hungary — Geographical indication 'Tokaj' — Exchange of letters — Possibility of using the word 'Tocai' in the term 'Tocai friulano' or 'Tocai italico' for the description and presentation of certain Italian wines, in particular quality wines produced in specified regions ('quality wines psr'), during a transitional period expiring on 31 March 2007 — Exclusion of that possibility at the end of the transitional period — Validity — Legal basis — Article 133 EC — Principles of international law relating to treaties — Articles 22 to 24 of the TRIPs Agreement — Protection of fundamental rights — Right to property)

(2005/C 182/17)

(Language of the case: Italian)

In Case C-347/03: reference for a preliminary ruling under Article 234 EC from the Tribunale amministrativo regionale del Lazio (Italy), made by decision of 9 June 2003, received at the Court on 7 August 2003, in the proceedings between Regione autonoma Friuli-Venezia Giulia and Agenzia regionale per lo sviluppo rurale (ERSA), on the one hand, and Ministero delle Politiche Agricole e Forestali, on the other, third party: Regione Veneto — the Court (Second Chamber) composed of C.W.A. Timmermans (Rapporteur), President of the Chamber, R. Silva de Lapuerta, R. Schintgen, G. Arestis and J. Klučka, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 12 May 2005, in which it ruled:

1. *The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, is not the legal basis of Council Decision 93/724/EC of 23 November 1993 concerning the conclusion of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names.*

2. *Article 133 EC, as referred to in the preamble to Decision 93/724, is an appropriate legal basis for the conclusion by the Community alone of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names.*

3. *The prohibition of use of the name 'Tocai' in Italy after 31 March 2007 resulting from the exchange of letters concerning Article 4 of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names is not contrary to the rules governing homonyms laid down in Article 4(5) of that agreement.*

4. *The Joint Declaration concerning Article 4(5) of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, in so far as it states in the first paragraph that in respect of Article 4(5)(a) of that agreement the Contracting Parties noted that at the time of the negotiations they were not aware of any specific case to which the provisions referred to could be applicable, is not a clear misrepresentation of reality.*

5. *Articles 22 to 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1 C to the Agreement establishing the World Trade Organisation, approved on behalf of the Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994, are to be interpreted as meaning that, in a case such as that in the main proceedings, which concerns homonymity between a geographical indication of a third country and a name including the name of a vine variety used for the description and presentation of certain Community wines made from it, those provisions do not require that that name may continue to be used in the future notwithstanding the twofold circumstance that it has been used in the past by the producers concerned either in good faith or for at least 10 years prior to 15 April 1994 and that it clearly identifies the country, region or area of origin of the protected wine in such a way as not to mislead the consumer.*

6. *The right to property does not preclude the prohibition on use by the operators concerned in the autonomous region of Friuli-Venezia Giulia (Italy) of the word 'Tocai' in the term 'Tocai friulano' or 'Tocai italico' for the description and presentation of certain Italian quality wines produced in specified regions at the end of a transitional period expiring on 31 March 2007, resulting from the exchange of letters concerning Article 4 of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names annexed to that agreement but not referred to in the latter.*

([1]) OJ C 264 of 1.11.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 26 May 2005

in Case C-409/03: Reference for a preliminary ruling from the Bundesfinanzhof in Société d'exportation de produits agricoles SA (SEPA) v Hauptzollamt Hamburg-Jonas ([1])

(Export refunds — Beef — Special emergency slaughtering — Regulation (EEC) No 3665/87 — Article 13 — Sound and fair marketable quality — Marketability in normal conditions)

(2005/C 182/18)

(Language of the case: German)

In Case C-409/03: reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 15 July 2003, received at the Court on 1 October 2003, in the proceedings between Société d'exportation de produits agricoles SA (SEPA) and Hauptzollamt Hamburg-Jonas — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Lenaerts, N. Colneric, K. Schiemann and E. Juhász (Rapporteur), Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 26 May 2005, in which it ruled:

Article 13 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products must be interpreted as meaning that meat fulfilling the hygiene criteria, the marketing of which for human consumption within the European Community is restricted by Community rules to the local market because it comes from animals which have undergone special emergency slaughtering, cannot be regarded as being of 'sound and fair marketable quality', as required for the grant of export refunds.

([1]) OJ C 275 of 15.11.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 May 2005

in Case C-415/03: Commission of the European Communities v Hellenic Republic ([1])

(State aid — Obligation to recover — Absolute impossibility of implementation — Absence)

(2005/C 182/19)

(Language of the case: Greek)

In Case C-415/03 Commission of the European Communities (Agents: D. Triantafyllou and J. Buendía Sierra) v Hellenic Republic (Agents: A. Samoni-Rantou, P. Mylonopoulos, F. Spathopoulos and P. Anestis) — action under Article 88(2) EC for failure to fulfil obligations, brought on 25 September 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta (Rapporteur), R. Schintgen, G. Arestis and J. Klučka, Judges; L.A. Geelhoed, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 12 May 2005, in which it:

1. *Declares that, by failing to take within the prescribed period all the measures necessary for repayment of the aid found to be unlawful and incompatible with the common market — except that relating to the contributions to the national social security institution —, in accordance with Article 3 of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways, the Hellenic Republic has failed to fulfil its obligations under that article;*

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

([1]) OJ C 289 of 29.11.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 May 2005

in Case C-444/03: Reference for a preliminary ruling from the Verwaltungsgericht Berlin Meta Fackler KG v Bundesrepublik Deutschland [1]

(Medicinal products for human use — Homeopathic medicinal products — National provision excluding from the special, simplified registration procedure a medicinal product composed of known homeopathic substances if its use as a homeopathic medicinal product is not generally known)

(2005/C 182/20)

(Language of the case: German)

In Case C-444/03: reference for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Berlin (Germany), made by decision of 28 August 2003, received at the Court on 21 October 2003, in the proceedings between Meta Fackler KG and Bundesrepublik Deutschland — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, C. Gulmann (Rapporteur), P. Kūris and J. Klučka, Judges; P. Léger, Advocate General, K. Sztranc, Administrator, for the Registrar, gave a judgment on 12 May 2005, the operative part of which is as follows:

Articles 14 and 15 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use must be interpreted as meaning that they preclude a national provision which does not permit use of the special simplified registration procedure for a medicinal product composed of several known homeopathic substances where its use as a homeopathic medicinal product is not generally known.

[1] OJ C 21 of 24.01.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 12 May 2005

in Case C-452/03: Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division RAL (Channel Islands) Ltd and Others v Commissioners of Customs and Excise [1]

(VAT — Sixth Directive — Article 9(1) and (2) — Slot gaming machines — Entertainment or similar activities — Supplier of services established outside the territory of the Community — Determination of the place where services are supplied)

(2005/C 182/21)

(Language of the case: English)

In Case C-452/03: Reference for a preliminary ruling under Article 234 EC from the High Court of Justice (England and Wales), Chancery Division (United Kingdom), made by decision of 17 October 2003, received at the Court on 27 October 2003, in the proceedings between RAL (Channel Islands) Ltd, RAL Ltd, RAL Services Ltd, RAL Machines Ltd, on the one hand, and Commissioners of Customs and Excise, on the other — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Lenaerts (Rapporteur), N. Colneric, K. Schiemann and E. Juhász, Judges; M. Poiares Maduro, Advocate General, K. Sztranc, Administrator, for the Registrar, gave a judgment on 12 May 2005, in which it ruled:

The supply of services consisting of enabling the public to use, for consideration, slot gaming machines installed in amusement arcades established in the territory of a Member State must be regarded as constituting entertainment or similar activities within the meaning of the first indent of Article 9(2)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, so that the place where those services are supplied is the place where they are physically carried out.

[1] OJ C 7 of 10.01.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 26 May 2005

in Case C-478/03: Reference for a preliminary ruling from the House of Lords in Celtec Ltd v John Astley and Others ([1])

(Directive 77/187/EEC — Article 3(1) — Safeguarding of employees' rights in the event of transfers of undertakings — Transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer — Meaning of 'date of a transfer')

(2005/C 182/22)

(Language of the case: English)

In Case C-478/03: reference for a preliminary ruling under Article 234 EC from the House of Lords (United Kingdom), made by decision of 10 November 2003, received at the Court on 17 November 2003, in the proceedings between Celtec Ltd and John Astley and Others — the Court (First Chamber), composed of P. Jann, President, K. Lenaerts (Rapporteur), N. Colneric, E. Juhász and E. Levits, Judges; M. Poiares Maduro, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 26 May 2005, in which it ruled:

1. *Article 3(1) of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses must be interpreted as meaning that the date of a transfer within the meaning of that provision is the date on which responsibility as employer for carrying on the business of the unit transferred moves from the transferor to the transferee. That date is a particular point in time which cannot be postponed to another date at the will of the transferor or transferee.*

2. *For the purposes of applying that provision, contracts of employment or employment relationships existing on the date of the transfer within the meaning stated in paragraph 1 of the operative part between the transferor and the workers assigned to the undertaking transferred are deemed to be handed over, on that date, from the transferor to the transferee, regardless of what has been agreed between the parties in that respect.*

([1]) OJ C 21of 24.01.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 26 May 2005

in Case C-498/03: Reference for a preliminary ruling from the VAT and Duties Tribunal, London in Kingscrest Associates Ltd, Montecello Ltd v Commissioners of Customs and Excise ([1])

(Sixth VAT Directive — Article 13A(1)(g) and (h) — Exempt transactions — Supplies closely linked to welfare and social security work — Supplies closely linked to the protection of children and young persons — Supplies made by bodies other than those governed by public law and recognised as charitable by the Member State concerned — Private, profit-making entity — Meaning of 'charitable')

(2005/C 182/23)

(Language of the case: English)

In Case C-498/03: Reference for a preliminary ruling under Article 234 EC from the VAT and Duties Tribunal, London (United Kingdom), made by decision of 10 June 2003, received at the Court on 26 November 2003, in the proceedings between Kingscrest Associates Ltd, Montecello Ltd and Commissioners of Customs and Excise — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, A. La Pergola, J. Malenovský and A. Ó Caoimh (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 26 May 2005, the operative part of which is as follows:

1. *The word 'charitable' in the English version of Article 13A(1)(g) and (h) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is a concept with its own independent meaning in Community law which must be interpreted taking account of all the language versions of that directive.*

2. *The meaning of 'organisations recognised as charitable by the Member State concerned' in Article 13A(1)(g) and (h) of the Sixth Directive 77/388 does not exclude private profit-making entities.*

3. *It is for the national court to determine, having regard, in particular, to the principles of equal treatment and fiscal neutrality, and taking account of the content of the supplies of services in question, as well as the conditions for making them, whether the recognition of a private profit-making entity, which as such does not have charitable status under domestic law, as charitable for the purposes of the exemptions under Article 13A(1)(g) and (h) of the Sixth Directive 77/388 exceeds the discretion granted by those provisions to the Member States for the purposes of such recognition.*

([1]) OJ C 21 of 24.01.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 26 May 2005

in Case C-536/03: Reference for a preliminary ruling from the Supremo Tribunal Administrativo António Jorge Lda v Fazenda Pública ([1])

(VAT — Article 19 of the Sixth VAT Directive — Deduction of input tax — Property transactions — Goods and services used for both taxable and exempt transactions — Deductible proportion)

(2005/C 182/24)

(Language of the case: Portuguese)

In Case C-536/03: reference for a preliminary ruling under Article 234 EC from the Supremo Tribunal Administrativo (Portugal), made by decision of 26 November 2003, received at the Court on 22 December 2003, in the proceedings between **António Jorge Lda** and **Fazenda Pública** — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta (Rapporteur), J. Makarczyk, P. Kūris and G. Arestis, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 26 May 2005, the operative part of which is as follows:

It is contrary to Article 19(1) of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — to include, in the denominator of the fraction making it possible to calculate the deductible proportion, the value of work in progress carried out by a taxable person in the course of civil construction activity, where that value does not correspond to the supply of goods or the provision of services which has already been made by the taxable person or which has given rise to statements of account of work and/or the receipt of payments on account.

([1]) OJ C 47 of 21.02.2004.

