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JUDGMENT OF THE COURT

(Third Chamber)

of 16 June 2005

in Case C-123/02: European Parliament v Royal & Sun Alliance Insurance [1]

(Arbitration clause — Insurance policies — Termination on grounds of increase of the risk insured — Abuse — Contractual liability — Damages)

(2005/C 193/01)

(Language of the case: French)

In Case C-123/02 **European Parliament** (Agents: D. Petersheim, O. Caisou-Rousseau and M. Ecker) v **Royal & Sun Alliance Insurance** (Lawyers: J.-L. Fagnart and L. Vael) — action brought on 5 April 2002 under Article 238 EC — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and K. Schiemann, Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 16 June 2005, in which it:

1. *Holds that the termination of guarantees in contracts nos. 5.013.347 and 1F516.071 notified by Royal & Sun Alliance Insurance to the European Parliament on 9 October and 6 November 2001 constitutes a wrongful termination of those contracts;*

2. *Orders Royal & Sun Alliance Insurance to compensate the damage caused to the European Parliament as a result of the wrongful termination of contracts nos. 5.013.347 and 1F516.071;*

3. *Holds that the sum due as compensation for the damage which Royal & Sun Alliance Insurance caused the European Parliament in respect of the year 2001 is obtained by multiplying, firstly, the sum of EUR 205 131,75 by the percentage of premiums received by Royal & Sun Alliance Insurance out of the total sum of those due by the Parliament to the four co-assurors and by multiplying, secondly, the sum of EUR 178 453,01 by the same percentage and by the fraction 44/46, which corresponds to the proportion of the length of time involved. The sum which that institution paid or should have paid to Royal & Sun Alliance Insurance under the 'labour disputes/terrorist acts' guarantee for its assets in Belgium and Luxembourg for the period 5 November to 31 December 2001 and in respect of all the guarantees covering its assets in France for the period 18 November 2001 to 31 December 2001 must then be deducted from the sum of those two products;*

4. *Holds that the sum due as compensation for the damage which Royal & Sun Alliance Insurance caused the European Parliament in respect of the year 2002 is obtained by multiplying the sum of EUR 389 291,73 by the percentage of premiums which Royal & Sun Alliance Insurance would have received out of the total of those which the European Parliament should have paid the four co-assurors in respect of the guarantees for the year 2002 and by deducting from the product thus obtained the sum which that institution should have paid Royal & Sun Alliance Insurance in respect of the cover for its assets in France against all material damage for the year 2002;*

5. *Holds that the sums due to the European Parliament by Royal & Sun Alliance Insurance generate interest at the statutory rate with effect from 4 April 2002;*

6. *Orders Royal & Sun Alliance to pay the costs.*

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[1] OJ C 144, 15.06.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 16 June 2005

in Case C-124/02: European Parliament v AIG Europe [1]

(Arbitration clause — Insurance policies — Termination on grounds of increase of the risk insured — Abuse — Contractual liability — Damages)

(2005/C 193/02)

(Language of the case: French)

In Case C-124/02 **European Parliament** (Agents: D. Petersheim, O. Caisou-Rousseau and M. Ecker) v **AIG Europe** (Lawyers: J.-L. Fagnart and L. Vael) — action brought on 5 April 2002 under Article 238 EC — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and K. Schiemann, Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 16 June 2005, in which it:

1. *Holds that the termination of the guarantees in contract no. 5.013.347 notified by AIG Europe to the European Parliament on 8 October and 5 November 2001 constitutes a wrongful termination of that contract;*

2. *Orders AIG Europe to compensate the damage caused to the European Parliament as a result of the wrongful termination of contract no. 5.013.347;*

3. *Holds that the sum due as compensation for the damage which AIG Europe caused the European Parliament in respect of the year 2001 is obtained by multiplying, firstly, the sum of EUR 205 131,75 by the percentage of premiums received by AIG Europe out of the total sum of those due by the Parliament to the four co-assurors and by multiplying, secondly, the sum of EUR 178 453,01 by the same percentage. The sum which that institution paid or should have paid to AIG Europe under the 'labour disputes/terrorist acts' guarantee for its assets in Belgium and Luxembourg for the period 5 November to 31 December 2001 and in respect of all the guarantees covering its assets in France for the period 16 November to 31 December 2001 must then be deducted from the sum of those two products;*

4. *Holds that the sum due as compensation for the damage which AIG Europe caused the European Parliament in respect of the year 2002 is obtained by multiplying the sum of EUR 389 291,73 by the percentage of premiums which AIG Europe would have received out of the total of those which the European Parliament should have paid to the four co-assurors in respect of the guarantees for the year 2002 and by deducting from the product thus obtained the sum which that institution should have paid to AIG Europe in respect of the cover for its assets in France against all material damage for the year 2002;*

5. *Holds that the sums due to the European Parliament by AIG Europe generate interest at the statutory rate with effect from 4 April 2002;*

6. *Orders AIG Europe to pay the costs.*

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[1] OJ C 144, 15.06.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 16 June 2005

in Case C-125/02: European Parliament v HDI International [1]

(Arbitration clause — Insurance policies — Termination on grounds of increase of the risk insured — Abuse — Contractual liability — Damages)

(2005/C 193/03)

(Language of the case: French)

In Case C-125/02 **European Parliament** (Agents: D. Petersheim, O. Caisou-Rousseau and M. Ecker) v **HDI International** (Lawyers: J.-L. Fagnart and L. Vael) — action brought on 5 April 2002 under Article 238 EC — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and K. Schiemann, Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 16 June 2005, in which it:

1. *Holds that the termination of the guarantees in contract no. 5.013.347 notified by HDI International to the European Parliament on 30 October 2001 as well as on 13 and 20 November 2001 constitutes a wrongful termination of that contract;*

2. *Orders HDI International to compensate the damage caused to the European Parliament as a result of the wrongful termination of contract no. 5.013.347;*

3. *Holds that the sum due as compensation for the damage which HDI International caused the European Parliament is obtained by multiplying the sum of EUR 389 291,73 by the percentage of premiums which HDI International would have received out of the total of those which the European Parliament should have paid the four co-assurors in respect of the guarantees for the year 2002 and by deducting from the product thus obtained the sum which that institution should have paid HDI International in respect of the cover for its assets in France against all material damage for the year 2002;*

4. *Holds that the sums due to the European Parliament by HDI International generate interest with effect from 4 April 2002 at the statutory rate applicable in France;*

5. *Orders HDI International to pay the costs.*

([1]) OJ C 144, 15.06.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 9 June 2005

in Case C-287/02: Kingdom of Spain v Commission of the European Communities ([1])

(EAGGF — Clearance of accounts — 2001 financial year — Detailed implementing rules)

(2005/C 193/04)

(Language of the case: Spanish)

In Case C-287/02: Kingdom of Spain (Agent: L. Fraguas Gadea) v Commission of the European Communities (Agents: M. Niejahr and S. Pardo Quintillán) — action for annulment under Article 230 EC, brought on 9 August 2002 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, J.-P. Puissochet, S. von Bahr and J. Malenovský (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 9 June 2005, in which it:

1. *Annuls Commission Decision 2002/461/EC of 12 June 2002 on the clearance of the accounts of Member States' expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2001 financial year in so far as Annex I thereto includes in the amount recoverable from the Kingdom of Spain a financial correction of the accounts of the Castilla-La Mancha paying agency corresponding to the amount of the compensatory allowances;*

2. *Dismisses the remainder of the action;*

3. *Orders the Kingdom of Spain and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 233, 28.9.2002.

JUDGMENT OF THE COURT OF JUSTICE

(Grand Chamber)

of 16 June 2005

in Case C-105/03, Reference for a preliminary ruling from the Tribunale di Firenze (Italy), in criminal proceedings against Maria Pupino ([1])

(Police and judicial cooperation in criminal matters — Articles 34 EU and 35 EU — Framework Decision 2001/220/JHA — Standing of victims in criminal proceedings — Protection of vulnerable persons — Hearing of minors as witnesses — Effects of a framework decision)

(2005/C 193/05)

(Language of the case: Italian)

In Case C-105/03: reference for a preliminary ruling under Article 35 EU, by the judge in charge of preliminary enquiries at the Tribunale di Firenze (Italy), made by decision of 3 February 2003, received at the Court on 5 March 2003, in criminal proceedings against Maria Pupino — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur), P. Kūris, E. Juhász, G. Arestis and M. Ilešič, Judges; J. Kokott, Advocate General, L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 16 June 2005, the operative part of which is as follows:

1. *Articles 2, 3 and 8(4) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as meaning that the national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place.*

2. *The national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision.*

([1]) OJ C 146 of 21.06.2003

JUDGMENT OF THE COURT OF JUSTICE

(First Chamber)

of 9 June 2005

in Joined Cases C-211/03, C-299/03 and C-316/03 to C-318/03 (References for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen): HLH Warenvertriebs GmbH, Orthica BC v Federal Republic of Germany ([1])

(Free movement of goods — Distinction between medicinal products and food additives — Product marketed as a food additive in the Member State of origin but treated as a medicinal product in the Member State of import — Marketing authorisation)

(2005/C 193/06)

(Language of the case: German)

In Joined Cases C-211/03, C-299/03 and C-316/03 to C 318/03: references for a preliminary ruling under Article 234 EC, by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany), by decisions of 7 May and of 4, 3, 7 and 8 July 2003 respectively, received at the Court on 15 May and 11 and 24 July 2003, in the proceedings pending before that court between **HLH Warenvertriebs GmbH** (C-211/03), **Orthica BV** (C-299/03 and C-316/03 to C-318/03) and the **Federal Republic of Germany**, intervener: **Vertreter des öffentlichen Interesses beim Oberverwaltungsgericht für das Land Nordrhein-Westfalen**, 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; L.A. Geelhoed, Advocate General, K. Sztranc, Administrator, for the Registrar, gave a judgment on 9 June 2005, the operative part of which is as follows:

1. *The classification of a product as a medicinal product or as a foodstuff must take account of all the characteristics of the product, established both in the initial stage of the product and where it is mixed, in accordance with the method by which it is used, with water or with yoghurt.*

2. *Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety constitutes an additional set of rules in relation to Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements, the application of which is precluded to the extent to which a Community rule, such as that directive, contains specific provisions for certain categories of foodstuffs.*

3. *Only the provisions of Community law specific to medicinal products apply to a product which satisfies equally well the conditions for classification as a foodstuff and the conditions for classification as a medicinal product.*

4. *The pharmacological properties of a product are the factor on the basis of which the authorities of the Member States must ascertain, in the light of the potential capacities of the product, whether it may, for the purposes of the second subparagraph of Article 1(2) 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, be administered to human beings with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in human beings. The risk that the use of a product may entail for health is an autonomous factor that must also be taken into consideration by the competent national authorities in the context of the classification of the product as a medicinal product.*

5. *A product which constitutes a medicinal product within the meaning of Directive 2001/83 may be imported into another Member State only upon acquisition of a marketing authorisation issued in accordance with the provisions of that directive, even where it is lawfully marketed as a foodstuff in another Member State.*

6. *The concept of 'upper safe levels' in Article 5(1)(a) of Directive 2002/46 is of no importance for the purposes of drawing a distinction between medicinal products and foodstuffs.*

7. *In the context of an evaluation by a Member State of the risks that foodstuffs or food supplements may constitute for human health, the criterion of the existence of a nutritional need in the population of the Member State may be taken into consideration. However, the absence of such a need does not in itself suffice to justify, either under Article 30 EC or under Article 12 of Directive 2002/46, a complete ban on marketing foodstuffs or food supplements lawfully manufactured or placed on the market in another Member State.*

8. *The fact that the discretion enjoyed by the national authorities as regards the establishment of an absence of nutritional need is subject to only limited review by the courts is compatible with Community law, on condition that the national procedure for judicial review of the decisions in that regard taken by those authorities enables the court or tribunal seised of an application for annulment of such a decision effectively to apply the relevant principles and rules of Community law when reviewing its legality.*

9. *Article 1(2) of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients is to interpreted as meaning that a food or a food ingredient has not been used for human consumption to a significant degree within the Community if, when all the circumstances of the case are taken into account, it is established that that food or that food ingredient has not been consumed in a significant quantity by humans in any of the Member States before the reference date. 15 May 1997 is the reference date for the purpose of determining the extent of human consumption of that food or food ingredient.*

10. *A national court cannot refer questions on the classification of products to the European Food Safety Authority. An opinion delivered by that Authority, possibly in a matter forming the subject-matter of a dispute pending before a national court, may constitute evidence that that court should take into consideration in the context of that dispute.*