JUDGMENT OF THE COURT

(Grand Chamber)

of 7 June 2005

in Case C-543/03: Reference for a preliminary ruling from the Oberlandesgericht Innsbruck in Christine Dodl, Petra Oberhollenzer v Tiroler Gebietskrankenkasse ([1])

(Regulations (EEC) Nos 1408/71 and 574/72 — Family benefits — Child-raising allowance — Entitlement to benefits of the same kind in the Member State of employment and the Member State of residence)

(2005/C 182/25)

(Language of the case: German)

In Case C-543/03: reference for a preliminary ruling under Article 234 EC from the Oberlandesgericht (Higher Regional Court) Innsbruck (Austria), made by decision of 16 December 2003, received at the Court on 29 December 2003, in the proceedings between **Christine Dodl**, **Petra Oberhollenzer** and **Tiroler Gebietskrankenkasse** — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas, Presidents of Chambers, C. Gulmann, J.-P. Puissochet, K. Schiemann (Rapporteur), J. Makarczyk, P. Kūris, E. Juhász, U. Lõhmus, E. Levits and A. Ó Caoimh, Judges; L.A. Geelhoed, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 7 June 2005, in which it ruled:

1. *A person has the status of an employed or self-employed person within the meaning of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 where he is covered, even if only in respect of a single risk, on a compulsory or optional basis, by a general or special social security scheme mentioned in Article 1(a) of that regulation, irrespective of the existence of an employment relationship. It is for the national court to make the necessary enquiries to determine whether the claimants in the main proceedings belonged to a branch of the Austrian social security system during the periods in respect of which the allowances in issue were applied for and, accordingly, whether they were 'employed persons' within the meaning of Article 1(a).*

2. *Where the legislation of the Member State of employment and that of the Member State of residence of an employed person each provide for an entitlement to family benefits in respect of the same member of that person's family and for the same period, the Member State responsible for paying those benefits is, in principle, the Member State of employment pursuant to Article 10(1)(a) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71, as amended and updated by Commission Regulation (EC) No 410/2002 of 27 February 2002.*

However, where a person having the care of children, in particular the spouse or partner of the employed person, carries out a professional or trade activity in the Member State of residence, the family benefits must be paid by that Member State in application of Article 10(1)(b)(i) of Regulation No 574/72, as amended by Regulation No 410/2002, irrespective of who is designated as directly entitled to those benefits by the legislation of that State. In that situation, the payment of family benefits by the Member State of employment is to be suspended up to the sum of family benefits provided for by the legislation of the Member State of residence.

([1]) OJ C 850 of 03.04.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 2 June 2005

in Case C-15/04: Reference for a preliminary ruling from the Bundesvergabeamt Koppensteiner GmbH v Bundesimmobiliengesellschaft mbH ([1])

(Public procurement — Directive 89/665/EEC — Review procedures concerning the award of public procurement contracts — Decision to withdraw an invitation to tender after the opening of tenders — Judicial review — Scope — Principle of effectiveness)

(2005/C 182/26)

(Language of the case: German)

In Case C-15/04: reference for a preliminary ruling under Article 234 EC from the Bundesvergabeamt (Austria), made by decision of 12 January 2004, received at the Court on 19 January 2004, in the proceedings between Koppensteiner GmbH and Bundesimmobiliengesellschaft mbH — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, C. Gulmann (Rapporteur), P. Kūris and G. Arestis, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 2 June 2005, in which it ruled:

The court or tribunal having jurisdiction is required to disapply national rules which prevent compliance with the obligation arising from Articles 1(1) and 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.

([1]) OJ C 85 of 03.04.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 26 May 2005

in Case C-43/04: Reference for a preliminary ruling from the Bundesfinanzhof Finanzamt Arnsberg v Stadt Sundern ([1])

(Sixth Directive — Article 25 — Common flat-rate scheme for farmers — Grant of hunting licences within the framework of a municipal forestry undertaking — Concept of 'agricultural service')

(2005/C 182/27)

(Language of the case: German)

In Case C-43/04: reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 27 November 2003, received at the Court on 4 February 2004, in the proceedings between Finanzamt Arnsberg and Stadt Sundern — the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, A. La Pergola, J. Malenovský and A. Ó Caoimh, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 26 May 2005, the operative part of which is as follows:

1. *Article 25 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that the common flat-rate scheme for farmers applies only to the supply of agricultural products and agricultural services, as defined in Article 25(2), and that other operations carried out by flat-rate farmers are subject to the general scheme under that directive.*

2. *The fifth indent of Article 25(2) of Directive 77/388, read together with Annex B thereto, is to be interpreted as meaning that the grant of hunting licences by a flat-rate farmer is not an agricultural service within the meaning of that directive.*

([1]) OJ C 85 of 03.04.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 2 June 2005

in Case C-68/04: Commission of the European Communities v Hellenic Republic ([1])

(Failure of a Member State to fulfil obligations — Directive 2001/81/EC — Atmospheric pollutants — National emission ceilings)

(2005/C 182/28)

(Language of the case: Greek)

In Case C-68/04 **Commission of the European Communities** (Agents: G. Valero Jordana and M. Konstantinidis) v **Hellenic Republic** (Agent: N. Dafniou) — action under Article 226 EC for failure to fulfil obligations brought on 13 February 2004 — the Court (Sixth Chamber), composed of A. Borg Barthet (Rapporteur), President of the Chamber, A. La Pergola and A. Ó Caoimh, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 2 June 2005, in which it:

1. *Declares that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, the Hellenic Republic has failed to fulfil its obligations under Article 15(1) of that directive;*

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

([1]) OJ C 94 of 17.4.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 26 May 2005

in Case C-77/04: Reference for a preliminary ruling from the Cour de cassation Groupement d'intérêt économique (GIE) Réunion européenne and Others v Zurich España, Société pyrénéenne de transit d'automobiles (Soptrans) ([1])

(Brussels Convention — Request for interpretation of Article 6(2) and the provisions of Section 3, Title II — Jurisdiction in matters relating to insurance — Third-party proceedings between insurers — Multiple insurance situation)

(2005/C 182/29)

(Language of the case: French)

In Case C-77/04: 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 Cour de Cassation (France), made by decision of 20 January 2004, received at the Court on 17 February 2004, in the proceedings pending before that court between Groupement d'intérêt économique (GIE) Réunion européenne and Others and Zurich España, Société pyrénéenne de transit d'automobiles (Soptrans) — the Court (First Chamber), composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges; F.G. Jacobs, Advocate General; K.H. Sztranc, Administrator, for the Registrar, gave a judgment on 26 May 2005, the operative part of which is as follows:

1. *Third-party proceedings between insurers based on multiple insurance are not subject to the provisions of Section 3 of Title II 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, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, 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.*

2. *Article 6(2) of the Convention is applicable to third-party proceedings between insurers based on multiple insurance, in so far as there is a sufficient connection between the original proceedings and the third-party proceedings to support the conclusion that the choice of forum does not amount to an abuse.*

([1]) OJ C 85 of 03.04.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 2 June 2005

in Case C-89/04: Reference for a preliminary ruling from the Raad van State in Mediakabel BV v Commissariaat voor de Media ([1])

(Directive 89/552/CEE — Article 1(a) — Television broadcasting services — Scope of application — Directive 98/34/EC — Article 1(2) — Information society services — Scope of application)

(2005/C 182/30)

(Language of the case: Dutch)

In Case C-89/04: reference for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decision of 18 February 2004, received at the Court on 20 February 2004, in the proceedings between Mediakabel BV and Commissariaat voor de Media — the Court (Third Chamber) composed of A. Rosas, President of the Chamber, A. Borg Barthet, J. P. Puissochet (Rapporteur), S. von Bahr and J. Malenovský, Judges; A. Tizzano, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 2 June 2005, in which it ruled:

1. *The concept of 'television broadcasting' referred to in Article 1(a) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997, is defined independently by that provision. It is not defined by opposition to the concept of 'information society service' within the meaning of Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, and therefore does not necessarily cover services which are not covered by the latter concept.*

2. *A service comes within the concept of 'television broadcasting' referred to in Article 1(a) of Directive 89/552, as amended by Directive 97/36, if it consists of the initial transmission of television programmes intended for reception by the public, that is, an indeterminate number of potential television viewers, to whom the same images are transmitted simultaneously. The manner in which the images are transmitted is not a determining element in that assessment.*

3. *A service such as Filmtime, which consists of broadcasting television programmes intended for reception by the public and which is not provided at the individual request of a recipient of services, is a television broadcasting service within the meaning of Article 1(a) of Directive 89/552, as amended by Directive 97/36. Priority is to be given to the standpoint of the service provider in the analysis of the concept of 'television broadcasting service'. However, the situation of services which compete with the service in question is not relevant for that assessment.*

4. *The conditions in which the provider of a service such as Filmtime complies with the obligation referred to in Article 4(1) of Directive 89/552, as amended by Directive 97/36, to reserve for European works a majority proportion of his transmission time are irrelevant for the classification of that service as a television broadcasting service.*

([1]) OJ C 94 of 17.04.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 26 May 2005

in Case C-249/04: Reference for a preliminary ruling from the Cour du travail de Liège, Neufchâteau section José Allard v Institut national d'assurances sociales pour travailleurs indépendants (Inasti) [1]

(Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC et 43 EC) — Regulation (EEC) No 1408/71 — Self-employed persons pursuing professional activities in the territories of two Member States and residing in one of them — Requirement of a moderation contribution — Basis of calculation)

(2005/C 182/31)

(Language of the case: French)

In Case C-249/04: reference for a preliminary ruling under Article 234 EC from the Cour du travail de Liège, Neufchâteau section (Belgium), made by decision of 9 June 2004, received at the Court on 11 June 2004, in the proceedings between José Allard and Institut national d'assurances sociales pour travailleurs indépendants (Inasti) — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, P. Kūris and J. Klučka (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 26 May 2005, the operative part of which is as follows:

1. *Article 13 et seq. of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, require a contribution such as the moderation contribution payable under Royal Decree No 289 of 31 March 1984 to be calculated in such as way as to include under the heading of occupational income the income obtained in the territory of a Member State other than the Member State whose social legislation is applicable even if, after paying that contribution, the self-employed person cannot claim any social security or other benefit at the expense of that State.*

2. *Article 52 of the EC Treaty (now, after amendment, Article 43 EC) does not preclude the imposition of a contribution such as the moderation contribution, payable in the Member State of residence and calculated taking into account income obtained in another Member State, on self-employed persons pursuing professional activities in that capacity in those two Member States.*

[1] OJ C 190 of 24.07.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 26 May 2005

in Case C-287/04: Commission of the European Communities v Kingdom of Sweden [1]

(Failure of a Member State to fulfil its obligations — Directive 93/104/EC — Organisation of working time — Failure to transpose within the prescribed period)

(2005/C 182/32)

(Language of the case: Swedish)

In Case C-287/04 Commission of the European Communities (Agents: L. Ström van Lier and N. Yerrell) v Kingdom of Sweden (Agent: A. Kruse) — action under Article 226 EC for failure to fulfil obligations, brought on 5 July 2004 — the Court (Sixth Chamber), composed of A. Borg Barthet (Rapporteur), President of the Chamber, U. Lõhmus and A. Ó Caoimh, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 26 May 2005, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 3, 6 and 8 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, the Kingdom of Sweden has failed to fulfil its obligations under that directive;*

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

[1] OJ C 228 of 11. 09. 2004

JUDGMENT OF THE COURT

(Sixth Chamber)

of 2 June 2005

in Case C-454/04: Commission of the European Communities v Grand Duchy of Luxembourg [1]

(Failure of a Member State to fulfil its obligations — Directive 2001/55/EC — Temporary protection in the event of a mass influx of displaced persons — Failure to transpose within the prescribed period)

(2005/C 182/33)

(Language of the case: French)

In Case C-454/04 Commission of the European Communities (Agents: C. O'Reilly and A.-M. Rouchaud-Joët) v Grand Duchy of Luxembourg (Agent: S. Schreiner) — action under Article 226 EC for failure to fulfil obligations, brought on 28 October 2004 — the Court (Sixth Chamber), composed of A. Borg Barthet (Rapporteur), President of the Chamber, A. La Pergola and A. Ó Caoimh, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 2 June 2005, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

[1] OJ C 314 of 18. 12. 2004.

ORDER OF THE COURT

(Fifth Chamber)

of 28 February 2005

in Case C-260/02: P Michael Becker v Court of Auditors of the European Communities [1]

(Appeal — Officials — Invalidity pension — Application to begin the invalidity procedure during a period of leave on personal grounds — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2005/C 182/34)

(Language of the case: German)

In Case C-260/02 P: appeal under Article 49 of the EC Statute of the Court of Justice lodged at the Court on 15 July 2002 by **Michael Becker**, official at the Court of Auditors of the European Communities, resident in Luxembourg (Luxembourg) (lawyer: E. Fricke), the other party to the proceedings being **the Court of Auditors of the European Communities** (Agents: initially P. Giusta and B. Schäfer, then J.-M. Stenier and M. Bavendamm) — the Court (Fifth Chamber), composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, R. Schintgen and J. Makarczyk, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, made an order on 28 February 2005, the operative part of which is as follows

1. *The appeal is dismissed.*

2. *Mr Becker is ordered to pay the costs.*

[1] OJ C 202 of 24.8.2002.

ORDER OF THE COURT

(Fourth Chamber)

of 26 May 2005

in Case C-297/03: Reference for a preliminary ruling from the Oberster Gerichtshof in Sozialhilfeverband Rohrbach v Arbeiterkammer Oberösterreich, Österreichischer Gewerkschaftsbund [1]

(Article 104(3) of the Rules of Procedure — Directive 2001/23/EC — Transfers of Undertakings — Possibility of relying on a directive against individuals — Employee opposition to the transfer of their contracts to the transferee)

(2005/C 182/35)

(Language of the case: German)

In Case C-297/03: reference for a preliminary ruling under Article 234 EC from the Oberster Gerichtshof (Supreme Court) (Austria), made by decision of 4 June 2003, received at the Court on 10 July 2003, in the proceedings between **Sozialhilfeverband Rohrbach** and **Arbeiterkammer Oberösterreich, Österreichischer Gewerkschaftsbund** — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, N. Colneric (Rapporteur) and J. N. Cunha Rodrigues, Judges; P. Léger, Advocate General; R. Grass, Registrar, made an order on 26 May 2005, the operative part of which is as follows:

1. *A limited company governed by private law, the only shareholder of which is a social assistance association governed by public law, belongs to those entities subject to Article 3(1) and the first sentence of Article 1(1)(c) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.*

2. *A state entity which transfers its operations cannot rely on Articles 3(1) and 1(1)(c) of Directive 2001/23 against its employees in order to force them to continue their employment relationships with a transferee.*

[1] OJ C 226 of 20.9.2003.

ORDER OF THE COURT

(Fourth Chamber)

of 15 March 2005

in Case C-553/03 P: Panhellenic Union of Cotton Ginners and Exporters v Commission of the European Communities and Hellenic Republic [1]

(Appeal — State aid — Action for annulment — Article 119 of the Rules of Procedure)

(2005/C 182/36)

(Language of the case: English)

In Case C-553/03 P: Panhellenic Union of Cotton Ginners and Exporters (lawyers: K. Adamantopoulos and J. Gutiérrez Gisbert), with an address for service in Luxembourg, the other parties to the proceedings being: Commission of the European Communities (Agent: N. Khan) and Hellenic Republic (Agents: V. Kontolaimos and I. Chalkias) — appeal pursuant to Article 56 of the Statute of the Court of Justice, lodged on 30 December 2003 — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, J.N. Cunha Rodrigues (Rapporteur) and E. Juhász, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, made an order on 15 March 2005, the operative part of which is as follows

1. *The appeal is dismissed.*

2. *Panhellenic Union of Cotton Ginners and Exporters shall bear its own costs and shall pay those incurred by the Commission of the European Communities in these proceedings.*

3. *The Hellenic Republic shall bear its own costs.*

[1] OJ C 59 of 06.03.2004.

ORDER OF THE COURT

(Fourth Chamber)

of 26 April 2005

in Case C-149/04: Reference for a preliminary ruling from the Corte suprema di cassazione in Ugo Fava v Comune di Carrara [1]

(Tax levied on marble extracted within municipal boundaries by reason of its transport out of the municipality — Articles 92(1) and 104(3) of the Rules of Procedure — Partial inadmissibility — Question identical to one upon which the Court has already ruled)

(2005/C 182/37)

(Language of the case: Italian)

In Case C-149/04: reference for a preliminary ruling under Article 234 EC from the Corte suprema di cassazione (Supreme Court of Cassation) (Italy), made by decision of 27 October 2003, received at the Court on 23 March 2004, in the proceedings between Ugo Fava (administrator of the insolvent company, IMEG Srl) and Comune di Carrara — the Court (Fourth Chamber), composed of K. Lenaerts, (Rapporteur), President of the Chamber, N. Colneric and J.N. Cunha Rodrigues, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, made an order on 26 April 2005, the operative part of which is as follows:

1. *The reference for a preliminary ruling is inadmissible in so far as it relates to the interpretation of Articles 81 EC, 85 EC and 86 EC;*

2. *A proportional tax on goods by weight, levied in one municipality of a Member State only on a category of goods by reason of their transport out of the municipality, is a charge having equivalent effect to a customs duty on exports within the meaning of Article 23 EC, notwithstanding the fact that the tax also applies to those goods whose final destination is within the Member State concerned;*

3. *Article 23 EC may not be relied upon in support of applications for the restitution of sums levied as the tax on marble prior to 16 July 1992 except by those applicants who had commenced legal proceedings or made an equivalent complaint prior to that date.*

[1] OJ 2004 C 106 of 30.04.2004.

ORDER OF THE COURT

(Sixth Chamber)

of 7 April 2005

in Case C-160/04 P Gustaaf Van Dyck v Commission of the European Communities [1]

(Appeal — Officials — Lists for promotion — Act adversely affecting an official — Preparatory acts)

(2005/C 182/38)

(Language of the case: Dutch)

In Case C-160/04 P: appeal under Article 56 of the Statute of the Court of Justice, lodged at the Court on 19 March 2004 by **Gustaaf Van Dyck**, an official of the Commission of the European Communities, residing in Wuustwezel (Belgium) (lawyer: A. Bywater, assisted by W. Mertens), the other party to the proceedings being the **Commission of the European Communities** (Agents: F. Clotuche-Duvieusart and A. Weimar) — the Court (Sixth Chamber), composed of A. Borg Barthet, President of the Chamber, A. Ó Caoimh and U. Lõhmus (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, made an order on 7 April 2005, the operative part of which is as follows:

1. *The appeal is dismissed;*

2. *Mr Van Dyck shall pay the costs.*

[1] OJ C 106 of 30.4.2004.

ORDER OF THE COURT

(Fourth Chamber)

of 10 March 2005

in Case C-178/04: Reference for a preliminary ruling from the Bundesverwaltungsgericht in Franz Marhold v Land Baden-Württemberg [1]

(Article 104(3) of the Rules of Procedure — Workers — Civil servants working for employers in the national public sector — University professor — Grant of an annual special allowance)

(2005/C 182/39)

(Language of the case: German)

In Case C-178/04: reference for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Federal Administrative Court) (Germany), made by decision of 28 January 2004, received at the Court on 15 April 2004, in the proceedings between **Franz Marhold** and **Land Baden-Württemberg** — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, J.N. Cunha Rodrigues and E. Levits (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, made an order on 10 March 2005, the operative part of which is as follows:

Article 39 EC precludes a national law which refuses the right to an annual special allowance to a civil servant who leaves his employment before 31 March of the following year in order to take up employment in the civil service of another Member State, although it grants the right to such an allowance where the civil servant's new post is within the national civil service.

[1] OJ C 156 of 12. 06. 2004.

ORDER OF THE COURT

(Fourth Chamber)

of 22 February 2005

in Case C-480/04: Reference for a preliminary ruling from the Tribunale di Viterbo in criminal proceedings against Antonello D'Antonio [1]

(Reference for a preliminary ruling — Inadmissibility)

(2005/C 182/40)

(Language of the case: Italian)

In Case C-480/04: reference for a preliminary ruling under Article 234 EC from the Tribunale di Viterbo (Italy), made by decision of 2 November 2004, received at the Court on 17 November 2004, in criminal proceedings against Antonello D'Antonio — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, N. Colneric and K. Schiemann (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, made an order on 22 February 2005, the operative part of which is as follows:

The reference for a preliminary ruling made by the Tribunale di Viterbo by decision of 2 November 2004 is manifestly inadmissible.

[1] OJ C 31 of 5.2.2005.

Action brought on 18 March 2005 by the Commission of the European Communities against the Republic of Austria

(Case C-128/05)

(2005/C 182/41)

(Language of the case: German)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 18 March 2005 by the Commission of the European Communities, represented by Dr. Dimitris Triantafyllou, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by allowing taxable persons not established in Austria and who transport passengers there not to submit tax return forms and not to pay the net amount of VAT, when their annual turnover in Austria is below EUR 22 000, in assuming, in this case, that the amount of VAT owed is equal to the amount of deductible VAT and that the application of the simplified regulation is contingent on Austrian VAT not being in invoices or in other documents serving as invoices, the Republic of Austria has failed to fulfil its obligations under Articles 2, 6, 9(2)(b), 17, 18 and 22(3) to (5) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment; ([1])

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

Pleas in law and main arguments

For international passenger transport by taxable persons established in another Member State or in a third country, simplified rules have been in force in Austria since 1 April 2002. Such taxable persons are permitted not to submit tax return forms and not to pay the net amount of VAT, when their annual turnover in Austria is below 22 000 euros. The rules assume that, in this case, the amount of VAT owed is equal to the amount of deductible VAT. At the same time taxable persons who take advantage of these simplified rules do not have to state the Austrian VAT in their invoices or in other documents serving as invoices.

These rules are neither in accordance with the provisions of Council Directive 77/388/EEC of 17 May 1977 ('Sixth VAT Directive') nor with Council Decision 2001/242/EC of 19 May 2001.

The Commission submits that the abovementioned directive does in fact provide for the possibility of a flat-rate scheme for small enterprises, but the definition of 'small enterprise' used under Austrian rules — turnover in Austria of less than EUR 22 000 — does not correspond to the Community law concept of 'small enterprise', which must be given a uniform interpretation. It remains furthermore unproven that the Austrian flat-rate scheme does not lead to a tax reduction which exceeds the simplification measure which Article 24(1) of the abovementioned directive aims to permit. The release from the other invoicing and tax return obligations and the duty to keep records further constitutes the formal aspect of the oversimplification.

The Commission claims that the Austrian rules at issue cannot be accepted on the basis of the abovementioned Council decision either. This decision does admittedly authorise the Republic of Austria to tax, from 1 January 2001 to 31 December 2005, the international transportation of passengers carried out by taxable persons not established in Austria by means of motor vehicles not registered in Austria in derogation from Article 11 of the abovementioned directive. This exception is, however, expressly based on the condition that the distance covered in Austria be taxed on the basis of an average taxable amount per person and per kilometre.

([1]) OJ 1977 L 145, p. 1

Action brought on 22 April 2005 by the Commission of the European Communities against Ireland

(Case C-183/05)

(2005/C 182/42)

(Language of the case: English)

An action against Ireland was brought before the Court of Justice of the European Communities on 22 April 2005 by the Commission of the European Communities, represented by Mr Michel Van Beek, acting as Agent, assisted by Maître Matthieu Wemaëre, avocat, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by limiting its transposition into Irish law of the provisions of Article 12(2) and Article 13(1)(b) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ([1]) to those species listed in Annex IV of the Directive that occur in Ireland, Ireland has failed to comply with the said Articles 12(2) and 13(1)(b) of this Directive and with its obligation under the Treaty,

— declare that, in failing to take all the necessary specific measures to effectively implement the system of strict protection required by Article 12(1) of Directive 92/43/EEC, Ireland has failed to comply with the said Article 12(1) of this Directive and with its obligation under the Treaty,

— declare that, by retaining provisions of Irish legislation that are inconsistent with the provisions of Articles 12(1) and 16 of Directive 92/43/EEC, Ireland has failed to comply with the said Articles 12(1) and 16 of this Directive and with its obligation under the Treaty,

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission maintains that Ireland has failed to comply with Directive 92/43/EEC on the following grounds:

— The transposition of Article 12(2) of Directive 92/43/EEC (the Habitats Directive) in Irish law is incomplete in so far as it prohibits the keeping, transport and sale or exchange, and offering for sale or exchange of species listed in Annex IV(a) of the Directive only in respect of those animal species that occur in Ireland.