([1]) OJ C 200 of 23.08.2003
OJ C 275 of 15.11.1003

JUDGMENT OF THE COURT

(Third Chamber)

of 9 June 2005

in Case C-270/03: Commission of the European Communities v Italian Republic ([1])

(Failure of a Member State to fulfil obligations — Environment — Management of waste — Directive 75/442/EEC as amended by Directive 91/156/EEC — Transport and collection of waste — Article 12)

(2005/C 193/07)

(Language of the case: Italian)

In Case C-270/03, Commission of the European Communities (Agents: L. Visaggio and R. Amorosi) v Italian Republic (Agents: I.M. Braguglia and M. Fiorilli) brought on 23 June 2003 — failure to fulfil obligations under Article 226 EC — 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; L. Hewlett, Principal Administrator for the Registrar, gave a judgment on 9 June 2005, in which it:

1. *Declares that, by permitting undertakings, in accordance with Article 30(4) of Decree-Law No 22 of 5 February 1997 implementing Directive 91/156/EEC on waste, Directive 91/689/EEC on hazardous waste and Directive 94/62/EC on packaging and packaging waste, as amended by Article 1(19) of Law No 426 of 9 December 1998:*

   — *to collect and transport their own non-hazardous waste, as a normal and regular activity, without being required to be entered in the Albo nazionale delle imprese esercenti servizi di smaltimento rifiuti (national register of undertakings carrying out waste-disposal services) and*

   — *to transport their own hazardous waste in quantities not exceeding 30 kg and 30 l per day, without being required to be entered in that register,*

   the Italian Republic has failed to fulfil its obligations under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;

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

([1]) OJ C 200 of 23.08.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 16 June 2005

in Joined Cases C-462/03 and C-463/03: Reference for a preliminary ruling from the Bundesvergabeamt Strabag AG, Kostmann GmbH v Österreichische Bundesbahnen [1]

(Public procurement contracts — Directive 93/38/EEC — Water, energy, transport and telecommunications sectors — Concepts of 'operation' and 'provision' of networks providing a service to the public in the field of transport by railway — Railway infrastructure works)

(2005/C 193/08)

(Language of the case: German)

In Joined Cases C-462/03 and C-463/03: reference for a preliminary ruling under Article 234 EC from the Bundesvergabeamt (Austria), made by decision of 27 October 2003, received at the Court on 4 November 2003, in the proceedings pending before that court between Strabag AG (C-462/03), Kostmann GmbH (C-463/03) and Österreichische Bundesbahnen — 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; P. Léger, Advocate General, R. Grass, Registrar, has given a judgment on 16 June 2005, the operative part of which is as follows:

Where a contracting entity exercising one of the activities particularly mentioned in Article 2(2) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors contemplates, in the exercise of that activity, the award of a supply, works or service contract or the organisation of a design contest, that contract or contest is governed by the provisions of this directive.

[1] OJ C 21 of 24.1.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 16 June 2005

in Case C-104/04: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil obligations — Directive 97/13/EC — Telecommunication services — Contribution to research and development)

(2005/C 193/09)

(Language of the case: French)

In Case C-104/04 **Commission of the European Communities** (Agents: J.-F. Pasquier and M. Shotter) v **French Republic** (Agents: G. de Bergues and S. Ramet) — action under Article 226 EC for failure to fulfil obligations, brought on 27 February 2004 — the Court (Fourth Chamber), composed of K. Lenaerts, President of the Chamber, K. Schiemann and E. Levits (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 16 June 2005, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Articles 3(2) and 8(1) of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services, read in conjunction with the annex to that directive, the French Republic has failed to fulfil its obligations under that directive;*

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

[1] OJ C 94, 17.04.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 9 June 2005

in Case C-135/04: Commission of the European Communities v Kingdom of Spain [1]

(Conservation of wild fauna — Wild birds — Hunting periods — Hunting of woodpigeon during return journey in the province of Guipúzcoa)

(2005/C 193/10)

(Language of the case: Spanish)

In Case C-135/04 **Commission of the European Communities** (Agents: G. Valero Jordana and M. van Beek) v **Kingdom of Spain** (Agents: N. Díaz Abad and M. Muñoz Perez) — action under Article 226 EC for failure to fulfil obligations, brought on 12 March 2004 — the Court (Second Chamber), composed of C. W. A. Timmermans, President of the Chamber, R. Silva de Lapuerta, C. Gulmann (Rapporteur), R. Schintgen and G. Arestis, Judges; L. A. Geelhoed, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 9 June 2005, in which it:

1. *Declares that, by allowing the practice of 'a contrapasa' hunting of woodpigeons in the province of Guipúzcoa, the Kingdom of Spain has failed to fulfil its obligations under Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;*

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

[1] OJ C 106 of 30.4.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 June 2005

in Case C-191/04: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil obligations — Pollution and nuisance — Urban waste water treatment — Directive 91/271/EEC)

(2005/C 193/11)

(Language of the case: French)

In Case C-191/04: action for failure to fulfil obligations under Article 226 EC, brought on 23 April 2004, **Commission of the European Communities** (Agents: A. Bordes and G. Valero Jordana) v **French Republic** (Agents: G. de Bergues and C. Jurgensen-Mercier) the Court (Sixth Chamber), composed of A. Borg Barthet (Rapporteur), President of the Chamber, A. La Pergola and A. Ó Caoimh, Judges; Advocate General: J. Kokott, Registrar: R Grass, gave a judgment on 16 June 2005, in which it:

1. *Declares that, by failing to provide to the Commission of the European Communities, within six months of the request made on 18 December 2000, the information to be collected by 31 December 1999 by the competent authorities or appropriate bodies as part of the monitoring of discharges and residual sludge, introduced by Article 15 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, with respect to the agglomerations concerned by the 31 December 1998 time-limit, the French Republic has failed to fulfil its obligations under Article 15(4) of that directive;*

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

[1] OJ C 156 of 12.06.2004

JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 June 2005

in Case C-349/04: Commission of the European Communities v Grand Duchy of Luxembourg ([1])

(Failure of a Member State to fulfil its obligations — Directive 2002/77/EC — Markets for electronic communications networks and services — Failure to transpose within the prescribed period)

(2005/C 193/12)

(Language of the case: French)

In Case C-349/04 **Commission of the European Communities** (Agents: E. Gippini Fournier and K. Mojzesowicz) v **Grand Duchy of Luxembourg** (Agent: S. Schreiner) — action under Article 226 EC for failure to fulfil obligations, brought on 13 August 2004 — the Court (Sixth Chamber), composed of A. Borg Barthet, President of the Chamber, S. von Bahr and J. Malenovský (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 16 June 2005, in which it:

1. *Declares that, by failing to supply the Commission of the European Communities with all the information necessary to allow it to confirm that the provisions of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services have been complied with, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 9 of that directive;*

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

([1]) OJ C 239 of 25.9.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 9 June 2005

in Case C-510/04: Commission of the European Communities v Kingdom of Belgium ([1])

(Failure of a Member State to fulfil its obligations — Directive 2002/6/EC — Formalities for ships — Failure to transpose within the prescribed period)

(2005/C 193/13)

(Language of the case: French)

In Case C-510/04 **Commission of the European Communities** (Agents: K. Simonsson and W. Wils) v **Kingdom of Belgium** (Agent: M. Wimmer) — action under Article 226 EC for failure to fulfil obligations, brought on 13 December 2004 — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, G. Arestis and J. Klučka (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 9 June 2005, in which it:

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 2002/6/EC of the European Parliament and of the Council of 18 February 2002 on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 31 of 5.2.2005.

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division (Patents Court) by order of that court of 20 December 2004 in Yissum Research and Development Company of the Hebrew University of Jerusalem v Comptroller-General of Patents

(Case C-202/05)

(2005/C 193/14)

(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 (Patents Court) of 20 December 2004, received at the Court Registry on 9 May 2005, for a preliminary ruling in the proceedings between Yissum Research and Development Company of the Hebrew University of Jerusalem and Comptroller-General of Patents on the following questions:

The preliminary ruling of the Court of Justice of the European Communities is requested on the following questions which arise on the interpretation of Article 1(b) of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products [1] (hereafter 'the Regulation'):

1. In a case in which the basic patent protects a second medical application of a therapeutic agent what is meant by 'product' in Article 1 (b) of the Regulation and in particular does the application of the therapeutic agent play any part in the definition of 'product' for the purpose of the Regulation?

2. Does the term 'combination of active ingredients of a medicinal product' within the meaning of Article l(b) of the Regulation mean that each component of the combination must have therapeutic activity?

3. Is there a 'combination of active ingredients of a medicinal product' where a combination of substances comprising two components of which one component is a substance with a therapeutic effect for a specific indication and the other component renders possible a form of the medicinal product that brings about efficacy of the medicinal product for that indication?

[1] OJ L 182, 02.07.1992, p. 1

Reference for a preliminary ruling from the Bundessozialgericht by order of that court of 10 February 2005 in Gertraud Hartmann v Freistaat Bayern

(Case C-212/05)

(2005/C 193/15)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bundessozialgericht of 10 February 2005, received at the Court Registry on 17 May 2005, for a preliminary ruling in the proceedings between Gertraud Hartmann and Freistaat Bayern on the following questions:

(a) Is a German national who, while continuing his employment relationship as a post office official in Germany, moved his permanent residence from Germany to Austria in 1990 and has since then carried on his occupation as a frontier worker to be regarded as a migrant worker within the meaning of Regulation (EEC) No 1612/68 [1] of the Council on freedom of movement for workers within the Community ('Regulation No 1612/68') for periods between January 1994 and September 1998?

(b) If so:

Does it constitute indirect discrimination within the meaning of Article 7(2) of Regulation No 1612/68 if the non-working spouse of the person mentioned in (a), who lives in Austria and is an Austrian national, was excluded from receiving German child-raising allowance in the period in question because she did not have either her permanent residence or her habitual place of stay in Germany?

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

Reference for a preliminary ruling from the Bundessozialgericht by order of that court of 10 February 2005 in Wendy Geven v Land Nordrhein-Westfalen

(Case C-213/05)

(2005/C 193/16)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Bundessozialgericht of 10 February 2005, received at the Court Registry on 17 May 2005, for a preliminary ruling in the proceedings between Wendy Geven and Land Nordrhein-Westfalen on the following question:

Does it follow from Community law (in particular from Article 7(2) of Regulation (EEC) No 1612/68 [1]) of the Council on freedom of movement for workers within the Community) that the Federal Republic of Germany is precluded from excluding a national of that State who lives in another Member State and is in minor employment (between 3 and 14 hours a week) in Germany from receiving German child-raising allowance because she does not have a residence or habitual place of stay in Germany?

[1] OJ, English Special Edition1968 (II), p. 475.

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

(Case C-216/05)

(2005/C 193/17)

(Language of the case: English)

An action against Ireland was brought before the Court of Justice of the European Communities on 17 May 2005 by the Commission of the European Communities, represented by Mr Xavier Lewis, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that by making the full and effective participation of the public in certain environmental impact assessments subject to prior payment of participation fees, Ireland has failed to comply with its obligations under Articles 6 and 8 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1] as amended by Council Directive 97/11/EEC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment [2],

— order Ireland to pay the costs.

Pleas in law and main arguments

Irish planning law provides that participation fees can be charged to members of the public by planning authorities and by a planning appeals board for submitting observations or expressing opinions in planning procedures and for submitting observations in planning appeals. The Commission submits that the levying of such participation fees constitutes a breach of Directive 85/337/EEC, as amended by Directive 97/11/EEC, on the following grounds:

— no express provision of the directive permits the levying of such fees;

— such fees are contrary to the scheme and purpose of the directive;

— the wording of Article 6(2) and (3) of the directive does not allow for the latitude in interpretation that Ireland seeks to give it, and;

— Ireland impedes the rights given to the public under Article 6(2) of the Directive.

[1] OJ L 175, 05.07.1985, p. 40
[2] OJ L 73, 14.03.1997, p. 5

Reference for a preliminary ruling from the Tribunal Supremo by order of that court of 3 March 2005 in Confederación Española de Empresarios de Estaciones de Servicio v Compañía Españolas de Petróleos SA

(Case C-217/05)

(2005/C 193/18)

(Language of the case: Spanish)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Supremo (Spain) of 3 March 2005, received at the Court Registry on 17 May 2005, for a preliminary ruling in the proceedings between Confederación Española de Empresarios de Estaciones de Servicio and Compañía Españolas de Petróleos SA on the following questions:

Must Articles 10 to 13 of Commission Regulation (EEC) No 1984/83 ([1]) of 22 June 1983 on the application of Article 85(3) of the Treaty [now Article 81 EC] to categories of exclusive purchasing agreements be construed as meaning that they include within their scope contracts for the exclusive distribution of motor-vehicle and other fuels which are nominally classified as commission or agency contracts and which contain the following clauses?

(A) The service-station proprietor undertakes to sell the supplier's motor-vehicle and other fuels in accordance with the retail prices, conditions, and sales and business methods stipulated by the supplier.

(B) The service-station proprietor assumes the risk associated with the products as soon as he receives them from the supplier in the storage tanks at the service station.

(C) Once he has received the products, the proprietor assumes the obligation to keep the products in the conditions necessary to ensure that they undergo no loss or deterioration and is liable, where applicable, both to the supplier and to third parties for any loss, contamination or adulteration which may affect the products and for any damage arising as a result thereof.

(D) The service-station proprietor is required to pay the supplier the cost of the motor-vehicle and other fuels nine (9) days after the date of their delivery to the service station.

([1]) OJ L 173 of 30.6.1983 ; EE 08/02, p. 114.

Reference for a preliminary ruling from the Tribunal Administratif de Lyon (France) by judgment of that court of 7 April 2005 in the case Jean Auroux and Others v Commune de Roanne — Intervener: Société d'équipement du département de la Loire

(Case C-220/05)

(2005/C 193/19)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal Administratif de Lyon of 7 April 2005, received at the Court Registry on 19 May 2005, for a preliminary ruling in the proceedings between Jean Auroux and Others and Commune de Roanne — Intervener: Société d'équipement du département de la Loire, on the following questions:

1. Does a contract under which one contracting authority engages a second contracting authority to carry out a development project for a purpose of general interest, pursuant to which contract that second contracting authority is to deliver works to the first which are intended to meet its needs, and at the end of which such of the other land and works as have not been disposed of to third parties vest automatically in the first contracting authority, constitute a public works contract within the meaning of Article 1 of Directive 93/37/EEC of 14 June 1993, ([1]) as amended?

2. If the answer to question 1 is in the affirmative, is it necessary, in assessing the threshold of 500 000 000 special drawing rights imposed by Article 6 of the same directive, to take into account only the price paid in return for the delivery of the works to the contracting authority, or the sum of that price and the contributions paid, even if the latter are only partly allocated to the execution of those works, or the total value of the works, with assets not disposed of at the end of the contract vesting automatically in the first contracting authority and the latter then pursuing the execution of ongoing contracts and assuming the debts incurred by the second contracting authority?

3. If the answer to both questions 1 and 2 is in the affirmative, can the first contracting authority, when entering into such a contract, dispense with the procedures for awarding public works contracts laid down in that directive, on the grounds that that contract can be awarded only to certain legal persons and that those same procedures will be applied by the second contracting authority when awarding its public works contracts?

([1]) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

Reference for a preliminary ruling from the the Supreme Court, Ireland, by order of that court of 11 May 2005 in Sam McCauley Chemists (Blackpool) Ltd and Mark Sadja v Pharmaceutical Society of Ireland, Minister for Health and Children, Ireland and the Attorney General

(Case C-221/05)

(2005/C 193/20)

(Language of the case: English)

Reference has been made to the Court of Justice of the European Communities by order of the the Supreme Court, Ireland, of 11 May 2005, received at the Court Registry on 19 May 2005, for a preliminary ruling in the proceedings between Sam McCauley Chemists (Blackpool) Ltd and Mark Sadja and Pharmaceutical Society of Ireland, Minister for Health and Children, Ireland and the Attorney General on the following question:

Does Article 2 of Council Directive 85/433/EEC of 16 September 1985 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy ([1])

(a) impose a single obligation limited to requiring a Member State to recognise the qualifications referred to in Article 2.1 of the Directive except with respect to the establishment of new pharmacies as defined in Article 2.2, or,

(b) does it impose on a Member State a distinct obligation to recognise the qualifications referred to in Article 2.1 but, in addition, confer on Member States a discretion whether to extend such recognition to persons holding such qualifications with respect to the establishment of new pharmacies open to the public, as defined in Article 2.2?

([1]) OJ L 254, 24.09.1985, p. 37

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven by order of that court of 17 May 2005 in 1. J. van der Weerd, 2. Maatschap van der Bijl, and 3. J. W. Schoonhoven v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-222/05)

(2005/C 193/21)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands) of 17 May 2005, received at the Court Registry on 20 May 2005, for a preliminary ruling in the proceedings between 1. J. van der Weerd, 2. Maatschap van der Bijl, and 3. J. W. Schoonhoven and Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality) on the following questions:

1. Does Community law require the courts of their own motion to conduct an examination, that is to say an examination of grounds which are outside the terms of the dispute but are based on Directive 85/511/EEC? ([1])

2. If the answer to Question 1 is affirmative, does the obligation on Member States under the first indent of Article 11(1) of Directive 85/511/EEC, read in conjunction with the second indent of Article 13(1) thereof, to ensure that laboratory testing to detect the presence of FMD is carried out by a laboratory listed in Annex B to Directive 85/511/EEC have direct effect?

3. (a) Must Article 11(1) of Directive 85/511/EEC be interpreted as meaning that legal consequences must be attached to the fact that the presence of FMD is found by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

   (b) If the answer to Question 3(a) is in the affirmative:

   Is the purpose of Article 11(1) of Directive 85/511/EEC to protect the interests of individuals, such as the appellants in the main proceedings? If not, can individuals, such as the appellants in the main proceedings, plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?

(c) If the answer to Question 3(b) means that individuals can rely on Article 11(1) of Directive 85/511/EEC:

What legal consequences must be attached to a finding of the presence of FMD by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

4. Must Annex B to Directive 85/511/EEC be interpreted, having regard to Articles 11 and 13 thereof, as meaning that the mention in Annex B to Directive 85/511/EEC of 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.?

5. If it follows from the above answers that the presence of FMD can be found by a laboratory which is not listed in Annex B to Directive 85/511/EEC or that Annex B to Directive 85/511/EEC must be interpreted as meaning that the mention of the 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.:

Must Directive 85/511/EEC be interpreted as providing that the national administrative authority authorised to adopt decisions is bound by the outcome of an examination by a laboratory which is listed in Annex B to Directive 85/551/EEC or — if the answer to Question 2a means that the administrative authority may base its FMD control measures also on results obtained by a laboratory which is not listed in Annex B to Directive 85/511/EEC — by the results of the latter laboratory, or does the determination of final authority in that regard fall within the procedural autonomy of the Member State and must the court before which the main proceedings are pending examine whether the rules in that respect apply irrespective of whether the laboratory examination is carried out by virtue of a Community or national legal obligation and of whether or not the application of the provisions of national procedural law renders the implementation of the Community rules extremely difficult or practically impossible?

6. If the answer to Question 5 means that the issue of whether national authorities are bound by the laboratory result is governed by Directive 85/511/EEC:

Are the national authorities bound unconditionally by the result of an FMD examination carried out by a laboratory? If not, what margin of discretion does Directive 85/511/EEC leave these national authorities?

(1) Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11).

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven by order of that court of 17 May 2005 in H.de Rooy sr, and H.de Rooy, jr v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-223/05)

(2005/C 193/22)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands) of 17 May 2005, received at the Court Registry on 20 May 2005, for a preliminary ruling in the proceedings between H.de Rooy sr, and H.de Rooy, jr and Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality) on the following questions:

1. Does Community law require the courts of their own motion to conduct an examination, that is to say an examination of grounds which are outside the terms of the dispute but are based on Directive 85/511/EEC? (1)

2. If the answer to Question 1 is affirmative, does the obligation on Member States under the first indent of Article 11(1) of Directive 85/511/EEC, read in conjunction with the second indent of Article 13(1) thereof, to ensure that laboratory testing to detect the presence of FMD is carried out by a laboratory listed in Annex B to Directive 85/511/EEC have direct effect?

3. (a) Must Article 11(1) of Directive 85/511/EEC be interpreted as meaning that legal consequences must be attached to the fact that the presence of FMD is found by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

(b) If the answer to Question 3(a) is in the affirmative:

Is the purpose of Article 11(1) of Directive 85/511/EEC to protect the interests of individuals, such as the appellants in the main proceedings? If not, can individuals, such as the appellants in the main proceedings, plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?

(c) If the answer to Question 3(b) means that individuals can rely on Article 11(1) of Directive 85/511/EEC:

What legal consequences must be attached to a finding of the presence of FMD by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

4. Must Annex B to Directive 85/511/EEC be interpreted, having regard to Articles 11 and 13 thereof, as meaning that the mention in Annex B to Directive 85/511/EEC of 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.?

5. If it follows from the above answers that the presence of FMD can be found by a laboratory which is not listed in Annex B to Directive 85/511/EEC or that Annex B to Directive 85/511/EEC must be interpreted as meaning that the mention of the 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.:

Must Directive 85/511/EEC be interpreted as providing that the national administrative authority authorised to adopt decisions is bound by the outcome of an examination by a laboratory which is listed in Annex B to Directive 85/551/EEC or — if the answer to Question 2a means that the administrative authority may base its FMD control measures also on results obtained by a laboratory which is not listed in Annex B to Directive 85/511/EEC — by the results of the latter laboratory, or does the determination of final authority in that regard fall within the procedural autonomy of the Member State and must the court before which the main proceedings are pending examine whether the rules in that respect apply irrespective of whether the laboratory examination is carried out by virtue of a Community or national legal obligation and of whether or not the application of the provisions of national procedural law renders the implementation of the Community rules extremely difficult or practically impossible?

6. If the answer to Question 4 means that the issue of whether national authorities are bound by the laboratory result is governed by Directive 85/511/EEC:

Are the national authorities bound unconditionally by the result of an FMD examination carried out by a laboratory? If not, what margin of discretion does Directive 85/511/EEC leave these national authorities?

([1]) Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11).

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven by order of that court of 17 May 2005 in 1. Maatschap H. and J. van 't Oever, 2. Maatschap F. van 't Oever and W. Fien, 3. B. van 't Oever, 4. Maatschap A. and J. Fien, 5. Maatschap K. Koers and J. Stellingwerf, 6. H. Koers, 7. Maatschap K. and G. Polinder, 8. G. van Wijhe, v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-224/05)

(2005/C 193/23)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands) of 17 May 2005, received at the Court Registry on 20 May 2005, for a preliminary ruling in the proceedings between 1. Maatschap H. and J. van 't Oever, 2. Maatschap F. van 't Oever and W. Fien, 3. B. van 't Oever, 4. Maatschap A. and J. Fien, 5. Maatschap K. Koers and J. Stellingwerf, 6. H. Koers, 7. Maatschap K. and G. Polinder, 8. G. van Wijhe and Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality) on the following questions:

1. Does Community law require the courts of their own motion to conduct an examination, that is to say an examination of grounds which are outside the terms of the dispute but are based on Directive 85/511/EEC? ([1])

2. If the answer to Question 1 is affirmative, does the obligation on Member States under the first indent of Article 11(1) of Directive 85/511/EEC, read in conjunction with the second indent of Article 13(1) thereof, to ensure that laboratory testing to detect the presence of FMD is carried out by a laboratory listed in Annex B to Directive 85/511/EEC have direct effect?

3. (a) Must Article 11(1) of Directive 85/511/EEC be interpreted as meaning that legal consequences must be attached to the fact that the presence of FMD is found by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

   (b) If the answer to Question 3(a) is in the affirmative:

   Is the purpose of Article 11(1) of Directive 85/511/EEC to protect the interests of individuals, such as the appellants in the main proceedings? If not, can individuals, such as the appellants in the main proceedings, plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?

   (c) If the answer to Question 3(b) means that individuals can rely on Article 11(1) of Directive 85/511/EEC:

   What legal consequences must be attached to a finding of the presence of FMD by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

4. Must Annex B to Directive 85/511/EEC be interpreted, having regard to Articles 11 and 13 thereof, as meaning that the mention in Annex B to Directive 85/511/EEC of 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.?