— The implementation of Article 12(1) of the Directive in Ireland is incomplete in so far as Ireland has not adopted all the specific measures necessary to effectively establish a system of strict protection for the animal species listed in Annex IV(a) that are found in Ireland.

— The transposition of Articles 12(1) and 16 of the Directive is incorrect because there exists a parallel regime of derogations that is incompatible with the scope of and the conditions for the application of Article 16 and which leads to a violation by Ireland of its obligation under Article 12(1) to establish and maintain a system of strict protection for animal species listed in Annex IV(a) of the Directive.

([1]) OJ L 206, 22.07.1992, p. 7

Action brought on 26 April 2005 by the Commission of the European Communities against the Italian Republic

(Case C-185/05)

(2005/C 182/43)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 26 April 2005 by the Commission of the European Communities, represented by B. Schima and F. Amato, of its Legal Service.

The Commission claims that the Court should:

1. declare that:

by maintaining in force legislation such as that contained in Article 9(3) and (4) of legislative decree No 344 of 1999, under which the operator of an establishment where dangerous substances are present may commence activity without the authority which has to give its views on the safety report having expressly communicated the conclusions of its examination of the safety report to the operator,

by maintaining in force legislation such as that contained in Article 21(3) of legislative decree No 344 of 1999, under which, where the measures the operator plans to adopt for the prevention and mitigation of major accidents are seriously deficient, the competent authority is not required to prohibit commencement of activity;

by failing to adopt binding legislation providing for inspections which allow a planned and systematic examination of technical, organisational and management systems applied in the establishment in question, so as to ensure that the operator can demonstrate that he has adopted adequate measures in the light of the activities carried out by the establishment, to prevent any relevant accidents and to ensure that the operator can demonstrate that he has appropriate means of limiting the consequences of accidents on and off site,

by failing to adopt legislation providing for inspections which ensure that the data and information contained in the safety report or any other report submitted adequately reflect the conditions in the establishment,

the Italian Republic has failed to fulfil its obligations under Article 9(4), Article 17(1) and the first, second and third indents of Article 18(1) of Directive 96/82. ([1])

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances provides that the operator of an establishment where dangerous substances are present is required to submit a safety report to the competent authority. The Italian Republic transposed that directive by legislative decree No 334 of 17 August 1999.

The Commission takes the view, first, that under Article 9(4) of the directive the operator may not commence activity in the absence of express authorisation from the competent authority.

However, the legislative decree allows the operator to commence activity without the competent authority having expressly communicated the conclusions of its examination of the safety report to the operator.

Then, according to Article 17(1) of the directive, the competent authority is required to prohibit the activity where the measures the operator plans to adopt for the prevention and mitigation of major accidents are seriously deficient.

However, the legislative decree appears not to impose that requirement on the competent authority.

Finally, under Article 18(1) of the directive, the Member States must adopt binding legislation providing for inspections which allow a planned and systematic examination of technical, organisational and management systems applied in the establishment in question, so as to ensure that the operator can demonstrate that he has adopted adequate measures in the light of the activities carried out by the establishment, to prevent any major accidents and to ensure that the operator can demonstrate that he has appropriate means of limiting the consequences of accidents on and off site. Under Article 18(1) of the directive, again, the Member States must adopt legislation providing for inspections which ensure that the data and information contained in the safety report or any other report submitted adequately reflects the conditions in the establishment.

However, the legislative decree has not implemented those provisions but merely referred to a later implementing decree which to date has not yet been adopted.

In the light of the foregoing, therefore, the Commission submits that the Italian Republic has failed to fulfil its obligations under Article 9(4), Article 17(1) and the first, second and third indents of Article 18(1) of the directive.

([1]) OJ 1997 L 10, 14. 1. 1997, p. 13

Reference for a preliminary ruling from the Centrale Raad van Beroep by order of that court of 22 April 2005 in K. Tas-Hagen and R.A. Tas v Raadskamer WUBO van de Pensioen- en Uitkeringsraad

(Case C-192/05)

(2005/C 182/44)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Centrale Raad van Beroep (Higher Social Security Court) (Netherlands) of 22 April 2005, received at the Court Registry on 29 April 2005, for a preliminary ruling in the proceedings between K. Tas-Hagen and R.A. Tas and Raadskamer WUBO van de Pensioen- en Uitkeringsraad (Pension and Benefits Board Advisory Chamber on the Law on Benefits for Civilian War Victims) on the following question:

Does Community law, in particular Article 18 EC, preclude national legislation under which, in circumstances such as those in the main proceedings, the grant of a benefit for civilian war victims is refused solely on the ground that the person concerned, who holds the nationality of the relevant Member State, was resident, not in the territory of that Member State, but in the territory of another Member State at the time when the application was submitted?

Action brought on 2 May 2005 by the Commission of the European Communities against the the Italian Republic

(Case C-194/05)

(2005/C 182/45)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 2 May 2005 by the Commission of the European Communities, represented by M. Konstantinidis, of its Legal Service, and G. Bambara, of the Milan Bar.

The Commission claims that the Court should:

1. declare that the Italian Republic, in so far as Article 10 of Law No 93 of 2001 and Article 1(17) and (19) of Law No 443 of 2001 exclude excavated earth and rocks intended for re-use for re-filling, infilling, embanking and grinding, with the exception of materials from polluted sites and reclaimed land with a concentration of pollutants above the acceptable limits laid down by the applicable rules, from the scope of national rules on waste, has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC ([1]) on waste, as amended by Council Directive 91/156/EEC. ([2])

2. order the the Italian Republic to pay the costs.

Pleas in law and main arguments

The European Commission takes the view that the Italian Republic, in so far as it excludes excavated earth and rocks intended for re-use for re-filling, infilling, embanking and grinding, from the scope of national rules on waste, has failed to fulfil its obligations under Article 1(a) of Directive 75/442/EEC on waste as amended by Directive 91/156/EEC.

(1) OJ L 194 of 25.07.1975, p. 39.
(2) OJ L 78 of 26.03.1991, p. 32.

Action brought on 2 May 2005 by the Commission of the European Communities against the Italian Republic

(Case C-195/05)

(2005/C 182/46)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 2 May 2005 by the Commission of the European Communities, represented by M. Konstantinidis, of its Legal Service, and G. Bambara, of the Milan Bar.

The Commission claims that the Court should:

1. declare that, by adopting operational directives valid for the whole of the national territory, set out in particular in the circular of the Environment Ministry of 28 July 1998 and the circular of the Health Ministry of 22 July 2002, which exclude from the scope of the rules on waste reject foodstuffs from the agri-foodstuffs industry intended for the production of feeding stuffs and by excluding, by means of Article 23 of Law No 179 of 31 July 2002, from the scope of the rules on waste leftovers from the kitchen preparation of all types of solid, cooked and uncooked food which have not entered the distribution chain and are intended for facilities for treating sick animals, the Italian Republic has failed to fulfil its obligations under Article 1(a) of Directive 75/442/EEC on waste, (1) as amended by Directive 91/156/EC; (2)

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

The European Commission takes the view that, by adopting operational directives valid for the whole of the national territory which exclude from the scope of the rules on waste reject foodstuffs from the agri-foodstuffs industry intended for the production of feeding stuffs and by excluding, by means of Article 23 of Law No 179 of 31 July 2002, from the scope of the rules on waste leftovers from the kitchen preparation of all types of solid, cooked and uncooked food which have not entered the distribution chain and are intended for facilities for treating sick animals, the Italian Republic has failed to fulfil its obligations under Article 1(a) of Directive 75/442/EEC on waste, as amended by Directive 91/156/EC.

(1) OJ L 194 of 25.07.1975, p. 39.
(2) OJ L 78 of 26.03. 1991, p. 32.

Reference for a preliminary ruling from the Finanzgericht München by order of that court of 17 April 2005 in Sachsenmilch AG v Oberfinanzdirektion Nürnberg

(Case C-196/05)

(2005/C 182/47)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht München (Finance Court, Munich) (Germany) of 17 April 2005, received at the Court Registry on 4 May 2005, for a preliminary ruling in the proceedings between Sachsenmilch AG and Oberfinanzdirektion Nürnberg on the following questions:

(1) Is the Combined Nomenclature (CN) in the version of Annex I to Regulation (EC) No 1789/2003 [1] of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 [2] on the tariff and statistical nomenclature and the Common Customs Tariff (CCT) to be interpreted as meaning that pizza cheese (mozzarella) that was stored after its manufacture for one to two weeks at 2 to 4° C is to be classified under subheading 0406 10 CN?

(2) In the absence of Community rules, may the examination of whether cheese is fresh cheese within the meaning of subheading 0406 10 CN be carried out on the basis of organoleptic features?

[1] OJ 2003 L 281, p. 1.
[2] OJ 1987 L 256, p. 1.

Action brought on 4 May 2005 by the Commission of the European Communities against the Italian Republic

(Case C-198/05)

(2005/C 182/48)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 4 May 2005 by the Commission of the European Communities, represented by W. Wils and L. Pignataro, acting as Agents.

The applicant claims that the Court should:

1. declare that the Italian Republic has failed to fulfil its obligations under Articles 1 and 5 of Directive 92/100/EEC of 19 November 1992 [1] in that all the categories of establishments which are accessible to the public within the meaning of the directive are exempt from public lending right.

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission notes that Article 69(1)(b) of Law No 633/41 exempts all State book and record libraries from lending right in so far as it lays down that lending is not subject to any authorisation or remuneration after at least 18 months from the first act of the distribution period, or after at least 24 months from the realisation of those works if the right of distribution is not exercised.

The Commission submits that in exempting all State book and record libraries from the payment of remuneration, that article of Law No 633/41 simultaneously infringes Article 5(2) and Article 5(3) of Directive 92/100/EEC. By not complying with the conditions for the grant of a derogation from exclusive lending right for public institutions, that provision also infringes Article 1 of that directive.

[1] OJ 1992 L 346, p. 61 of 27.11.1992.

Reference for a preliminary ruling from the Cour d'appel de Bruxelles by judgment of that court of 28 April 2005 in European Community v Belgian State

(Case C-199/05)

(2005/C 182/49)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'appel de Bruxelles (Court of Appeal, Brussels) of 28 April 2005, received at the Court Registry on 9 May 2005, for a preliminary ruling in the proceedings between the European Community and the Belgian State on the following questions:

1. Must the second paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities, which provides that the governments of the Member States shall take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes, be interpreted as meaning that a proportional duty levied in respect of decisions of courts and tribunals, given in all matters, concerning orders to pay amounts of money or securities and calculation of amounts of money or securities payable falls within its scope?

2. Must the third paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities, which provides that no exemption shall be granted in respect of a mere charge for a public utility service, be interpreted as meaning that the tax charged at the outcome of proceedings to the losing party, who is ordered to pay a specified amount, constitutes a mere charge for a public utility service?

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division, by order of that court of 18 March 2005 in The Test Claimants in the CFC and Dividend Group Litigation v Commissioners of Inland Revenue

(Case C-201/05)

(2005/C 182/50)

(Language of the case: English)

Reference has been made to the Court of Justice of the European Communities by order of the High Court of Justice (England and Wales), Chancery Division of 18 March 2005, received at the Court Registry on 6 May 2005, for a preliminary ruling in the proceedings between The Test Claimants in the CFC and Dividend Group Litigation and Commissioners of Inland Revenue on the following questions:

1. Is it contrary to Articles 43 or 56 of the EC Treaty for a Member State to keep in force and apply measures which:

   (i) exempt from corporation tax dividends received by a company resident in that Member State ('the resident company') from other resident companies; but which

   (ii) subject to corporation tax dividends received by the resident company from a company resident in another Member State and in particular a company controlled by it resident in another Member State and subject to a lower level of taxation there ('the controlled company'), after giving double taxation relief for any withholding tax payable on the dividend and for the underlying tax paid by the controlled company on its profits?