5. If it follows from the above answers that the presence of FMD can be found by a laboratory which is not listed in Annex B to Directive 85/511/EEC or that Annex B to Directive 85/511/EEC must be interpreted as meaning that the mention of the 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.:

   Must Directive 85/511/EEC be interpreted as providing that the national administrative authority authorised to adopt decisions is bound by the outcome of an examination by a laboratory which is listed in Annex B to Directive 85/551/EEC or — if the answer to Question 2a means that the administrative authority may base its FMD control measures also on results obtained by a laboratory which is not listed in Annex B to Directive 85/511/EEC — by the results of the latter laboratory, or does the determination of final authority in that regard fall within the procedural autonomy of the Member State and must the court before which the main proceedings are pending examine whether the rules in that respect apply irrespective of whether the laboratory examination is carried out by virtue of a Community or national legal obligation and of whether or not the application of the provisions of national procedural law renders the implementation of the Community rules extremely difficult or practically impossible?

6. If the answer to Question 4 means that the issue of whether national authorities are bound by the laboratory result is governed by Directive 85/511/EEC:

   Are the national authorities bound unconditionally by the result of an FMD examination carried out by a laboratory? If not, what margin of discretion does Directive 85/511/EEC leave these national authorities?

([1]) Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 1).

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven by order of that court of 17 May 2005 in B.J. van Middendorp v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-225/05)

(2005/C 193/24)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands) of 17 May 2005, received at the Court Registry on 20 May 2005, for a preliminary ruling in the proceedings between B.J. van Middendorp and Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality) on the following questions:

1. Does Community law require the courts of their own motion to conduct an examination, that is to say an examination of grounds which are outside the terms of the dispute but are based on Directive 85/511/EEC? ([1])

2. If the answer to Question 1 is affirmative, does the obligation on Member States under the first indent of Article 11(1) of Directive 85/511/EEC, read in conjunction with the second indent of Article 13(1) thereof, to ensure that laboratory testing to detect the presence of FMD is carried out by a laboratory listed in Annex B to Directive 85/511/EEC have direct effect?

3. (a) Must Article 11(1) of Directive 85/511/EEC be interpreted as meaning that legal consequences must be attached to the fact that the presence of FMD is found by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

   (b) If the answer to Question 3(a) is in the affirmative:

   Is the purpose of Article 11(1) of Directive 85/511/EEC to protect the interests of individuals, such as the appellants in the main proceedings? If not, can individuals, such as the appellants in the main proceedings, plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?

   (c) If the answer to Question 3(b) means that individuals can rely on Article 11(1) of Directive 85/511/EEC:

   What legal consequences must be attached to a finding of the presence of FMD by a laboratory which is not listed in Annex B to Directive 85/511/EEC?

4. Must Annex B to Directive 85/511/EEC be interpreted, having regard to Articles 11 and 13 thereof, as meaning that the mention in Annex B to Directive 85/511/EEC of 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.?

5. If it follows from the above answers that the presence of FMD can be found by a laboratory which is not listed in Annex B to Directive 85/511/EEC or that Annex B to Directive 85/511/EEC must be interpreted as meaning that the mention of the 'Centraal Diergeneeskundig Instituut, Lelystad' can or must refer also to ID-Lelystad B.V.:

   Must Directive 85/511/EEC be interpreted as providing that the national administrative authority authorised to adopt decisions is bound by the outcome of an examination by a laboratory which is listed in Annex B to Directive 85/551/EEC or — if the answer to Question 2a means that the administrative authority may base its FMD control measures also on results obtained by a laboratory which is not listed in Annex B to Directive 85/511/EEC — by the results of the latter laboratory, or does the determination of final authority in that regard fall within the procedural autonomy of the Member State and must the court before which the main proceedings are pending examine whether the rules in that respect apply irrespective of whether the laboratory examination is carried out by virtue of a Community or national legal obligation and of whether or not the application of the provisions of national procedural law renders the implementation of the Community rules extremely difficult or practically impossible?

6. If the answer to Question 5 means that the issue of whether national authorities are bound by the laboratory result is governed by Directive 85/511/EEC:

   Are the national authorities bound unconditionally by the result of an FMD examination carried out by a laboratory? If not, what margin of discretion does Directive 85/511/EEC leave these national authorities?

([1]) Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11).

Reference for a preliminary ruling from the Commissione Tributaria di Primo Grado di Trento, by order of that court of 21 March 2005 in Stradasfalti Srl v Agenzia Entrate Ufficio Trento

(Case C-228/05)

(2005/C 193/25)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria di Primo Grado di Trento of 21 March 2005 received at the Court Registry on 24 May 2005, for a preliminary ruling in the proceedings between Stradasfalti Srl and Agenzia Entrate Ufficio Trento on the following questions:

1. Is the first sentence of Article 17(7) of Sixth Council Directive 77/388/EEC of 17 May 1977 [1], in relation to paragraph 2 of that article, on the harmonisation of the laws of the Member States on turnover taxes, to be interpreted as:

   (a) precluding from being treated as 'consultation of the VAT Committee', for the purposes of Article 29 of that directive, the mere notification by a Member State of the adoption of a rule of national law, like the present Article 19a(1)(c) and (d) of Presidential Decree No 633/1972, as subsequently extended, which restricts the right of VAT deduction in respect of the use and maintenance of goods under Article 17(2), on the basis that the VAT Committee has merely taken notice of the adoption of that rule;

   (b) also precluding from being treated as a measure falling within its scope any restriction whatsoever of the right to deduct VAT connected to the purchase, use and maintenance of the goods referred to in (a) introduced before the consultation of the VAT Committee and maintained in force by means of various legislative extensions adopted in unbroken succession for more than 25 years;

   (c) if the answer to 1(b) is in the affirmative, the Court is asked to provide guidelines for determining the maximum period, if any, for such extensions on grounds of cyclical economic reasons referred to in Article 17(7) of the Sixth Directive, or else to state whether the failure to observe the temporary nature of the derogations (repeated over time) confers on the tax payer the right to deduct.

2. If the requirements and conditions for the procedure under Article 17(7) referred to above have not been complied with, the Court of Justice is asked to state whether Article 17(2) of that directive is to be interpreted as precluding a rule of national law or an administrative practice adopted by a Member State after the entry into force of the Sixth Directive (1 January 1979 for Italy) which, objectively and without limitation in time, restricts VAT deduction in respect of the purchase, use and maintenance of certain motor vehicles.

[1] OJ L 145 of 13/06/1997 p. 1.

Reference for a preliminary ruling from the Korkein hallinto-oikeus by order of that court of 23 May 2005 in the proceedings brought by Oy Esab

(Case C-231/05)

(2005/C 193/26)

(Language of the case: Finnish)

Reference has been made to the Court of Justice of the European Communities by order of the Korkein hallinto-oikeus of 23 May 2005, received at the Court Registry on 25 May 2005, for a preliminary ruling in the proceedings brought by Oy Esab on the following question:

Are Articles 43 and 56 of the Treaty establishing the European Communities, having regard to Article 58 of the Treaty and Council Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, [1] to be interpreted as precluding a system such as that of the Finnish group subsidy legislation in which a condition for the deductibility in taxation of a group subsidy is that both the donor and the donee of the group subsidy are companies resident in Finland?

[1] 23 July 1990, OJ L 225 of 20.8.1990, p. 6.

Action brought on 30 May 2005 by Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-236/05)

(2005/C 193/27)

(Language of the case: English)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 30 May 2005 by the Commission of the European Communities, represented by Karen Banks, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that the United Kingdom has breached its obligations under Article 19 (i) first and third indents, of Council Regulation (EEC) 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ([1]), by communicating with considerable delay the data required by those provisions,

2. order the United Kingdom to pay the costs.

Pleas in law and main arguments

The provisions of Article 19(i) of Regulation 2847/93 require the Member States to transmit certain data to the Commission, by computer transmission, within a specific deadline. It is essential that the Commission has this data available in order to manage and develop the common fisheries policy, in particular with regard to conservation, management and exploitation of living aquatic resources.

The United Kingdom communicated the data required by Article 19(i) with considerable delay for the years 1999, 2000, 2001, 2002 and 2003. Deadlines for 2004 have not been met and no data has yet been received for 2005. The Commission therefore submits that the United Kingdom is in breach of its obligations under the aforementioned provision of Regulation 2847/93.

([1]) OJ L 261, 20.10.1993, p.1

Action brought on 30 May 2005 by the Commission of the European Communities against the Hellenic Republic

(Case C-237/05)

(2005/C 193/28)

(Language of the case: Greek)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 30 May 2005 by the Commission of the European Communities, represented by M. Patakia and X. Lewis, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that, owing to the practice followed by the competent authorities in regard to the works involved in the completion and collation of claim declarations by cereal producers and others in the context of the Integrated Administration and Control System (IACS) in respect of 2001, the Hellenic Republic has failed to fulfil its obligations under Directive 92/50/EEC, ([1]) and in particular Articles 3(2), 7, 11(1), and 15(2) thereof, as well as the general principle of transparency.

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission received a complaint in relation to the direct award to PASEGES ([2]) of the programme contract, and its implementing agreements, in relation to the provision of multiple services in connection with the application of the Integrated Administration and Control System (IACS) in respect of 2001.

In light of the Court's case-law, the Commission considers that the Greek authorities ought to have applied the rules of procedural openness laid down by Directive 92/50 in Titles III, IV, V, and VI.

The Commission further considers that the Hellenic Republic, on the one hand, has not substantiated the existence of grounds for derogation under Article 11(3)(b) of Directive 92/50 and, on the other, has wrongly categorised the services in question as coming under Annex 1B to the directive.

In the alternative, the Commission maintains that the Member States are not relieved of the obligation to maintain a certain degree of openness even in regard to services coming under Annex 1B to the directive.

Finally, the Commission considers that, apart from the continuing variance in regard to the interpretation of the relevant provisions of the directive at issue as between the Greek authorities and the Commission, application of the directive in practice has not been secured, contrary to the assertions of the Greek authorities.

Accordingly, the Commission considers that the Hellenic Republic infringed its obligations under Articles 3(2), 7, 11(1) and 15(2) of Directive 92/50/EEC, as well as the general principle of transparency.

([1]) OJ 1992 L 209, p. 1.

([2]) Panellinia Sinomospondia Enoseon Georgikon Sinetairismon (Pan-Hellenic association of unions of agricultural cooperatives).

Reference for a preliminary ruling from the Cour d'appel du Grand-Duché de Luxembourg by judgment of that court of 1 June 2005 in Administration de l'Enregistrement et des Domaines v EURODENTAL SARL

(Case C-240/05)

(2005/C 193/29)

(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 du Grand-Duché de Luxembourg of 1 June 2005, received at the Court Registry on 3 June 2005, for a preliminary ruling in the proceedings between Administration de l'Enregistrement et des Domaines and EURODENTAL SARL on the following questions:

1. Does a delivery of goods which, when made within a Member State, is exempted by reason of Article 13A(1)(e) of Sixth Council Directive 77/388/EEC ([1]) 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, and does not give rise to the right to deduct input tax pursuant to Article 17 of the directive, fall within the ambit of Article 15(1) and (2) of the directive as worded prior to 1 January 1993 or Article 28cA(a), applicable as of 1 January 1993, and thus within the ambit of Article 17(3)(b) of the directive giving rise to the right to deduct input tax when the delivery is made by an operator established in a Member State of the Community to an operator established in another Member State and when the conditions relating to the application of Article 15(1) and (2) of the directive as worded prior to 1 January 1993 and of Article 28cA(a), applicable as of 1 January 1993, are met?

2. Does a supply of services which, when made within a Member State, is exempted by reason of Article 13A(1)(e) 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, and does not give rise to the right to deduct input tax pursuant to Article 17 of the directive fall within the ambit of Article 15(3) as worded prior to 1 January 1993 (no exemptions were laid down for 1993) and thus within the ambit of Article 17(3)(b) of the directive giving rise to the right to deduct input tax when the delivery is made by an operator established in a Member State of the Community to an operator established in another Member State and when the conditions relating to the application of Article 15(3) as worded prior to 1 January 1993 are met?

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

Reference for a preliminary ruling from the Conseil d'Etat (France) by decision of that court of 9 May 2005 in Nicolae Bot v Préfecture du Val-de-Marne

(Case C-241/05)

(2005/C 193/30)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by decision of the Conseil d'Etat (Council of State) (France), of 9 May 2005, received at the Court Registry on 2 June 2005, for a preliminary ruling in the proceedings between Nicolae Bot and Préfecture du Val-de-Marne.

The Conseil d'Etat asks the Court of Justice to give a ruling on the question of what is meant by 'date of first entry' in terms of Article 20(1) of the Convention implementing the Schengen Agreement and, in particular, whether any entry taking place at the end of a period of six months during which there has been no other entry into the territory, as well as, in the case of an alien who carries out multiple entries for stays of short duration, any entry immediately following the expiry of a period of six months from the date of the last known 'first entry', should be regarded as a 'first entry' into the territory of the States which are party to that convention.

Appeal brought on 6 June 2005 by Agraz, SA and Others against the judgment delivered on 17 March 2005 by the Third Chamber of the Court of First Instance of the European Communities in Case T-285/03 between Agraz, SA and Others and the Commission of the European Communities

(Case C-243/05 P)

(2005/C 193/31)

(Language of the case: French)

An appeal against the judgment delivered on 17 March 2005 by the Third Chamber of the Court of First Instance of the European Communities in Case T-285/03 between Agraz, SA and Others and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 6 June 2005 by Agraz, SA and Others, represented by José Luís da Cruz Vilaça and Dorothée Choussy, lawyers.

The appellants claim that the Court should:

1. set aside in part the judgment of the Court of First Instance of the European Communities of 17 March 2005 in so far as it held that the damage was not specific and dismissed the application; and, in a new decision,

2. principally, find that the conditions for the establishment of the non-contractual liability of the Commission are satisfied in this case; order the defendant to pay the balance of the production aid to each of the applicant companies (as detailed in Annex A.27) together with interest at the rates to be fixed by the Court of First Instance with effect from 12 July 2000 (or, in the alternative, from 13 July 2000 or, in the further alternative, from 16 July 2000) up to the date on which payment is actually made; and order the Commission to pay all of the costs in both sets of proceedings including those incurred by the appellants;

3. in the alternative, refer the case back to the Court of First Instance for an adjudication on the amounts of the compensation to be paid to the appellants, after they have been heard again, and order the Commission to pay the costs (including those incurred by the appellants) in the proceedings on appeal and in the proceedings at first instance before the Court of First Instance.

Pleas in law and main arguments

The appellant companies rely on the following pleas in support of their appeal:

First plea:: Error of law, in that the Court of First Instance considered that the damage which the appellants sustained was not specific and that, accordingly, it could not constitute a basis for their right to compensation.

This plea is in two parts:

In the first part, the appellants maintain that the Court of First Instance failed to have regard to the case-law of the Community Courts, and also the principles established by the national judicial orders of the Member States in relation to non-contractual civil liability, by misinterpreting the notion of 'specific damage' and by confusing the determination of the nature of the damage with the calculation of the amount of the damage.

In the second part, the appellants submit arguments designed to demonstrate, in relation to the recognition of their right to compensation, that the Court of First Instance did not draw the necessary consequences from its findings in relation to the unlawfulness of the Commission's conduct in breaching Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products, ([1]) or in relation to the principles of a duty of care and sound administration.

Second plea:: Breach of the *inter partes* principle and of the appellants' right to be heard;

Third plea:: Distortion of the forms of order sought by the appellants;

Fourth plea:: Disregard by the Court of First Instance of its unlimited jurisdiction and of its duty to adjudicate; denial of justice, in that the Court of First Instance omitted to draw the necessary consequences from its findings in relation to the fixing of the amount of the damage.

([1]) OJ 1996 L 297, p. 29.

Reference for a preliminary ruling from the Oberster Patent- und Markensenat by order of that adjudication body of 9 February 2005 in Armin Häupl v Lidl Stiftung & Co KG

(Case C-246/05)

(2005/C 193/32)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Oberster Patent- und Markensenat of 9 February 2005, received at the Court Registry on 10 June 2005, for a preliminary ruling in the proceedings between Armin Häupl and Lidl Stiftung & Co KG on the following questions:

1. Is Article 10(1) of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ([1]) to be interpreted as meaning that the 'date of the completion of the registration procedure' means the start of the period of protection?

2. Is Article 12(1) of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks to be interpreted as meaning that there are proper reasons for non-use of a mark if the implementation of the corporate strategy being pursued by the trade mark proprietor is delayed for reasons outside the control of the undertaking, or is the trade mark proprietor obliged to change his corporate strategy in order to be able to use the mark in good time?

([1]) OJ L 40, 11.02.1989, p. 1.

Action brought on 15 June 2005 by the Commission of the European Communities against the Republic of Finland

(Case C-249/05)

(2005/C 193/33)

(Language of the case: Finnish)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 15 June 2005 by the Commission of the European Communities, represented by D. Triantafyllou and I. Koskinen, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by imposing an obligation to appoint a tax representative on taxable persons not established in the country who carry out taxable transactions in Finland and are established in another Member State or in the territory of a third country with which a convention has been concluded concerning mutual assistance, the scope of which corresponds to the scope laid down in Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ([1]) and in Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92, ([2]) the Republic of Finland has failed to fulfil its obligations under Articles 21 and 22 of the Sixth Council Directive 77/388/EEC of 17 May 1977 ([3]) and Articles 28 EC and 49 EC;

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

Pleas in law and main arguments

Under Article 21(2) of the Sixth VAT Directive 77/388/EEC the Member States may not impose an obligation to appoint a tax representative on an economic operator not established in the country who is established in another Member State. In such cases the appointment of a tax representative is always voluntary for an economic operator not established in the country.

The Finnish system is as follows in this respect: (a) if the economic operator is a taxable person not established in Finland, the person liable to pay value added tax is the recipient of the supply ('reversed tax liability'); (b) where an economic operator not established in Finland is given the possibility to register as a taxable person, in that case he is obliged to appoint a tax representative in Finland.

As regards the appointment of a tax representative, the Finnish system is not in accordance with Community law. The mandatory obligation to appoint a tax representative is contrary to Article 21(2) of the Sixth VAT Directive.

The Finnish system can give economic operators not established in the country freedom to choose to be registered as taxable persons, but Finland cannot make such a choice conditional on fulfilling a mandatory obligation, of appointing a tax representative, which is contrary to the Sixth VAT Directive and in direct conflict with the aim of Directive 2000/65/EC ([4]) and in conflict with the principles of the free movement of goods and the freedom to provide services laid down in the EC Treaty.

([1]) OJ L 73 of 19.3.1976, p. 18.

([2]) OJ L 264 of 15.10.2003, p. 1.

([3]) On the harmonisation of the laws of the Member States concerning turnover taxes – Common system of value added tax: uniform basis of assessment, OJ L 145 of 13.6.1977, p. 1.

([4]) Council Directive of 17 October 2000 amending Directive 77/388/EEC as regards the determination of the person liable for payment of value added tax, OJ L 269 of 21.10.2000, p. 44.

Appeal brought on 20 June 2005 by Sniace SA against the judgment delivered on 14 April 2005 by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities in Case T-88/01 between Sniace SA and the Commission of the European Communities

(Case C-260/05 P)

(2005/C 193/34)

(Language of the case: Spanish)

An appeal against the judgment delivered on 14 April 2005 by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities in Case T-88/01 between Sniace SA and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 20 June 2005 by Sniace SA, represented by D.J. Baró Fuentes, abogado.

The appellant claims that the Court of Justice should:

(1) annul the judgment of 14 April 2005 of the Court of First Instance in Case T-88/01;

(2) allow the claims made at first instance or, if appropriate, refer the case back to the Court of First Instance for the latter to give a decision on the merits of the case;

(3) allow the appellant's request for measures of organisation of procedure made on 16 October 2001, and the request for the parties to appear in person, for witnesses to give evidence and for an expert's report, made by the appellant on 20 April 2001;

(4) order the respondent (the defendant at first instance) to pay the costs.

Pleas in law and main arguments

In support of its claims the appellant pleads:

1. An error of law in that the appellant's application was held to be inadmissible because it had not adduced pertinent reasons to show that the contested decision might adversely affect its legitimate interests by seriously jeopardising its position on the market. Here, the Court of First Instance fell into various errors of assessment of the information in the file, in particular in relation to direct competition between the cellulose fibres (lyocell, sub-standards of lyocell and proviscose) manufactured and marketed by the undertaking which is the recipient of the State aid and the cellulose fibres (viscose) manufactured and marketed by the appellant. Both fibres compete for certain uses and applications on the same market. Likewise, the Court of First Instance failed to make a proper assessment of various matters in the file that constituted legal evidence of the existence of a set of specific circumstances identifying the appellant (closed circle of addressees and over-capacity on the market for cellulose fibres etc.). Finally, the Court of First Instance made an incorrect assessment of the matters in the file that prove the considerable adverse effect on the appellant's position on the market.

2. An error of law in that the application was declared inadmissible because the appellant was not individually concerned, having played only a minor role in the pre-litigation procedure. On this point, the European Commission gave the appellant notice to submit comments as an interested third party for the purposes of Article 88(2) EC. The appellant made effective use of its procedural rights and submitted comments directed at the aid granted to Lenzing Lyocell. Nonetheless, that participation could serve no practical purpose because the Commission considered it expedient not to reveal certain information during the administrative procedure.

3. As a subsidiary matter, breach of the fundamental right of effective legal protection. The Court of First Instance's decision to declare the action inadmissible, without undertaking any evaluation of the merits of the case, constitutes an infringement of the right to a fair hearing and a denial of justice. It implies a retrograde step in Community case-law which has made more flexible the conditions on which third parties concerned in proceedings concerning State aid may bring an action.

4. As a further subsidiary matter, infringement of Community law. This plea may in turn be divided into two parts. First, breach of the principle of procedural equality, given that comparative examination supports the conclusion that the Fifth Chamber (Extended Composition) of the Court of First Instance afforded different treatment to two comparable situations. Second, infringement of Articles 64 and 65 of the Rules of Procedure of the Court of First Instance, in that the Court of First Instance did not grant the request for measures of organisation of procedure and for evidence sought at first instance by the appellant.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 May 2005

in Case T-272/02, Comune di Napoli v Commission of the European Communities [1]

(European Regional Development Fund (ERDF) — Construction of an underground rail line in Naples (Italy) — Conclusion of Community financial assistance — Action for annulment — Legitimate expectations — Fairness — Statement of reasons)

(2005/C 193/35)

(Language of the case: Italian)

In Case T-272/02: Comune di Napoli (Italy), represented by M. Merola, C. Tesauro, G. Tarallo and E. Barone, lawyers, against Commission of the European Communities (Agents: L. Flynn and A. Aresu, with an address for service in Luxembourg) — Application for annulment of the decision of the Commission notified in a letter of 11 June 2002 to the Italian Ministry of Finance concluding the financial assistance granted from the European Regional Development Fund (ERDF) (Assistance No 850503066) and the implied rejection of an application for correction of the account relating to other financial assistance granted from the ERDF (Assistance No 850503067) — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 31 May 2005, in which it:

1. *Dismisses the action;*

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

[1] OJ C 261 of 26.10.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 May 2005

in Case T-284/02 Triantafyllia Dionyssopoulou v Council of the European Union [1]

(Officials — Promotion — Article 45 of the Staff Regulations — Consideration of comparative merits — Taking into account of the actual duties performed during the reference period — Taking into account of age and seniority — Action for annulment — Action for compensation)

(2005/C 193/36)

(Language of the case: French)

In Case T-284/02: Triantafyllia Dionyssopoulou, a former official of the Council of the European Union, residing in Brussels (Belgium), represented by J. Martin, lawyer, against Council of the European Union (Agents: M. Sims and F. Anton) — application, firstly, for annulment of the decision not to promote the applicant to Grade C2 in the 2001 promotion procedure and, secondly, for compensation for the damage allegedly suffered by the applicant as a result of that decision — the Court of First Instance (First Chamber), composed of J.D. Cooke, President, R. García-Valdecasas and I. Labucka, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 31 May 2005, in which it:

1. *Dismisses the application;*

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

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 June 2005

in Case T-375/02 Alessandro Cavallaro v Commission of the European Communities [1]

(Officials — Open competition — Decision of the selection board not to admit a candidate to the oral tests in consequence of the result obtained in the written test — Secrecy of the proceedings of the selection board — Statement of reasons — Equal treatment — Error of fact)

(2005/C 193/37)

(Language of the case: Italian)

In Case T-375/02: Alessandro Cavallaro, residing in Rome (Italy), represented by C. Forte, lawyer, against Commission of the European Communities (Agents: J. Currall and L. Lozano Palacios, assisted by A. Dal Ferro, lawyer, with an address for service in Luxembourg) — application for annulment of the decision of the appointing authority of 11 September 2002 rejecting the applicant's complaint lodged against the decision of the selection board in Open Competition COM/A/6/01 of 15 May 2002 to give him an insufficient mark for the written test in that competition and, in consequence, not to admit him to the oral tests, and for annulment of the subsequent stages of that competition, in so far as is necessary to restore his rights — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, M.E. Martins Ribeiro and K. Jürimäe, Judges; M.J. Plingers, Administrator, for the Registrar, gave a judgment on 7 June 2005, in which it:

1. *Dismisses the application;*

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

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[1] OJ C 44 of 22.2.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 May 2005

in Case T-105/03 Triantafyllia Dionyssopoulou v Council of the European Union [1]

(Officials — Staff report — Action for annulment — No longer any legal interest in bringing proceedings — No need to adjudicate — Action for compensation)

(2005/C 193/38)

(Language of the case: French)

In Case T-105/03: Triantafyllia Dionyssopoulou, a former official of the Council of the European Union, residing in Brussels (Belgium), represented by F. Renard, lawyer, against Council of the European Union (Agents: M. Sims and F. Anton) — application, firstly, for annulment of the decision drawing up the applicant's final staff report for the 1999/2001 period and, secondly, for compensation for the damage allegedly suffered by her — the Court of First Instance (First Chamber), composed of J.D. Cooke, President, R. García-Valdecasas and I. Labucka, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 31 May 2005, the operative part of which is as follows:

1. *There is no need to adjudicate on the claims for annulment;*

2. *The claims for compensation are rejected as unfounded;*

3. *The parties shall bear their own costs.*

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[1] OJ C 112 of 10.5.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 2 June 2005

in Case T-177/03 Andreas Strohm v Commission of the European Communities [1]

(Officials — Refusal of promotion to Grade A4 — Consideration of comparative merits — Duty to state grounds — Additional statement of grounds — Action for annulment and compensation — Admissibility)

(2005/C 193/39)

(Language of the case: German)

In Case T-177/03: Andreas Strohm, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by C. Illig, lawyer, against Commission of the European Communities (Agents: C. Berardis-Kayser, assisted by B. Wägenbaur, lawyer, with an address for service in Luxembourg) — application for annulment of the Commission's decision dated 14 August 2002, not to promote the applicant to Grade A4 in the 2002 procedure, and for compensation — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges; C. Kristensen, Administrator, for the Registrar, gave a judgment on 2 June 2005, in which it:

1. *Annuls the Commission's decision, dated 14 August 2002, not to promote the applicant to Grade A4 in the 2002 promotion procedure;*

2. *Dismisses the application as inadmissible in so far as it seeks compensation for the applicant;*

3. *Orders the defendant to bear all the costs.*

([1]) OJ C 200 of 20.8.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 May 2005

in Case T- 294/03, Jean-Louis Gibault v Commission of the European Communities ([1])

(Open competition — Non-inclusion on the list of successful candidates — Lack of a statement of reasons — Discrimination on grounds of nationality)

(2005/C 193/40)

(Language of the case: French)

In Case T-294/03: Jean-Louis Gibault, residing in Wattrelos (France), represented by F.Tuytschaever, lawyer, against Commission of the European Communities (Agent: J. Currall, with an address for service in Luxembourg) — application for annulment of the decision of the selection board for open competition COM/A/6/01 not to include the applicant on the list of successful candidates — the Court of First Instance (First Chamber), composed of J.D. Cooke, President, I. Labucka and V. Trstenjak, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 31 May 2005, in which it:

1. *Dismisses the application as unfounded;*

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

([1]) OJ C 251 of 18.10.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 June 2005

in Case T-303/03 Lidl Stiftung v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition proceedings — Application for word mark Salvita — Earlier national word mark SOLEVITA — Proof of use of the earlier national trade mark — Rejection of the opposition)

(2005/C 193/41)

(Language of the case: German)

In Case T-303/03: Lidl Stiftung & Co. KG, established in Neckarsulm (Germany), represented by P. Groß, lawyer, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: U. Pfleghar and G. Schneider), the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court, being REWE-Zentral AG, established in Cologne (Germany), represented initially by M. Kinkeldey, and subsequently by M. Kinkeldey and C. Schmitt, lawyers — action brought against the decision of the First Board of Appeal of OHIM of 30 June 2003 in Case R 408/2002-1 concerning the opposition of the proprietor of the national mark SOLEVITA to the registration of the Community word mark Salvita — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges; H. Jung, Registrar, gave a judgment on 7 June 2005, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 275 of 15.11.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 8 June 2005

in Case T-315/03 Hans-Peter Wilfer v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Word mark ROCKBASS — Absolute grounds for refusal — Article 7(1)(c) of Regulation (EC) No 40/94 — Examination of the facts by the Board of Appeal of its own motion — Failure to take into account evidence produced by the applicant — Article 74(1) and (2) of Regulation (EC) No 40/94)

(2005/C 193/42)

(Language of the case: German)

In Case T-315/03: Hans-Peter Wilfer, resident in Markneukirchen (Germany), represented by A. Kockläuner, lawyer, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: D. Schennen and G. Schneider) — action against the decision of the First Board of Appeal of OHIM of 11 July 2003 in Case R 266/2002-1 concerning registration of the word sign ROCKBASS as a Community trade mark — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Lindh and V. Vadapalas, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 8 June 2005, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to pay three-quarters of its own costs and three-quarters of the costs incurred by OHIM;*

3. *Orders OHIM to pay one quarter of its own costs and one quarter of the costs incurred by the applicant.*

[1] OJ C 289 of 29.11.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 June 2005

in Case T-316/03, Münchener Rückversicherungs-Gesellschaft AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Word mark MunichFinancialServices — Absolute ground of refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)

(2005/C 193/43)

(Language of the case: German)

In Case T-316/03: Münchener Rückversicherungs-Gesellschaft AG, established in Munich (Germany), represented by G. Würtenberger and R. Kunze, lawyers, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: D. Schennen and G. Schneider) — Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 June 2003 (Case R 337/2002-4), regarding an application for registration of the Community word mark MunichFinancialServices — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, M. E. Martins Ribeiro and K. Jürimäe, Judges; C. Kristensen, Administrator, for the Registrar, gave a judgment on 7 June 2005, in which it:

1. *Dismisses the application;*

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

[1] OJ C 289 of 29.11.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 31 May 2005

in Case T-373/03 Solo Italia Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Word mark PARMITALIA — Time-limit for bringing an appeal against the decision of the Opposition Division — Article 59 of Regulation (EC) No 40/94 — Rule 48 of Regulation (EC) No 2868/95 — Inadmissibility of the appeal)

(2005/C 193/44)

(Language of the case: French)

In Case T-373/03: Solo Italia Srl, established in Ossona (Italy), represented by A. Bensoussan, M.-E. Haas and L. Tellier-Loniewski, lawyers, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: I. de Medrano Caballero and A. Folliard-Monguiral), the other party to the proceedings before the Board of Appeal of OHIM and intervener before the Court of First Instance being Nuova Sala Srl, established in Brescia (Italy), represented by E. Gavuzzi, S. Hassan and C. Pastore, lawyers — application brought against the decision of the Second Board of Appeal of OHIM of 10 September 2003 (Case R 208/2003-2), confirming the refusal to register the word mark PARMITALIA — the Court of First Instance (First Chamber), composed of J.D. Cooke, President, I. Labucka and V. Trstenjak, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 31 May 2005, in which it:

1. *Dismisses the action;*

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

[1] OJ C 21 of 24.1.2004.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 9 June 2005

in Case T-80/04 Jean-Pierre Castets v Commission of the European Communities [1]

(Officials — Invalidity — Compensation for leave not taken — Number of days taken into account for the purpose of calculating compensation — Reasons not attributable to the requirements of the service)

(2005/C 193/45)

(Language of the case: French)

In Case T-80/04: Jean-Pierre Castets, a former official of the Commission of the European Communities, residing in Saint-Victor-des-Oules (France), represented by G. Crétin, lawyer, against the Commission of the European Communities (Agents: J. Currall and V. Joris, with an address for service in Luxembourg) — application for annulment of the decision of the Commission fixing the amount of compensation for annual leave not taken by the applicant at the time of leaving the service, insofar as the compensation calculation is a result of the fact that the amount of leave which may be carried over is limited to twelve days per calendar year — 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 9 June 2005, in which it:

1. *Dismisses the action;*

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

[1] OJ C 94 of 17.4.2004.

ORDER OF THE COURT OF FIRST INSTANCE

of 25 May 2005

in Case T-443/03 Sociedad Operadora de Telecomunicaciones de Castilla y León, SA (Retecal) and Others v Commission of the European Communities ([1])

(Competition — Concentrations — Complaint concerning an alleged failure by the Spanish authorities to fulfil their obligations — Decision to take no further action on the complaint — Inadmissibility)

(2005/C 193/46)

(Language of the case: Spanish)

In Case T-443/03: Sociedad Operadora de Telecomunicaciones de Castilla y León, SA (Retecal), established in Boecillo (Spain), Euskaltel, SA, established in Zamudio-Vizcaya (Spain), Telecable de Asturias, SA, established in Oviedo (Spain), R Cable y Telecomunicaciones Galicia, SA, established in La Coruña (Spain), Tenaria, SA, established in Cordovilla (Spain), represented by J. Jiménez Laiglesia, lawyer, against the Commission of the European Communities (Agent: F. Castillo de la Torre, with an address for service in Luxembourg), supported by the Kingdom of Spain (Agent: L. Fraguas Gadea), by Sogecable, SA, established in Tres Cantos, Madrid (Spain), represented by S. Martínez Lage and H. Brokelmann, lawyers, and by Telefónica, SA, established in Madrid, represented initially by M. Merola and S. Moreno Sánchez, lawyers, and subsequently by M. Merola — action seeking the annulment of the decision of the Commission of 21 October 2003 to take no further action on the applicants' complaint of an alleged infringement by the Spanish authorities of Article 9(8) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (corrected version, OJ 1990 L 257, p. 13) in the context of the concentration between Vía Digital and Sogecable (Case COMP/M.2845 — Sogecable/Canal Satélite Digital/Vía Digital) — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, F. Dehousse and D. Švaby, Judges; H. Jung, Registrar, made an order on 25 May 2005, the operative part of which is as follows:

1. *The action is dismissed as inadmissible.*

2. *The applicants shall bear their own costs as well as those incurred by the Commission, by Telefónica, SA and by Sogecable, SA.*

3. *The Kingdom of Spain shall bear its own costs.*

([1]) OJ C 59 of 6.3.2004.

Action brought on 31 December 2004 by SUCCESS-MARKETING Unternehmensberatungsgesellschaft m.b.H. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-506/04)

(2005/C 193/47)

(Language of the application: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 31 December 2004 by SUCCESS-MARKETING Unternehmensberatungsgesellschaft m.b.H., Linz (Austria), represented by G. Secklehner and C. Ofner, lawyers, with an address for service in Luxembourg.

The other party before the Board of Appeal was CHIPITA INTERNATIONAL S.A. INTERNATIONAL DIVISION, Athens.

The applicant claims that the Court should:

— set aside the decision of 15 October 2004 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Case R 39/2004-2);

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

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity is sought:	The figurative mark PAN SPEZIALITÄTEN for goods in Class 30 (prepared baking mixtures for bread, cakes, bread rolls, croissants, pizzas…) — Community trade mark No 382 374.
Proprietor of the Community trade mark:	CHIPITA INTERNATIONAL S.A. INTERNATIONAL DIVISION
Applicant for declaration of invalidity of the Community trade mark:	The applicant
Decision of the Cancellation Division:	Rejection of the application for a declaration of invalidity.
Decision of the Board of Appeal:	Dismissal of the appeal.
Pleas in law:	— The registered trade mark is devoid of any distinctive character within the meaning of Article 7(1)(b) of Regulation (EC) No 40/94. — The trade mark is descriptive and is thus not capable of being protected under Article 7(1)(c) of the Regulation as regards goods containing cereals or manufactured with cereal products. The trade mark is deceptive in the sense of Article 7(1)(g) of the Regulation as regards those goods not containing cereals or not manufactured with cereal products.

Action brought on 28 January 2005 by Anke Kröppelin against Council of the European Union

(Case C-T-54/05)

(2005/C 193/48)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 28 January 2005 by Anke Kröppelin, residing in Brussels (Belgium), represented by Sébastien Orlandi, Xavier Marten, Albert Coolen, Etienne Marchal and Jean-Noël Louis, lawyers, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. annul the Council's decision rejecting the applicant's request to annul its decision not to award him the expatriation allowance and the associated rights;

2. order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law put forward by the applicant are the same as those put forward by the same applicant in Case T-408/04 ([1]).