2. Do Articles 43, 49 or 56 of the EC Treaty preclude national tax legislation such as that in issue in the main proceedings under which, prior to 1st July 1997:

   (i) certain dividends received by an insurance company resident in a Member State from a company resident in another Member State ('the non-resident company') were chargeable to corporation tax; but

   (ii) the resident insurance company was allowed to elect that corresponding dividends received from a company resident in the same Member State should not be chargeable to corporation tax, with the further consequence that a company which had made the election was unable to claim payment of the tax credit to which it would otherwise have been entitled?

3. Do Articles 43, 49 or 56 of the EC Treaty preclude national tax legislation in a Member State such as that in issue in the main proceedings which:

   a) provides in specified circumstances for the imposition of a charge to tax upon the resident company in respect of the profits of a controlled company being a company resident in another Member State as defined in Question 1 (ii) above; and

   b) imposes certain compliance requirements where the resident company does not seek or is not able to claim any exemption and pays tax in respect of the profits of that controlled company; and

   c) imposes further compliance requirements where the resident company seeks to obtain exemption from that tax?

4. Would the answer to Questions 1, 2 or 3 be different if the controlled company (in Questions 1 and 3) or the non-resident company (in Question 2) was resident in a third country?

5. Where, prior to 31 December 1993, a Member State adopted the measures outlined in Questions 1, 2 and 3, and after that date amended those measures in the manner described in Part C of this Schedule, and if those measures as amended constitute restrictions prohibited by Article 56 of the EC Treaty, are those restrictions to be taken to be restrictions which did not exist on the 31 December 1993 for the purposes of Article 57 EC?

6. In the event that any of the measures referred to in Questions 1, 2 and 3 are contrary to the Community provisions referred to, then in circumstances where the resident company and/or the controlled company make any of the following claims:

(i) a claim for repayment of (or the loss of use of money paid as) corporation tax unlawfully levied on the resident company in the circumstances referred to in Questions 1, 2 or 3 above;

(ii) a claim for restitution and/or compensation in respect of losses, reliefs and expenses that were used by the resident company (or surrendered to the resident company by other companies in the same group resident in the same Member State) to eliminate or reduce taxation charges incurred by virtue of the measures referred to in Questions 1, 2 and 3 above where such losses, reliefs and expenses would have been available for alternative use or could have been carried forward;

(iii) a claim for compensation for costs, losses, expenses and liabilities incurred in complying with the domestic legislation referred to in Question 3 above;

(iv) where a controlled company has distributed reserves to the resident company to meet the requirements of the national legislation as an alternative to the resident company incurring the charge referred to in Question 3, and the controlled company has incurred costs, expenses and liabilities in doing so which it could have avoided had it been able to put those reserves to alternative use, a claim for compensation for those costs, expenses and liabilities.

are such claims to be regarded as:

a claim for repayment of sums unduly levied which arise as a consequence of, and adjunct to, the breach of the abovementioned Community provisions; or

a claim for compensation or damages such that the conditions set out in Joined Cases C-46/93 and C-48/93 *Brasserie du Pecheur* and *Factortame* must be satisfied; or

a claim for payment of an amount representing a benefit unduly denied?

7. In the event that the answer to any part of Question 6 is that the claim is a claim for payment of an amount representing a benefit unduly denied:

a) are such claims a consequence of, and an adjunct to, the right conferred by the abovementioned Community provisions; or

b) must some or all of the conditions for recovery laid down in Joined Cases C-46/93 and C-48/93 *Brasserie du Pecheur* and *Factortame* be satisfied; or

c) must some other conditions be met?

8. Does it make any difference whether as a matter of domestic law the claims referred to in Question 6 are brought as restitutionary claims or are brought, or have to be brought, as claims for damages?

9. What guidance, if any, does the Court of Justice think it appropriate to provide in the present cases as to which circumstances the national court ought to take into consideration when it comes to determine whether there is a sufficiently serious breach within the meaning of the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pecheur* and *Factortame*, in particular as to whether, given the state of the case law on the interpretation of the relevant Community provisions, the breach was excusable?

10. As a matter of principle, can there be a direct causal link (within the meaning of the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pecheur* and *Factortame*) between any breach of Articles 43, 49 and 56 EC and the losses falling into the categories identified in Question 6 (i) to (iv) above that are claimed to flow from it? If so, what guidance, if any, does the Court of Justice think it appropriate to provide as to the circumstances which the national court should take into account in determining whether such a direct causal link exists?

11. In determining the loss or damage for which reparation may be granted, is it open to the national court to have regard to the question of whether injured persons showed reasonable diligence in order to avoid or limit their loss, in particular by availing themselves of legal remedies which could have established that the national provisions did not [by reason of the application of double taxation conventions) have the effect of imposing the obligations set out in Questions 1, 2 and 3 above?

12. Is the answer to Question 11 above affected by the beliefs of the parties at the relevant times as to the effect of the double taxation conventions?

Reference for a preliminary ruling from the Special Commissioners by order of that court of 3 May 2005 in Vodafone 2 v Her Majesty's Revenue and Customs

(Case C-203/05)

(2005/C 182/51)

(Language of the case: English)

Reference has been made to the Court of Justice of the European Communities by direction of the the Special Commissioners of 3 May 2005, received at the Court Registry on 9 May 2005, for a preliminary ruling in the proceedings between Vodafone 2 and Her Majesty's Revenue and Customs on the following questions:

1. Do Articles 43, 49 and/or 56 of the EC Treaty preclude national tax legislation such as that at issue in the main proceedings which provides in specified circumstances for the imposition of a charge to tax upon a company resident in that Member State ('the Resident Company') in respect of the profits of a company controlled by it ('the Controlled Company') which is resident in another Member State and subject to a lower level of taxation, and in particular:

   1.1 imposes such a charge unless the Resigent Company is able to establish that an exemption from that legislation applies to the Controlled Company;

   1.2 provides for exemptions from the imposition of such a charge but in terms which give scope for uncertainty as to the availability in practice of an exemption upon the establishment of the Controlled Company or thereafter;

   1.3 imposes certain compliance requirements, where the Resident Company does not seek or is not able to claim any such exemption and pays tax in respect of the profits of that Controlled Company;

   1.4 imposes compliance requirements where the Resident Company seeks to obtain exemption from that charge to tax which may include the obligation to review and consider the application of the legislation in respect of all of its Controlled Companies and thereafter in each year to monitor the activities of each of its Controlled Companies to ensure qualification for exemption continues;

   1.5 imposes in all cases administrative and cost burdens (which may be considerable) on the Resident Company,

   and in each case, the consequences referred to do not apply in respect of any company established in the Member State in which the Resident Company is established?

2. Would the answer to the Question put at 1 be different if:

   2.1 the Controlled Company carried out only minimal activities in the Member State in which it is resident; or

   2.2 only a minimal part of the profits of the Controlled Company are subject to tax in the Member State in which it is resident; or

   2.3 the Controlled Company was established as part of an artificial scheme to avoid tax, and, if so, what are the indicia of such an artificial scheme?

3. Are there circumstances in which:

   3.1 the Resident Company may not rely on rights derived from Article 43 and/or Article 56 EC; or

   3.2 no rights derived from Article 43 and/or Article 56 EC accrue to the Resident Company;

   on the ground that such reliance or the accrual of such rights would be an abuse of those rights? If there are such circumstances, what guidance does the Court of Justice consider it appropriate to give as to how the Special Commissioners should determine, in the factual context of this case, whether there are such circumstances or whether there is such an abuse?

4. Do Articles 56 and 58(1)(a) of the EC Treaty and Declaration No. 7 of the Maastricht Treaty preclude national tax legislation of a Member State such as that at issue in the main proceedings where one or more exemptions to the application of that legislation would be available but for an amendment to such legislation having effect after 1 January 1994?

5. Do Articles 43, 49 and/or 56 of the EC Treaty preclude national tax legislation such as that at issue in the main proceedings where that legislation would not apply if the Resident Company capitalised the Controlled Company with debt rather than equity?

6. Do Articles 43, 49 and/or 56 of the EC Treaty preclude national tax legislation such as that at issue in the main proceedings where one or more exemptions to the application of that legislation would be available if the Controlled Company's income in the other Member State either:

   6.1 comprised income from sources within that Member State and not from another Member State or other jurisdictions; or

   6.2 comprised dividend income instead of interest income from the same company?

Reference for a preliminary ruling from the Tribunal des affaires de sécurité sociale de Longwy by order of that court of 14 April 2005 in Fabien Nemec v Caisse Régionale d'Assurance Maladie du Nord-Est

(Case C-205/05)

(2005/C 182/52)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal des affaires de sécurité sociale de Longwy (Social Security Tribunal, Longwy) of 14 April 2005, received at the Court Registry on 11 May 2005, for a preliminary ruling in the proceedings between Fabien Nemec and Caisse Régionale d'Assurance Maladie du Nord-Est (Regional Health Insurance Fund of the North East) on the following question:

In refusing to take the pay earned by Mr Nemec in Belgium into account when calculating the amount of the allowance for asbestos workers awarded to him pursuant to Article 41 of Law No 98-1194 of 23 December 1998, on the basis of Article 2 of the Decree implementing Law No 99-247 of 29 March 1999 and Circular 2SS/4B/99 No 332 of 9 June 1999, because that pay did not give rise to the payment of social security contributions in accordance with Article L 242-1 of the French Social Security Code, did the C.R.A.M. take, in his regard, a wrongful decision constituting an impediment to freedom of movement as laid down in Article 39 EC, an infringement of Regulation (EC) No 883/2004 ([1]) or an infringement of Article 15 of Regulation (EEC) No 574/72 ([2])?

([1]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

([2]) Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1972(I), p. 159).

Action brought on 11 May 2005 by the Commission of the European Communities against the Italian Republic

(Case C-207/05)

(2005/C 182/53)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 11 May 2005 by the Commission of the European Communities, represented by V. Di Bucci and L. Pignataro, acting as Agents.

The Commission claims that the Court should:

1. declare that, by not adopting within the prescribed time-limits all measures necessary to recover from the beneficiaries the aid adjudged to be unlawful and incompatible with the common market by Commission Decision 2003/193/EC ([1]) of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding, C 27/99 (ex NN 69/98), or in any event by not informing the Commission of those provisions, the Italian Republic has failed to fulfil its obligations under Articles 3 and 4 of that decision and the EC Treaty;

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

The decision obliges Italy to take all measures necessary to recover from the beneficiaries the aid granted and unlawfully made available to the beneficiaries under the schemes examined in that decision, and to inform the Commission within two months of notification of the measures taken to comply with it.

Italy has not taken the necessary measures and in any event has not informed the Commission or submitted that it is absolutely impossible to enforce the decision. Recent legislation has allowed the subsequent extension of the time-limits for recovery which do not in any case result in the immediate enforcement of the decision. Moreover, the Commission has always given Italy its full cooperation.

([1]) OJ 2003 L 77, p. 21 of 24.03.2003.

Appeal brought on 17 May 2005 by Sergio Rossi SpA against the judgment delivered on 1 March 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-169/03 between Sergio Rossi SpA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-214/05 P)

(2005/C 182/54)

(Language of the case: Italian)

An appeal against the judgment delivered on 1 March 2005 by the Second Chamber of the Court of First Instance of the European Communities in Case T-169/03 between Sergio Rossi SpA and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of Justice of the European Communities on 17 May 2005 by Sergio Rossi SpA, represented by A. Ruo of the Alicante Bar (Spain).