([1]) OJ 2004 C 300 of 4.12.2004, p. 50.

Action brought on 4 May 2005 by Franky Callewaert and Others against Commission of the European Communities

(Case T-192/05)

(2005/C 193/49)

(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 Franky Callewaert, residing in Roeselare (Belgium) and Others, represented by Georges Vandersanden and Laure Levi, lawyers.

The applicants claim that the Court should:

— annul the classification in grade granted to the applicants in their recruitments decisions, in so far as that classification is based on Article 12(3) of Annex XIII to the new Staff Regulations;

— reconstitute the applicants' careers (including recognition of their experience in the grade thus amended, their rights to promotion and their pension entitlement), on the basis of the grade to which they should have been appointed on the basis of the competition notice following which they were placed on the reserve recruitment list, either in the grade appearing in that vacancy notice, or, corresponding to its equivalent according to the classification in the new Staff Regulations (and the appropriate step in accordance with the rules applicable before 1 May 2004), on the basis of the decision appointing them;

— award the applicants default interest on the basis of the rate fixed by the European Central Bank for principal refinancing arrangements applicable during the relevant period, plus two percentage points, on all sums corresponding to the difference between the salary corresponding to their classification in the recruitment decision and the classification to which they should have been entitled up to the date of the decision properly classifying them in grade;

— order the Commission to pay the entire costs.

Pleas in law and main arguments

The pleas in law and main arguments put forward are the same as those in Case T-58/05 and similar to those in Cases T-130/05, T-160/05, T-162/05, T-164/05, T-170/05 and T-183/05.

Action brought on 19 May 2005 by N.V. Deloitte Business Advisory against the Commission of the European Communities

(Case T-195/05)

(2005/C 193/50)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 19 May 2005 by N.V. Deloitte Business Advisory, Brussels, represented by Dirk Van Heuven, Steve Ronse and Sofie Logie, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the contested decisions;

2. order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant, which was in a consortium with other undertakings, submitted a tender, under the name EUPHET, in response to the invitation to tender for the 'Sanco Evaluation Framework Contract, Lot 1 (Public Health) — tender No SANCO/2004/01/041', issued by the European Commission. In the application, the applicant seeks annulment of the European Commission's decision not to select EUPHET for the contract, as well as annulment of the award decision, not served on and unknown to the applicant, by which the contract was awarded to a third party.

In support of its application, the applicant pleads infringement of Article 94 of Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ([1]) and infringement of Articles 138 and 147(3) of Regulation No 2342/2002 laying down detailed rules for the implementation of Regulation No 1605/2002. ([2]) The applicant also pleads breach of the tender documents, of the general duty to state reasons and of the principle of the protection of legitimate expectations.

According to the applicant, the reason stated for exclusion, namely that the proposal for measures to prevent a conflict of interest was inadequate and did not provide a sufficient guarantee, is completely unlawful and in breach of the contract documents. The applicant maintains that it is sufficient that the contractor undertake, by signing the draft contract, to inform the Commission immediately of any conflict of interest and to take the necessary steps to resolve such conflict as soon as possible. The applicant also states that it proposed measures which went further than what was required.

The applicant further claims that it was not at any time invited to supply additional information. According to the applicant, that constitutes an infringement of Article 146(3) of Regulation No 2342/2002, a breach of the principle of the protection of legitimate expectations, of the principle of the right to be treated fairly and of the principle of non-discrimination, as well as an infringement of Articles 89(1) and 99 of Regulation No 1605/2002.

([1]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

([2]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

Action brought on 9 May 2005 by Jean-François Vivier against the Commission of the European Communities

(Case C-T-196/05)

(2005/C 193/51)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 May 2005 by Jean-François Vivier, residing in Le Petten (Netherlands), represented by Sébastien Orlandi, Albert Coolen and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the Commission's decision fixing the applicant's classification in grade A*6;

2. order the defendant to pay the costs.

Pleas in law and main arguments

The applicant was recruited by the Commission as a temporary servant, in a post for which the level of responsibility had been fixed in the vacancy notice by reference to grades A7 to A4, which under the new system are equivalent to grades A*8 to A*12. Upon recruitment, however, his classification was fixed in grade A*6.

The applicant claims that that decision should be annulled; he maintains that it fails to take account of Article 9 of the Rules applicable to other servants, since he was recruited at a grade below the level of responsibility envisaged for his post. The applicant further contends that Article 12 of Annex XIII to the Staff Regulations, on which the Commission relies in order to justify its decision on classification, does not apply in his case, as he entered the service after 30 April 2004.

Action brought on 9 May 2005 by Asa Sundholm against the Commission of the European Communities

(Case T-197/05)

(2005/C 193/52)

(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 9 May 2005 by Asa Sundholm, residing in Brussels (Belgium), represented by Sébastien Orlandi, Xavier Martin Membiela, Albert Coolen and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the decision of the Commission establishing the applicant's Career Development Report for 2003;

2. order the defendant to pay the costs.

Pleas in law and main arguments

In support of her claim, the applicant points out, firstly, the existence of manifest inconsistencies between the points and the comments of the reporting officer, which constitute a breach of the obligation to give reasons.

The applicant further submits that there is a manifest error of assessment to the extent that she is criticised for having asked her hierarchical superiors for details of the way in which she should complete her work, without their having shown that those instructions had been previously laid down in such a way that they did not require clarification.

Finally, the applicant alleges infringement of her defence rights, submitting that the appeal assessor based his decision on new factors without affording her the opportunity of stating her point of view.

Action brought on 18 May 2005 by Laura Gnemmi against the Commission of the European Communities

(Case T-199/05)

(2005/C 193/53)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 May 2005 by Laura Gnemmi, residing in Arona (Italy), 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 reporting for the year 2003 so far as it concerns the applicant;

2. alternatively, annul her Career Development Report for the period 1.1.2003 — 31.12.2003;

3. order the Commission to pay the costs.

Pleas in law and main arguments

The applicant relies on the same pleas as those on which she already relies in Case T-97/04 ([1]) relating to her Career Development Report for the period 2001–2002.

([1]) OJ C 106, 30.4.2004, p. 82.

Action brought on 12 May 2005 by Michael Cwik against the Commission of the European Communities

(Case T-200/05)

(2005/C 193/54)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 May 2005 by Michael Cwik, residing in Tervuren (Belgium), represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the decision of the Director General of DG ECFIN of 25 June 2004 confirming, without amendment, the applicant's Career Development Report (CDR) for the period from 1 January 2003 to 31 December 2003;

2. annul, in so far as it is necessary, the Commission's decision of 24 January 2005 rejecting the applicant's claim (R/970/04);

3. order the defendant to pay symbolic damages of EUR 1;

4. order the defendant to pay all the costs.

Pleas in law and main arguments

The pleas and main arguments relied on by the applicant with regard to the new evaluation system for officials are similar to those relied on in Case T-96/04. In addition, the applicant submits that that new system leads to an abuse of power to the extent that the number of merit points granted is influenced by expected promotions. Finally, the applicant alleges that the disputed report is vitiated by manifest errors of assessment.

Action brought on 18 May 2005 by José María Perez Santander against Council of the European Union

(Case T-201/05)

(2005/C 193/55)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 18 May 2005 by José María Perez Santander, residing in Ixelles (Belgium), represented by G. Vandersanden and L. Levi, lawyers.

The applicant claims that the Court should:

— annual the classification in grade granted to the applicant in his recruitment decision, in so far as that classification is based on Article 12(3) of Annex XIII to the new Staff Regulations;

— in consequence, reconstitute the applicant's career (including recognition of his experience in the grade thus amended, his rights to promotion and his pension entitlement), on the basis of the grade in which he should have been appointed as stated in the competition notice following which he was placed on the reserve list for recruitment, either in the grade appearing in that competition notice, or, corresponding to its equivalent according to the classification in the new Staff Regulations (and the appropriate step in accordance with the rules applicable before 1 May 2004), on the basis of the decision appointing him;

— award the applicant default interest based on the rate applied by the European Central Bank for its main refinancing operation, during the period concerned, plus 2 points, on all the sums corresponding to the difference between the salary corresponding to his classification in his recruitment decision and the classification to which he should have been entitled up to the date of the decision properly classifying him in grade;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The pleas in law and main arguments are identical to those invoked in Case T-58/95, *Centeno Mediavilla and Others* v *Commission* ([1]).

([1]) OJ C 93 of 16.4.2005, p. 38.

Action brought on 18 May 2005 by Caroline Ogou against Commission of the European Communities

(Case T-202/05)

(2005/C 193/56)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 May 2005 by Caroline Ogou, resident in Abidjan (Ivory Coast), represented by M.-A. Lucas, lawyer.

The applicant claims that the Court should:

— annul the notice of competition COM/PB/04 of 6 April 2004 and the instructions relating to the electronic entry procedure to which it refers, or at least Paragraph IX.1 of the notice;

— declare illegal the exclusion of her candidature which resulted from the impossibility with which she was confronted, on 12 May 2004, of obtaining access to the electronic entry form by following the procedure prescribed by the competition notice;

— annul the decision of the 'Internal Competition Task Force', which was notified to her by an electronic message of 12 May 2004, rejecting the application, delivery of which she had procured on the same day by another method;

— annul the subsequent formal steps in the competition procedure, in particular;

  — the list of candidates who meet the requirements of Article 28(a), (b) and (c) of the Staff Regulations, adopted by the Appointing Authority and transmitted to the Selection Board with the applicants' files;

  — the list, adopted by the Selection Board, of candidates who satisfy the requirements of the competition notice;

  — the list of suitable candidates adopted by the Selection Board at the conclusion of its work;

  — and the decisions of appointment which were or will be adopted by the Appointing Authority on that basis;

— annul, if necessary, the decision of 3 February 2005 of the Director-General of Personnel and Administration rejecting her complaint of 12 August 2004 against the preceding contested acts,

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, a member of the local staff of the Commission, was faced with the impossibility of entering electronically internal competition COM/PB/04 to pass from category C to category B, in accordance with the competition notice, since the Commission had configured the computer system for entering in such away as to obstruct the candidature of local staff.

The applicant claims that Paragraph III.1 of the competition notice, which provides that officials and temporary staff are eligible and which therefore excludes local staff, is contrary to Articles 4, 27 and 29(1)(b) of the Staff Regulations, as well as to the principle of equal treatment. The obstacle to her entry 'on line' is, as a result, illegal. The applicant maintains in that regard that local staff who are in the service of the institution because of a connection under public law, form part of the internal or statutory staff and have, as a rule, the right of access to internal competitions, that they are entrusted with tasks equivalent to those of officials or temporary staff, and that their exclusion from internal competitions is therefore neither justified by the requirements of the posts to be filled nor compatible with the interests of the service.

The applicant also claims that Paragraph IX of the competition notice, as well as Paragraph 2 of the instructions to candidates are contrary to Articles 2, 4 and 5 of Annex III to the Staff Regulations, because they prescribe a mandatory electronic entry procedure which was such as to exclude her candidature.

Action brought on 23 May 2003 by Giorgio Lebedef and Others against Commission of the European Communities

(Case T-204/05)

(2005/C 193/57)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 May 2005 by Giorgio Lebedef, residing in Luxembourg, Armand Imbert, residing in Brussels, Jean-Marie Rousseau, residing in Brussels, and Maria Rosario Domenech Cobo, residing in Brussels, represented by G. Bounéou and F. Frabetti, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

— annul the express rejection, of 12 July 2004, of application D/393/04 by which the applicants requested that the operating system and all the software used to operate their personal computers be made available, by the competent service, in their mother tongue, or alternatively, in another official language of the European Union of their choice;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants, all officials of the Commission, applied to their superiors for the operating system and all the software used to operate their personal computers to be made available in their mother tongue or, alternatively, in another official language of the European Union of their choice. That application and their complaints having been rejected, the applicants brought this action. They claim that the practice of installing the entire configuration of the computers in English, although the software used is available in several languages, infringes the principle of non-discrimination, because the complete mastery of the computer necessitates a knowledge, no less complete, of the English language, superior to the level which can reasonably be expected of a European official who is not anglophone by birth.

The applicants also rely on alleged infringements of the duty to have regard for the welfare of officials, of the prohibition of arbitrary procedures and of the duty to state reasons, as well as an alleged misuse of powers.

Action brought on 17 May 2005 by European Dynamics SA against the Commission of the European Communities

(Case T-205/05)

(2005/C 193/58)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 17 May 2005 by European Dynamics SA, established in Athens (Hellenic Republic), represented by N. Korogiannakis, lawyer.