The appellant claims that the Court should:

1. set aside in full the judgment under appeal for infringement of Articles 8 and 73 of Council Regulation (EC) No 40/94 ([1]) and Articles 44(1) and 81 of the Rules of Procedure of the Court of First Instance;

2. in the alternative, set aside in part the judgment under appeal only as regards the registration of the trade mark SISSI ROSSI in respect of 'leather and imitations of leather';

3. in the further alternative, uphold the right to produce evidence, set aside in full the judgment under appeal and refer the present dispute back to the Court of First Instance for it to examine the evidence held to be inadmissible or, in the alternative and, pursuant to the right to be heard under Article 73 of Council Regulation (EC) No 40/94, refer the present dispute to the Board of Appeal of OHIM for it to set a time-limit within which the parties can present their comments;

4. order the respondent as the unsuccessful party to pay the costs pursuant to Article 69(2) of the Rules of Procedure of the Court of Justice of the European Communities.

Pleas in law and main arguments

The appellant submits that the judgment under appeal is flawed in that it infringes the following rules:

1. Article 81 of the Rules of Procedure of the Court of First Instance in that the judgment under appeal does not state reasons in respect of the primary claim made in the action.

2. Article 44(1) of the Rules of Procedure of the Court of First Instance in that evidence produced by the appellant, which in the opinion of the appellant should have been accepted, was held to be inadmissible; in the alternative, the appellant submits that Article 73 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark was infringed in that, in the proceedings before the Board of Appeal of OHIM, the appellant was not given the opportunity to present its comments on whether or not the goods in question are similar.

3. Article 8 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark in that the marks Miss Rossi and Sissi Rossi should be regarded as incompatible. Given the similarity of both the goods and the marks the question of whether there is a likelihood of confusion between those marks within the meaning of that article should be reconsidered.

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

Action brought on 17 May 2005 by the Commission of the European Communities against the Italian Republic

(Case C-218/05)

(2005/C 182/55)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 17 May 2005 by the Commission of the European Communities, represented by K. Simonsson and C. Loggi, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC ([1]) or, in any event, by failing to communicate to the Commission tht it had done so, the Italan Republic has failed to fulfil its oblgations under Article 29 of that directive.

(2) order the Italian Republic to pay the costs.

Pleas in law and main arguments:

The time-limit for transposing the dirctive was 5 February 2004.

([1]) OJ L 208 of 05.08.2002, p. 10.

Action brought on 18 May 2005 by the Commission of the European Communities against the Kingdom of Spain

(Case C-219/05)

(2005/C 182/56)

(Language of the case: Spanish)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 18 May 2005 by the Commission of the European Communities, represented by D. Recchia, Agent, J. Rivas-Andrés and J. Gutiérrez Gisbert, lawyers, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to subject the urban waste water from Sueca, its districts and certain municipalities of La Ribera (Valencia) to appropriate treatment before discharging it in an area declared sensitive, the Kingdom of Spain has failed to fulfil its obligations under Articles 3, 4 and 5(2) of Council Directive 91/271/EEC ([1]) of 21 May 1991 concerning urban waste-water treatment;

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

Pleas in law and main arguments

— The Kingdom of Spain has failed to fulfil its obligations under Article 3 of the directive. In accordance with that article, Member States are to ensure that collecting systems are provided at the latest by 31 December 1998 for agglomerations with a population equivalent of more than 10 000 when they discharge urban waste waters into receiving waters which are considered 'sensitive areas'. Both the agglomeration of Sueca and the majority of the agglomerations of the region of La Ribera in the province of Valencia have a population equivalent of more than 10 000 and discharge their water into an area which has been declared 'sensitive'. However, they have not yet provided collecting systems for all the waste water of those towns.

— The Kingdom of Spain has failed to fulfil its obligations under Articles 4 and 5 of the directive. Those two articles require that, by 31 December 1998 at the latest, urban waste water from agglomerations of more than 10 000 inhabitants is to be subject to treatment which is more rigorous than secondary treatment before being discharged in sensitive areas. However, not all waste water from Sueca is subject to treatment which is more rigorous than secondary treatment before being discharged into a sensitive area in the sea. Nor is most of the waste water from the agglomerations of the region of La Ribera subject to appropriate treatment before being discharged into the same sensitive area. The coastal districts of Sueca (El Perelló, Las Palmeres, Mareny de Barraquetes, Playa del Rey and Boga de Mar), with a population in summer of 37 000 — 51 000 persons, only subject their water to secondary treatment before it is discharged into the same sensitive area.

([1]) OJ L 135 of 30.05.1991, p. 40

Reference for a preliminary ruling from the Bayerisches Verwaltungsgericht München by order of that court of 4 May 2005 in Daniel Halbritter v Freistaat Bayern

(Case C-227/05)

(2005/C 182/57)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bayerisches Verwaltungsgericht München (Germany) of 23 May 2005, received at the Court Registry on 4 May 2005, for a preliminary ruling in the proceedings between Daniel Halbritter and Freistaat Bayern on the following questions:

1. Is Article 1(2) in conjunction with Article 8(2) and (4) of Directive 91/439/EEC ([1]) to be interpreted as meaning that a Member State within its territory is precluded from refusing to recognise a right to drive under a driving licence issued by another Member State even where, in the territory of the first Member State, a measure withdrawing or cancelling a driving licence issued by that State has been taken against the holder of the driving licence, if the ban on obtaining a new driving licence in that Member State, with which that measure was coupled, had expired before the driving licence was issued by the other Member State *and*

(a) where the law of the first Member State is based on the premiss that evidence of fitness to drive as a substantive condition for restoration of a driving licence must be adduced in the form of a medical-psychological report specifically governed by national legislation and ordered by the authorities (which has not yet been done)

and/or

(b) where under national law there is an entitlement in the territory of the first Member State to be granted the right to make use of an EU driving licence issued after the expiry of the ban if the internal reasons for the withdrawal or for the ban no longer exist?

2. Should Article 1(2) in conjunction with Article 8(2) and (4) of Directive 91/439/EEC be interpreted as meaning that, in the event of an application for a driving licence to be granted to the holder of a driving licence from another Member State being made by handing over the driving licence of that other Member State (so-called 'reregistration'), a Member State, simply by virtue of the EU driving licence having been granted by that other Member State, is precluded from conducting a further examination of fitness — as stated by its internal law to be a condition for the grant of a licence and regulated therein — having regard to the circumstances in existence at the time that the EU driving licence was granted?

(1) OJ 1991 L 237, p. 1.

Appeal brought on 26 May 2005 by L against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 9 March 2005 in Case T-254/02 L v Commission of the European Communities

(Case C-230/05 P)

(2005/C 182/58)

(Language of the case: French)

An appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 9 March 2005 in Case T-254/02 L v Commission of the European Communities was brought before the Court of Justice of the European Communities on 26 May 2005 by L, represented by P. Legros and S. Rodrigues, avocats.

The appellant claims that the Court should:

1. set aside the contested judgment of the Court of First Instance of the European Communities of 9 March 2005 in Case T-254/02;

2. uphold the claims for annulment and compensation made at first instance;

3. order the defendant to pay all the costs.

Pleas in law and main arguments

The contested judgment:

— first, infringed the rights of the defence and the interests of the applicant, in that the Court of First Instance committed several procedural irregularities and made several manifest errors of assessment and vitiated the contested judgment by not stating reasons, and

— second, infringed Community law by not drawing any consequences from the breach by the defendant of its obligations concerning the transmission of correspondence to its staff and the treatment within a reasonable time of its staff's affairs, by virtue of the general principle of sound administration.

Removal from the register of Case C-384/03 (1)

(2005/C 182/59)

(Language of the case: Spanish)

By order of 28 April 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-384/03: Commission of the European Communities v Kingdom of Spain.

(1) OJ C 264 of 01.11.2003.

Removal from the register of Case C-440/03 (1)

(2005/C 182/60)

(Language of the case: German)

By order of 4 April 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-440/03: Commission of the European Communities v Federal Republic of Germany.

(1) OJ C 289 of 29.11.2003.

Removal from the register of Case C-51/04 [1]

(2005/C 182/61)

(Language of the case: Greek)

By order of 22 March 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-51/04: Commission of the European Communities v Hellenic Republic.

[1] OJ C 85 of 03.04.2004.

Removal from the register of Case C-54/04 [1]

(2005/C 182/62)

(Language of the case: German)

By order of 4 April 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-54/04: Commission of the European Communities v Republic of Austria.

[1] OJ C 71 of 20.03.2004.

Removal from the register of Case C-457/04 [1]

(2005/C 182/63)

(Language of the case: Portuguese)

By order of 7 April 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-457/04 Commission of the European Communities v Portuguese Republic.

[1] OJ C 6 of 08.01.2005.

Removal from the register of Case C-474/04 [1]

(2005/C 182/64)

(Language of the case: Greek)

By order of 9 March 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-474/04: Commission of the European Communities v Hellenic Republic.

[1] OJ C 314 of 18.12.2004.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 25 May 2005

in Case T-352/02 Creative Technology Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Application for a Community word mark PC WORKS — Earlier national figurative mark W WORK PRO — Refusal of registration — Article 8(1)(b) of Regulation (EC) No 40/94)

(2005/C 182/65)

(Language of the case: English)

In Case T-352/02: Creative Technology Ltd, established in Singapore (Singapore), represented by M. Edenborough, Barrister, J. Flintoft, S. Jones and P. Rawlinson, Solicitors, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: B. Holst Filtenborg and S. Laitinen), the other party to the proceedings before the Board of Appeal of OHIM being José Vila Ortiz, residing in Valencia (Spain) — action brought against the decision of the Fourth Board of Appeal of OHIM of 4 September 2002 (Case R 265/2001-4) relating to an opposition between Creative Technology Ltd and José Vila Ortiz — 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 25 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 25 May 2005

in Case T-67/04: Spa Monopole, compagnie fermière de Spa SA/NV v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark SPA-FINDERS — Earlier national word marks SPA and LES THERMES DE SPA — Article 8(5) of Regulation (EC) No 40/94)

(2005/C 182/66)

(Language of the case: English)

In Case T-67/04: Spa Monopole, compagnie fermière de Spa SA/NV, established in Spa (Belgium), represented by L. de Brouwer, E. Cornu, E. De Gryse and D. Moreau, lawyers, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: A. Folliard-Monguiral), the other party to the proceedings before the Board of Appeal of OHIM being Spa-Finders Travel Arrangements Ltd, established in New York (United States) — action brought against the decision of the First Board of Appeal of OHIM of 10 December 2003 (Case R 131/2003-1), relating to the opposition proceedings between Spa Monopole, compagnie fermière de Spa SA/NV, and Spa-Finders Travel Arrangements Ltd — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges; C. Kristensen, Administrator, for the Registrar, gave a judgment on 25 May 2005, in which it:

1. *Dismisses the application;*

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

[1] OJ C 94 of 17.4.2004.

ORDER OF THE COURT OF FIRST INSTANCE

of 22 April 2005

in Case T-399/03 Arnaldo Lucaccioni v Commission of the European Communities ([1])

(Officials — Occupational illness — Request for recognition of aggravation — Implementation of a judgment of the Court of First Instance — Legal classification of a note of the Commission — Action for annulment — Inadmissibility)

(2005/C 182/67)

(Language of the case: French)

In Case T-399/03: Arnaldo Lucaccioni, former official of the Commission of the European Communities, residing in St-Leonards-on-Sea, represented by J. R. Iturriagagoitia and K. Delvolvé, lawyers, against Commission of the European Communities (Agent: J. Currall, assisted by J.-L. Fagnart, lawyer, with an address for service in Luxembourg) — action for annulment of the decision of the Commission of 10 March 2003 implementing the judgment of the Court of First Instance of 26 February 2003 given in Case T-212/01, and for annulment of the medical report compiled during that procedure — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges; H. Jung, Registrar, made an order on 22 April 2005, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

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

([1]) OJ C 47, 21.2.2004

ORDER OF THE COURT OF FIRST INSTANCE

of 28 February 2005

in Case T-445/04 Energy Technologies ET S.A. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

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

(2005/C 182/68)

(Language of the case: English)

In Case T-445/04: Energy Technologies ET S.A., established in Fribourg (Switzerland), represented by A. Boman, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of OHIM being Aparellaje eléctrico, SL, established in Hospitalet de Llobregat (Spain) — action brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 7 July 2004 (Case R 366/2002-4) concerning an application for registration of the word mark UNEX as a Community trade mark — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Mengozzi and I. Wiszniewska-Białecka, Judges; H. Jung, Registrar, made an order on 28 February 2005, the operative part of which is as follows:

1. *The action is dismissed as being manifestly inadmissible.*

2. *The applicant shall bear its own costs.*

([1]) OJ C 31 of 5.2.2005.