The applicant claims that the Court should:

1) annul the decision of the Commission communicated to the applicant through a letter dated 3 March 2005, to issue a recovery order for an amount of 59 485 euros against the applicant related to the 'eEBO' project, the decision of the Commission communicated to the applicant through a letter dated 12 November 2004 by which the Commission decided to reimburse an amount of labour not exceeding 85 971 euros, as well as the decision of the Commission communicated to the applicant by letter dated 16 May 2003 to terminate the contract EDC-53007 eEBO/27873: eContent exposure and business opportunities.

2) order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application.

Pleas in law and main arguments

The applicant was awarded a contract by the Commission relating to the project 'e-Content Exposure and Business Opportunities' (eEBO). Some of the work for this contract was subcontracted by the applicant, even though subcontracting was not allowed. A technical verification was executed by the Commission and clarifications were requested on certain issues relating to the personnel used by the applicant. Following this evaluation, the Commission adopted the decision contested in the present case.

In support of its application, the applicant submits that the Commission made an evident error of assessment in that it failed to take into account that the eEBO-project was dependent on another e-content project, namely PICK, and that the contractor for the PICK project did not respect its obligations. The applicant also claims that the Commission erred in terminating the project as a whole.

Furthermore, the applicant submits that the Commission infringed the principles of good administration and transparency and did not eliminate certain conflicts of interest. According to the applicant, the Commission failed to act when the applicant indicated that, allegedly, the source of the malfunctioning of the project were the personnel relations between specific Commission officials and the two experts to which the applicant subcontracted part of the work.

Action brought on 27 May 2005 by Jean-Marc Colombani against the Commission of the European Communities

(Case T-206/05)

(2005/C 193/59)

(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 May 2005 by Jean-Marc Colombani, residing in Brussels, represented by Stéphane Rodrigues and Alice Jaume, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission of 7 March 2005 and the resulting measures concerning the applicant's remuneration;

— take all necessary measures to safeguard the applicant's rights and interests, in particular as regards the minimum subsistence amount which he should be granted in terms of remuneration;

— order the defendant to pay damages in the sum of EUR 10 002;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant, an official of the Commission, took leave on personal grounds until 31 August 2004. Having made a request to return to work at the end of his leave, he was reinstated in DG RELEX by decision of 28 September 2004. However, it was not specified to which precise position he would be assigned, that decision providing that he would be informed of that at a later stage.

By note of 7 March 2005, the administration informed the applicant that he had been absent without leave since 5 October 2004 and that the appropriate measures would be taken against him. He did not receive his salary for April and his pay slip stated that he owed the Commission the amount he had received by way of salary from October 2004.

By his action, the applicant contests the note of 7 March 2005 and the resulting measures. He pleads infringement of the rights of the defence, claiming that he was not able to defend his interests before the contested decisions were adopted. He also pleads infringement of the obligation to state reasons and that manifest errors of assessment were made. More particularly, he maintains that that he was never informed that he had been assigned to the unit RELEX/C.1. He further contests the claim that he did not respond to an offer of employment.

The applicant then pleads infringement of Article 40 of the Staff Regulations, which, in his view, allows him to turn down the first offer of employment. He also pleads infringement of Article 60 of the Staff Regulations, on the ground that his alleged absence was not duly established and was not initially deducted from his annual leave. The applicant further claims that Annexes VIII and IX to the Staff Regulations ensuring that he is paid the minimum subsistence amount were infringed. Finally, he pleads infringement of the principles of sound administration and the duty to have regard to the interests of officials.

In addition to the annulment of the contested measures, the applicant seeks compensation for the material and non-material damages which he allegedly suffered.

Action brought on 25 May 2005 by Gudrun Schulze against the Commission of the European Communities

(Case T-207/05)

(2005/C 193/60)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 May 2005 by Gudrun Schulze, residing in Brussels [(Belgium)], represented by Stéphane Rodrigues and Alice Jaume, lawyers.

The applicant claims that the Court should:

1. annul the decision of the appointing authority rejecting the applicant's complaint, in conjunction with the appointment decision adopted by the appointing authority on 11 October 2004, in so far as it determines her grade in accordance with Article 12(3) of Annex XIII to the Staff Regulations and her step in the grade pursuant to the current Article 32 of the Staff Regulations;

2. advise the appointing authority of the consequences of the annulment of the contested decisions, in particular the re-grading of the applicant to grade A*10, step 4 with retrospective effect from 16 June 2004, the date on which the appointment decision of 11 October 2004 took effect;

3. in the alternative, order the Commission to pay compensation for the damage suffered by the applicant as a result of not being graded at grade A*10, step 4 with effect from 16 June 2004, the date on which the appointment decision of 11 October 2004 took effect;

4. order the defendant to pay the costs.

Pleas in law and main arguments

Between March 2000 and December 2003, the applicant was employed at the Commission as a temporary staff member, initially at grade A4, then, from 1 January 2001, at grade A6. From 1 January to 30 April 2004, the applicant was a member of the auxiliary staff in group AI 04.

Having passed Open competition COM/A/3/02 for grade A7/A6 administrators in the field of research, the applicant was appointed an official by the contested decision of 11 October 2004. She was appointed to the post which she had previously held as a temporary and auxiliary staff member. Under Article 12 of Annex XIII to the Staff Regulations, the applicant was, on recruitment, placed in the new grade A*6, which ranks below the old A7/A6 grades which correspond to grades A*8/A*10 under the new system.

In support of her action, the applicant argues first that Article 12 of Annex XIII to the Staff Regulations is inapplicable in her case. According to the applicant, that article applies only to officials on a list of suitable candidates. Successful candidates on a recruitment reserve list cannot be regarded as officials.

In the alternative, the applicant argues that that article is unlawful, being in breach, in her view, of the principle of equal treatment for successful candidates of competitions published before 1 May 2004, as well as of Article 5(5) of the Staff Regulations. She also claims that her appointment to grade A*6 constitutes indirect discrimination on the ground of age as against administrators appointed in that grade, in so far as her long career is not given recognition. Furthermore, the applicant considers that the principle of equal treatment for officials performing the same functions is also infringed by the fact that she has the same experience and performs the same functions as other officials who are however in higher grades and receive a higher salary.

The applicant also pleads breach of Article 31 of the Staff Regulations, of legitimate expectations, of legal certainty, of the principle of good administration and of the duty to have regard for the interests of officials. The applicant considers that the contested decision also infringes her legitimate expectation of being allowed additional seniority in accordance with Article 32 of the Staff Regulations, as applicable before 1 May 2004.

Finally the applicant claims compensation for the material and non-material damage she has suffered as a result of her appointment to a lower grade.

Action brought on 30 May 2005 by Michael Brown against the Commission of the European Communities

(Case T-208/05)

(2005/C 193/61)

(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 30 May 2005 by Michael Brown, residing in Overijse (Belgium), represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

1. annul the decision adopted by the Appointing Authority on 10 February 2005 (notified under cover of a note dated 14 February 2005, received on 25 February 2005), rejecting the claim brought by the applicant on 16 September 2004 against the decision of 22 June 2004 adopted by the president of the selection board of Competition COM/PB/04 refusing the applicant admission to that competition;

2. in addition, in so far as it is necessary, annul the decision adopted on 22 June 2004 by the president of the selection board of Competition COM/PB/04 and the confirmation thereof dated 19 July 2004;

3. order the defendant to pay the costs.

Pleas in law and main arguments

The application of the applicant, an auxiliary agent at the Commission, for admission to internal competition for change of category COM/PB/04 was rejected on the ground that he was not a temporary agent or an official at the closing date for the lodging of applications.

The applicant relies on two pleas, alleging

— firstly, infringement of Articles 27 and 29(1) of the Staff Regulations and a manifest error of assessment in that the contested decisions and the notice of competition had the effect of excluding candidates who could show that they had particular skills and considerable professional experience within the Commission in favour of candidates who were potentially less competent and who had less effective seniority in the Commission's services, and

— secondly, infringement of the principle of non-discrimination in that employees the greater part of whose career had been spent at the Commission as auxiliary agents would be admitted to the competition on the sole ground that they were temporary agents at the closing date for the lodging of applications, whereas the applicant, who was a temporary agent of long standing, was excluded on the sole ground that he was an auxiliary agent on that date.

Action brought on 30 May 2005 by the Italian Republic against the Commission of the European Communities

(Case T-212/05)

(2005/C 193/62)

(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 30 May 2005 by the Italian Republic, represented by Antonio Cingolo, Avvocato dello Stato.

The applicant claims that the Court should:

1. annul the following memoranda [No 02772 of 21 March 2005 [POR Campania Region Ob 1 2000-2006 (No. CCI 1999 IT 16 1 PO 007)], No. 04534 of 13 May 2005 [Docup Ob 2 Lombardy Region 2000-2006 (No. CCI 2000 IT 16 2 DO 014)] and No 04537 of 13 May 2005 [Docup Ob 2 Lombardy Region 2000-2006 (No CCI 2000 IT 16 2 DO 014)]] and all related and prior measures;

2. order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those relied on in Case T-345/04 between the Italian Republic and the Commission ([1]).

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

Action brought on 26 May 2005 by Jean-Luc Delplancke and Matteo Governatori against the Commission of the European Communities

(Case T-213/05)

(2005/C 193/63)

(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 26 May 2005 by Jean-Luc Delplancke, residing in Braine-le-Comte (Belgium), and Matteo Governatori, residing in Saint-Josse-ten-Node (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:

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

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are identical to those relied on in Cases T-130/05, T-160/05, T-162/05, T-170/05, T-183/05 and similar to those relied on in Cases T-58/05, T-164/05, T-192/05 and T-201/05.

Action brought on 10 June 2005 by Huvis Corporation against the Council of the European Union

(Case T-221/05)

(2005/C 193/64)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 10 June 2005 by Huvis Corporation, established in Seoul (Republic of Korea), represented by J.-F. Bellis, F. Di Gianni and R. Antonini, lawyers.

The applicant claims that the Court should:

— annul Article 2 of Council Regulation (EC) No 428/2005 of 10 March 2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan insofar as it imposes a definitive anti-dumping duty on imports from Korea of the product concerned manufactured by Huvis Corporation and, to the extent necessary, to declare inapplicable the provisions of the basic Regulation on the basis of which the flawed determinations contained in the Contested Regulation relied on; and

— order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

The applicant is a Korean-based company specialising in the production of polyester filament yarn, polyester staple fibre and polyethylene terephthalate. By Council Regulation (EC) No 428/2005 [1], the Council imposed a definitive anti-dumping duty of 5,7 % on imports of polyester staple fibre manufactured by the applicant and originating in Korea.

The applicant submits that the methodology used by the Council to calculate the applicant's dumping margin and, in particular, to calculate the duty drawback adjustment claimed by the applicant, is contrary to Article 2.4 of the WTO Anti-Dumping Agreement, since it did not produce a fair comparison between the applicant's export price and the normal value and it imposed an unreasonable burden of proof on the applicant.

The methodology used to calculate the applicant's duty drawback adjustment also violated the principles of legal certainty, legitimate expectations, sound administration and proportionality, since by using this methodology the Council unlawfully increased the applicant's dumping margin. Moreover, the Council violated Article 11(9) of the basic Anti-Dumping Regulation as in the review proceeding at stake it applied a different methodology for the calculation of the duty drawback adjustment than that used in the original investigation. The methodology also violates the principle of non-discrimination as a more favourable methodology was applied by the Council in other similar cases.

The applicant further submits that the rejection of the credit costs claimed by the applicant in the framework of the review proceeding is contrary to Article 2.4 of the WTO Anti-Dumping Agreement, since it did not produce a fair comparison between the applicant's export price and the normal value and the evidence sought by the Council in support of the credit costs adjustment amounts to an unreasonable burden of proof on the applicant.

The rejection of the credit costs claimed by the applicant also violated the principle of sound administration since this determination was based on the finding that the applicant did not provide written evidence in support of its claim, whereas the payment terms granted by the applicant were agreed on the basis of customary business rules in force in the Republic of Korea.

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[1] Council Regulation (EC) No 428/2005 of 10 March 2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan (OJ L71, p. 1)

III

(Notices)

(2005/C 193/65)

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

OJ C 182, 23.7.2005

Past publications

OJ C 171, 9.7.2005

OJ C 155, 25.6.2005

OJ C 143, 11.6.2005

OJ C 132, 28.5.2005

OJ C 115, 14.5.2005

OJ C 106, 30.4.2005

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