Action brought on 23 March 2005 by Commission of the European Communities against Impetus Consultants

(Case T-138/05)

(2005/C 182/69)

(Language of the case: Greek)

An action against the company, Impetus Consultants, was brought before the Court of First Instance of the European Communities on 23 March 2005 by the Commission of the European Communities, represented by D. Triandafilou, assisted by N. Kostikas, lawyer.

The applicant claims that the Court should:

— order the defendant to pay the amount of EUR 235 655,21 comprising EUR 160 380,35, by way of capital, and EUR 75 274,86, in respect of interest for late payment, as from the due date on the basis of each debit note;

— order the defendant to pay as from 15 March 2005 until full settlement the debt arising out of the 'COP 493 — Invite' contract daily interest in the amount of EUR 41,93; in regard to the debt arising out of the 'TR 1006 — Ausias' contract daily interest in the amount of EUR 1,66 and in regard to the 'V 2043 — Artis' contract daily interest of EUR 1,01;

— order the defendant to pay the costs.

Pleas in law and main arguments

The European Community, represented by the European Commission, entered into three contracts with the defendant in the context of Community framework programmes for research and development. Those contracts were more specifically:

— 'COP 493 — Invite', which specifically concerned the carrying out of a project under the title 'telematics for internal navigation' and was to be implemented within 24 months as from 30 December 1994. The defendant was a member and the co-ordinator of the relevant group.

— 'TR 1006 — Ausias', which specifically concerned the carrying out of a project under the title 'Advanced telematic systems for integrated transport in conurbations' and was to be implemented within 23 months as from 30 December 1995. The defendant was a member of the relevant group.

— 'V 2043 — Artis', which concerned the carrying out of a project under the title 'Advanced telematic systems for road transport in Spain' and was to be implemented within 12 months as from 1 January 1992. The defendant was a member of the relevant group.

In all those cases it was provided that the Commission would make a financial contribution to the relevant project under the terms laid down in each agreement. In respect of each agreement the Commission paid to the defendant advances on its financial contribution.

Following financial checks, the Commission found that the defendant was using only a part of the monies paid over to it for the purposes of the relevant project. Specifically:

— Under the 'COP 493 — Invite' contract the Commission paid to the defendant as the group coordinator an advance in the amount of EUR 257 400. The defendant passed on to the other participants only the amount of EUR 79 062,70 and retained the amount of EUR 178 337,30 of which only the amount of EUR 42 000 was used for the actual programme. The Commission has issued a debit note in the amount of EUR 136 037,30 against the defendant.

— Under the 'TR 1006 — Ausias' contract the Commission paid to the group in respect of the period during which the defendant was a member of it an advance in the amount of EUR 78 341,91. The Commission discovered that only the amount of EUR 63 229,63 had been used by the defendant for the actual programme and has issued a debit note in the amount of EUR 15 112,28 against the defendant.

— Under the 'V 2043 — Artis' contract the defendant, as a member of the relevant association, received from the Commission an advance in the amount of EUR 62 621,86. The Commission adjudged that only the amount of EUR 53 391,09 had been used by the defendant for carrying out the actual programme and has issued a debit note in the amount of EUR 9 320,77 against the defendant.

By its action the Commission seeks repayment of the abovementioned amounts owed, together with interest thereon, in accordance with the law applicable to each contract, that is to say, in the case of the first contract, Greek law and, in the case of the other two contracts, Spanish law.

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

(Case T-167/05)

(2005/C 182/70)

(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 25 April 2005 by Grether AG, established in Binningen (Switzerland), represented by V. von Bomhard, A. Pohlmann and A. Renck, lawyers.

Crisgo (Thailand) Co., Ltd established in Samutsakorn (Thailand) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul in its entirety Decision R250/2002-4 of 14 October 2004 of the Board of Appeal of the Office of Harmonisation in the Internal Market (Trade Marks and Designs);

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

Pleas in law and main arguments

Applicant for Community trade mark:	Crisgo Co. Ltd.
Community trade mark concerned:	Figurative mark FL FENNEL for goods in class 3 application No 903 922
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Trade mark or sign cited in opposition:	Community word mark FENJAL for goods in class 3
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Dismisses the appeal
Pleas in law:	Violation of Articles 73 and 74 of Council Regulation No 40/94. In this context, the applicant alleges that the Board of Appal based its decision on various new arguments and facts not brought forward or discussed by the parties. The applicant further claims that the contested decision violates Article 8(1)(b) of Regulation No 40/94 by concluding that there was no risk of confusion.

Action brought on 2 May 2005 by Bart Nijs against the Court of Auditors of the European Communities

(Case T-171/05)

(2005/C 182/71)

(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 2 May 2005 by Bart Nijs, Bereldange (Luxembourg), represented by Fränk Rollinger, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the decision of the College of Merits of the Court of Auditors awarding the applicant his promotion points for 2003;

2. annul the decision of the appointing authority not to promote the applicant to the grade of reviser in 2004;

3. annul the applicant's staff report for 2003;

4. annul decision No 6/2004 of 26 October 2004 of the Appeal Committee of the Court of Auditors upholding the applicant's staff report for 2003;

5. annul any related and/or later decision;

6. make good the damage suffered by the applicant and order the Court of Auditors to pay the costs of these proceedings.

Pleas in law and main arguments

The applicant in the present case, having also brought the action lodged in Case T-377/04, [1] contests the decisions of the defendant awarding him promotion points for 2003 and establishing his staff report for that year, and its decision not to promote him in 2004 to the post of reviser in the Dutch translation unit.

In support of his claims he relies on pleas of:

— breach of Article 11a of the Staff Regulations and of the principles of the duty to have regard for the welfare of officials, sound administration and equal treatment,

— irregularities in the appraisal procedure in that it was entrusted to officials whose integrity had been called into question by the pre-litigation procedure,

— failure to respect time limits in the appraisal procedure,

— failure in this case to consider comparative merits in the terms of the Dutch translation unit,

— breach of the principles of legal certainty and the protection of legitimate expectations by the failure to communicate the rules applicable to the 2004 promotion procedure,

— misuse of powers in the case.

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[1] Case T-377/04 *Nijs* v *Court of Auditors* (OJ 2004 C 284, 20.11.2004, p. 26).

Action brought on 27 April 2005 by Martine Heus against the Commission of the European Communities

(Case T-173/05)

(2005/C 182/72)

(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 Martine Heus, Anderlecht (Belgium), represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

1. annul the decision adopted by the appointing authority on 7 January 2005 rejecting the complaint lodged by the applicant on 18 October 2004 against the decision of 19 July 2004 adopted by the chairman of the selection board in competition COM/PC/04 refusing to admit the applicant to that competition;

2. annul, to the extent necessary, the decision adopted on 19 July 2004 by the chairman of the selection board in competition COM/PC/04;

3. order the defendant to pay the costs.

Pleas in law and main arguments

The applicant was refused admission to competition COM/PC/04 on the ground that she did not fulfil the requirement of five years' seniority within the Commission or another institution, as the periods of professional activity she had spent in the Commission on a temporary basis were not taken into account by the selection board in the competition.

In support of her application the applicant relies on pleas of breach of Articles 27 and 29(1) of the Staff Regulations and a manifest error of assessment in so far as the contested decisions and the notice of competition, or in any event the interpretation given to them by the appointing authority, resulted in the rejection of the applicant for reasons relating solely to her former administrative status (as member of the contract staff rather than a member of staff covered by the Conditions of Employment).

The applicant also relies on a plea of breach of the principle of non-discrimination, in so far as the criteria at issue allowed other candidates to be admitted to the competition although they were less competent or had less professional experience within the Commission.

Action brought on 28 April 2005 by Pia Landgren against the European Training Foundation

(Case T-180/05)

(2005/C 182/73)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 April 2005 by Pia Landgren, Turin (Italy), represented by Marc-Albert Lucas, lawyer.

The applicant claims that the Court should:

1. annul the decision of 25 June 2004 of the former Director of the Foundation dismissing the applicant;

2. annul, if necessary, the decision of 19 January 2005 of the Director of Training rejecting the complaint made by the applicant on 27 September against the first decision;

3. order the Foundation to pay, in compensation for the material damage caused to her by the unlawfulness of the contested decisions, a sum equivalent to the salary and pension she would have received if she had been able to continue her career at the Foundation until the age of 65, reduced by the amount of the allowances for dismissal and unemployment and the pension she has received or will receive because of her dismissal;

4. order the Foundation to pay the applicant a sum at the Court's discretion to make good the non-material damage caused to her by the unlawfulness of the contested decision;

5. order the defendant to pay the costs.

Pleas in law and main arguments

According to the applicant, the Foundation has not established that the decision to dismiss the applicant is based on a valid ground in law, particularly as that decision is in apparent contradiction with the applicant's staff report for 2003.

The applicant also claims that the real reason for her dismissal is manifestly unlawful and contrary to the interest of the service because it is based on a prior agreement that she would leave the Foundation after 31 December 2003.

Moreover, the applicant submits that the ground for the contested decision is unlawful and arbitrary if the refusal of the Head of Department to retain her is based on adverse assessments made of her in the past.

Finally, the applicant raises pleas of failure to state reasons, breach of the duty to have regard for the welfare of officials and of the right to be heard and manifest errors of assessment, if the refusal of the Head of Department and/or the dismissal are based on professional failings within the EECA department or generally.

Action brought on 4 May 2005 by Dypna Mc Sweeney and Pauline Armstrong against the Commission of the European Communities

(Case T-184/05)

(2005/C 182/74)

(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 Dypna Mc Sweeney, residing in Brussels, and Pauline Armstrong, residing in Overijse (Belgium), represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

1. annul the decisions of 6 and 7 September 2004 refusing to admit the applicants to the EPSO/C/11/03 competition tests;

2. order the defendant to pay the costs.

Pleas in law and main arguments

The applicants participated in the EPSO/C/11/03 competition organised for the purposes of drawing up a reserve list of English-language secretaries at grade C5/C4. The selection board in that competition decided to exclude them from the tests of that competition, on the ground that their diplomas did not correspond to the level required by the competition notice.

In support of their action, the applicants submit that that decision infringes the competition notice and stems from a manifest error of assessment.

Action brought on 2 May 2005 by Joël de Bry against the Commission of the European Communities

(Case T-188/05)

(2005/C 182/75)

(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 2 May 2005 by Joël De Bry, residing in Woluwé-St-Lambert (Belgium), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the Commission's decision drawing up the applicant's career development report for 2003.

2. order the defendant to pay a symbolic Euro to be increased pending proceedings together with costs.

Pleas in law and main arguments

In support of his action, the applicant alleges, first, an objective conflict of interests on the part of his appraiser who is on the same grade.

Furthermore, he claims that errors were made in assessing his merits and argues that there were inconsistencies between the comments and the marks which he was attributed.

Finally, the applicant alleges infringement of the general provisions implementing Article 43 of the Staff Regulations and the aims and objectives sought by the establishment of a new system focused on career development, as well as breach of the obligation to state reasons, the rights of the defence, and Article 26 of the Staff Regulations.

Action brought on 4 May 2005 by Usinor against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-189/05)

(2005/C 182/76)

(Language of the case: French)

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 4 May 2005 by Usinor, whose registered office is in Paris, represented by Patrice de Condé, lawyer.

The applicant claims that the Court should:

1. annul the decision of the First Board of Appeal of OHIM of 10 February 2005;

2. order OHIM to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	CORUS UK Limited
Community trade mark sought:	Word mark GALVALLOY — application No 796 557, for goods in Class 6 (steel sheet and strip etc)
Proprietor of mark or sign cited in the opposition proceedings:	Applicant
Mark or sign cited in opposition:	National word mark GALVALLIA for goods in Class 6 (steel sheet and strip etc)
Decision of the Opposition Division:	Registration refused
Decision of the Board of Appeal:	Decision of the Opposition Division annulled
Pleas in law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 [1]

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, OJ L 11 of 14.1.1994, p. 1.

Action brought on 10 May 2005 by Viviane Le Maire against the Commission of the European Communities

(Case T-191/05)

(2005/C 182/77)

(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 10 May 2005 by Viviane Le Maire, residing in Evere (Belguim), represented by Gilles Bounéou and Frédéric Frabetti, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the implied decision of 5 September 2004, by which the Commission refused to grant the applicant the daily subsistence allowances following her entry into service;

2. order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in these proceedings objects to the Appointing Authority's refusal to grant her the daily subsistence allowances provided for in Article 10 of Annex VII to the Staff Regulations. It is apparent from the documents annexed to the application that the reason for that refusal is the fact that the period of 120 days referred to in paragraph 2(a) of that provision was exceeded in the present case.

In support of her claims, the applicant argues:

— breach of Article 10 of Annex VII to the Staff Regulations, in the versions of that text before and after 1 May 2004, to the extent that the administration made her subject to requirements which are not provided for by that provision,

— breach of the principles of sound administration, prohibition on arbitrary conduct and abuse of power, by requiring the applicant to produce evidence that she was renting a house,

— breach of the obligation to state reasons for a measure,

— breach of the principles of equal treatment and non-discrimination,

— breach of the duty to have regard to the interests of officials.

Action brought on 13 May 2005 by Mebrom NV against the Commission of the European Communities

(Case T-198/05)

(2005/C 182/78)

(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 13 May 2005 by Mebrom NV, established in Rieme-Ertvelde (Belgium), represented by C. Mereu and K. Van Maldegem, lawyers.

The applicant claims that the Court should:

— order the European Commission to pay to the applicant the amount requested through the present application for the damage suffered by the applicant as a result of the defendant's failure to establish a system allowing the applicant to import Methyl Bromide in January and February 2005, or any other amount as further established by the applicant in the course of these proceedings or by the Court ex aequo et bono;

— in the alternative, rule on interlocutory judgment that the European Commission is obliged to make reparation for the loss suffered and order the parties to produce to the Court within a reasonable period from the date of the judgment figures as to the amount of the compensation agreed between the parties or, failing agreement, order the parties to produce to the Court within the same period their submissions with detailed figures in support;

— order the European Commission to pay to the applicant a compensatory interest of 8 % per annum;

— order the Commission to pay an interest of 8 %, or any other appropriate rate to be determined by the Court, calculated on the amount payable as from the date of the Court's judgment until actual payment; and

— order the Commission to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicant imports Methyl Bromide (MBr) in the EU. Methyl Bromide is a controlled substance within the meaning of Regulation (EC) No 2037/2000 of the European Parliament and Council of 29 June 2000 on substances that deplete the ozone layer ([1]). The applicant states that it can therefore only import Methyl Bromide subject to the presentation of an import licence and the nominal allocation of a 12-month import quota established by the defendant each year.

With the present action, the applicant claims compensation for damages allegedly suffered as a direct consequence of the defendant's unlawful failure to establish a system in accordance with Articles 6 and 7 of Regulation No 2037/2000 allowing the applicant to obtain import licences and import quotas for the import of Methyl Bromide in the European Union in January and February 2005.

In support of its application, the applicant submits that the defendant breached Articles 6 and 7 of Regulation 2037/2000, which oblige the Commission to allocate licences and quotas for the import of Methyl Bromide in the EU for each 12-month period after 31 December 1999. The applicant submits furthermore a violation of the principles of sound administration and the duty of care, requiring the Commission to act diligently, impartially and in a timely fashion, as well as a violation of the principles of legal certainty and legitimate expectations.

The applicant states that the damage suffered by it as a result of the defendant's unlawful conduct consists of the lost profit that the applicant would have made by importing and subsequently selling Methyl Bromide during these two months.

([1]) OJ L 244, p. 1

Action brought on 19 May 2005 by Nalocebar — Consultores e Serviços Lda. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-210/05)

(2005/C 182/79)

(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 19 May 2005 by Nalocebar — Consultores e Serviços Lda., established in Funchal (Madeira), represented by G. Pasquarella and R. M. Pasquarella, lawyers.

Limiñana y Botella, S. L. established in Monforte del Cid, Alicante (Spain) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— quash the Decision of 18 March 2005 of the First Board of Appeal of the OHIM in case no. R 646/2004-1 by upholding the lawfulness of the figurative mark filed on 12 July 2000 by the applicants and published in the Community Trademark Bulletin no. 103/01 on 03.12.01;

— award the statutory costs.

Pleas in law and main arguments

Applicant for Community trade mark:	Big Ben Establishment Ltd. The applicant in this case is the purchaser of the application for registration filed by Big Ben Establishment
Community trade mark concerned:	Figurative mark 'Limoncello di Capri' for goods in classes 30 (pastries etc.), 32 (syrups and other lemon based drinks belonging to class 32) and 33 (lemon based liqueurs)
Proprietor of mark or sign cited in the opposition proceedings:	Limiñana y Botella S.L.
Trade mark or sign cited in opposition:	Spanish word mark LIMONCHELO for goods in class 33
Decision of the Opposition Division:	Refuses registration
Decision of the Board of Appeal:	Rejects the appeal
Pleas in law:	Violation of Article 8 (1) (b) of Council Regulation No. 40/94 [1].

[1] OJ L 011, 14/01/1994, p. 1

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

(Case T-211/05)

(2005/C 182/80)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 May 2005 by the Italian Republic, represented by Paolo Gentili, Avvocato dello Stato.

The applicant claims that the Court should:

1. annul Commission decision C (2005) 591 final;

2. order the Commission to pay the costs.

Pleas in law and main arguments

The action concerns Commission decision C (2005) 591 final which declared incompatible with the common market, as State aid contrary to Article 87 EC, two Italian tax measures granted to companies obtaining listing on regulated markets in the period stated in the measures themselves. Those measures reduce the rate of income tax for three years and exclude from taxable income the costs of the listing borne by the company.

According to the Commission, the measures in question are selective since they favour only those companies obtaining listing in the period stated in the Italian rules, excluding those already listed and those which might be listed in different periods; the measures cannot therefore be regarded as compatible since they do not come within any of the cases laid down in Article 87(2) and (3) EC.

The Italian Government criticises the decision, first, from the procedural point of view, since the Commission initiated the procedure provided for in Article 88(2) EC without discussing the measures with the Member State concerned beforehand.

Secondly, the applicant notes that the Commission did not submit any comments regarding a previous measure adopted by Italy in 1997, which was essentially the same.

Thirdly, the applicant denies that the measures are selective. In fact they are directed at a potentially indefinite number of recipients. On the other hand, the measures are consistent with the tax system as a whole, since they take account of the fact that, in order to be listed, a newly quoted company must bear very heavy charges which place it in a situation of reduced earning capacity compared both with unquoted companies and those which have been quoted for some time and have been able to write off those costs. The limited time period is the result of budgetary constraints and the experimental nature of the measure. That factor cannot, in itself, render selective a measure which is inherently not so.

Fourthly, the applicant denies that the Commission has demonstrated that the measure is likely to distort competition and affect trade between Member States.

Fifthly and finally, the applicant argues that if the measure is defined as aid, it is compatible with the common market within the meaning of Article 87(3)(c). It is aid for investments rather than for operations, and is consistent with the specific economic objective of promoting the listing of companies on the stock exchange which is beneficial for efficiency, transparency and the competitiveness of the system.

Action brought on 31 May 2005 by Mebrom NV against the Commission of the European Communities

(Case T-216/05)

(2005/C 182/81)

(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 31 May 2005 by Mebrom NV, established in Rieme-Ertvelde (Belgium), represented by C. Mereu and K. Van Maldegem, lawyers.

The applicant claims that the Court should:

— to annul Commission Decision A(05)4338 — D/6l76 of 11 April 2005;

— to order the Commission to allocate a l2-month quota to the applicant pursuant to Article 7 of Regulation 2037/2000; and

— to order the Commission to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicant imports Methyl Bromide (MBr) in the EU. Methyl Bromide is a controlled substance within the meaning of Regulation (EC) No 2037/2000 of the European Parliament and Council of 29 June 2000 on substances that deplete the ozone layer ([1]). With the present application, the applicant seeks the annulment of the Commission's decision rejecting the applicant's request for a quota for the importation of Methyl Bromide in the European Union for critical uses for 2005.

In support of its application, the applicant submits that the Commission deprived the applicant of its right to an allocation of a 12-month import quota for the importation of Methyl Bromide in the EU in 2005. The applicant invokes that the Commission manifestly misapplied the applicable legal framework. According to the applicant, the Commission furthermore violated Article 7 of Regulation 2037/2000 which, according to the applicant, confers to it a specific right to obtain a 12-month Methyl Bromide quota for 2005. The applicant also claims that the Commission acted beyond its competence conferred by Article 7 of Regulation 2037/2000. Finally, the applicant invokes the infringement of the principle of legal certainty as the Commission failed to establish a predictable system of import quotas for those who are subject to it, and frustrated the applicant's legitimate expectations in obtaining an import quota on the basis of Article 7 of Regulation 2037/2000, the Commission's Notice to importers of July 2004 ([2]) and an e-mail message from the defendant of 10 December 2004, addressed to the applicant and confirming that its import quota for 2005 was in the process of being notified to him.

([1]) OJ L 244, p. 1

([2]) Notice to importers in the European Union in 2005 of controlled substances that deplete the ozone layer, regarding Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer (OJ 2004 C 187, p. 11)

Action brought on 7 June 2005 by Bustec Ireland Limited Partnership against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-218/05)

(2005/C 182/82)

(Language in which the application was submitted: 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 7 June 2005 by Bustec Ireland Limited Partnership, represented by Enrique Armijo Chavarri and Antonio Castán Peréz-Goméz, lawyers.

Mustek, S.L. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

1. annul the decision of the Second Board of Appeal of 22 March 2005 in Case R 1125/2004-2;

2. order OHIM to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	The applicant
Community trade mark sought:	Figurative mark BUSTEC — Application No 1644939, for goods in Classes 9, 35 and 42
Proprietor of mark or sign cited in the opposition proceedings:	Mustek, S.L.

Mark or sign cited in opposition:	Spanish word mark MUSTEK (No 1550684) for goods in Class 9
Decision of the Opposition Division:	Opposition allowed
Decision of the Board of Appeal:	Dismissal of the appeal, on the ground that the applicant did not file the requisite written statement setting out the grounds of appeal within the period of four months provided for in Article 59 of Regulation (EC) No 40/94 on the Community trade mark
Pleas in law:	Infringement of the rights of the defence and incorrect interpretation of Article 59 of Regulation (EC) No 40/94 on the Community trade mark

Removal from the Register of Case T-347/04 ([1])

(2005/C 182/83)

(Language of the case: French)

By order of 24 May 2005, the President of the Third Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-347/04, Pascal Millot v Commission of the European Communities.

([1]) OJ C 262 of 23.10.2004.

Removal from the Register of Case T-453/04 ([1])

(2005/C 182/84)

(Language of the case: Hungarian)

By order of 27 May 2005, the President of the Third Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-453/04, Péter Lesetár v Commission of the European Communities.

([1]) OJ C 57 of 5.3.2005.

Removal from the Register of Case T-14/05 ([1])

(2005/C 182/85)

(Language of the case: Italian)

By order of 25 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-14/05, Italian Republic v Commission of the European Communities.

([1]) OJ C 69 of 19.3.2005.

Partial Removal from the Register of Case T-122/05 ([1])

(2005/C 182/86)

(Language of the case: German)

By order of 24 May 2005, the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal of the name of the appliciant Marenzi Privatstiftung from the list of names of the applicants in Case T-122/05, Benkö and Others v Commission of the European Communities.

([1]) Not yet published in the OJ.

III

(Notices)

(2005/C 182/87)

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

OJ C 171, 9.7.2005

Past publications

OJ C 155, 25.6.2005

OJ C 143, 11.6.2005

OJ C 132, 28.5.2005

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