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JUDGMENT OF THE COURT

(Third Chamber)

of 6 October 2005

in Case C-204/03: Commission of the European Communities v Kingdom of Spain [1]

(Failure of a Member State to fulfil its obligations — Articles 17 and 19 of the Sixth VAT Directive — Subsidies — Limitation of the right to deduct)

(2005/C 296/01)

(Language of the case: Spanish)

In Case C-204/03: Commission of the European Communities (Agents: E. Traversa and L. Lozano Palacios) v Kingdom of Spain (Agent: N. Díaz Abad) — action under Article 226 EC for failure to fulfil obligations, brought on 14 May 2003 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J.-P. Puissochet, S. von Bahr (Rapporteur), J. Malenovský and U. Lõhmus, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 6 October 2005, in which it:

1. *Declares that, by providing for a deductible proportion of value added tax for taxable persons who carry out only taxable transactions, and by laying down a special rule which limits the right to deduct VAT on the purchase of goods and services which are subsidised, the Kingdom of Spain has failed to fulfil its obligations under Community law, and, in particular, Articles 17(2) and (5) and 19 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, as amended by Council Directive 95/7/EC of 10 April 1995;*

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

[1] OJ C 226 of 20.09.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 22 September 2005

in Case C-221/03: Commission of the European Communities v Kingdom of Belgium [1]

(Failure of a Member State to fulfil obligations — Directive 91/676/EEC — Incomplete transposition — Protection of water against pollution by nitrates from agricultural sources — Failure to identify waters that are or could be affected by pollution — Incorrect and inadequate designation of vulnerable zones — Code of good agricultural practice — Inadequacies — Action programme — Inadequacies and incomplete application)

(2005/C 296/02)

(Language of the case: French)

In Case C-221/03, Commission of the European Communities (Agents: G. Valero Jordana, assisted by M. van der Woude and T. Chellingsworth) v Kingdom of Belgium (Agent: A. Snoecx, and subsequently by E. Dominkovits,) — action under Article 226 EC for failure to fulfil obligations, brought on 22 May 2003 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, S. von Bahr, J. Malenovský and A. Ó Caoimh (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 22 September 2005, in which it:

1. *Declares that, by failing to adopt:*

   — *in the case of the Flemish Region, within the time-limit set by the reasoned opinion of 23 November 1998, the measures needed for the full and correct implementation of Article 4 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources and, within the time-limit set by the reasoned opinion of 9 November 1999, the measures needed for the full and correct implementation of Articles 3(1) and (2), 5 and 10 thereof, and*

   — *in the case of the Walloon Region, within the time-limit set by the reasoned opinion of 9 November 1999, the measures needed for the full and correct implementation of Articles 3(1) and (2) and 5 of that directive,*

   the Kingdom of Belgium has failed to fulfil its obligations under that directive;

2. *Declares that, to the extent to which, in its complaints, the Commission puts forward charges other than those set out in the reasoned opinions, its action is inadmissible;*

3. *Declares that the part of the complaint alleging infringement of Article 5 of Directive 91/676, in conjunction with Annex III thereto, to the effect that the Flemish Region action programme is only partly applicable in that region, in particular as regards the maximum quantities of livestock effluents that may be applied each year in vulnerable zones, is unfounded;*

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

([1]) OJ C 171, 19.07.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 6 October 2005

in Case C-243/03: Commission of the European Communities v French Republic ([1])

(VAT — Deduction of input tax paid — Capital goods financed by subsidies)

(2005/C 296/03)

(Language of the case: French)

In Case C-243/03: Commission of the European Communities (Agent: E. Traversa, assisted by N. Coutrelis, avocat) v French Republic (Agents: G. de Bergues and C. Jurgensen-Mercier), supported by: Kingdom of Spain (Agent: N. Díaz Abad) — action under Article 226 EC for failure to fulfil obligations, brought on 6 June 2003 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J.-P. Puissochet, S. von Bahr (Rapporteur), J. Malenovský and U. Lõhmus, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 6 October 2005, in which it:

1. *Declares that, by introducing a special rule limiting the deductibility of value added tax on the purchase of capital goods where they were financed by subsidies, the French Republic has failed to fulfil its obligations under Community law, in particular under Articles 17 and 19 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, as amended by Council Directive 95/7/EC of 10 April 1995;*

2. *Orders the Republic of France to pay the costs;*

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

([1]) OJ C 171, of 19.07.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 29 September 2005

in Case C-251/03: Commission of the European Communities v Portuguese Republic ([1])

(Failure of a Member State to fulfil obligations — Failure to satisfy the requirements of Annex I to Directive 80/778/EEC — Article 7(6) — Water intended for human consumption)

(2005/C 296/04)

(Language of the case: Portuguese)

In Case C-251/03: Commission of the European Communities (Agents: A. Caeiros and G. Valero Jordana) v Portuguese Republic (Agents: L. Fernandes and M. Lois) — action brought on 11 June 2003 under Article 226 EC for failure to fulfil Treaty obligations — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. La Pergola, J.-P. Puissochet (Rapporteur), U. Lõhmus and A. Ó Caoimh, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 29 September 2005, in which it:

1. *Declares that, by failing to adopt the measures necessary to comply with the requirements of Annex I to Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption, the Portuguese Republic has failed to fulfil its obligations under Articles 7(6) and 19 of that directive;*

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

([1]) OJ C 184 of 02.08.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 6 October 2005

in Case C-276/03 P: Scott SA v Commission of the European Communities and French Republic ([1])

(Appeal — Unlawful State aid — Temporal application of Regulation (EC) No 659/1999 — Decision on incompatibility and recovery of aid — Limitation period — Interruption — Need to inform the beneficiary of the aid of an interrupting action)

(2005/C 296/05)

(Language of the case: English)

In Case C-276/03 P: appeal under Article 56 of the Statute of the Court of Justice, brought on 24 June 2003 by Scott SA, established in Saint-Cloud (France) (represented by J. Lever QC, G. Peretz, Barrister, A. Nourry, R. Griffith and M. Papadakis, Solicitors), the other parties to the proceedings being: Commission of the European Communities (Agent: J. Flett), and the French Republic — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, N. Colneric, K. Schiemann, E. Juhász and E. Levits, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 6 October 2005, in which it:

1. *Dismisses the appeal;*

2. *Orders Scott SA and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 200 of 23. 08.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 6 October 2005

in Case C-291/03: Reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester, MyTravel plc v Commissioners of Customs & Excise ([1])

(Sixth VAT Directive — Scheme for travel agents — Package tours — Services bought in from third parties and in-house services — Method of calculating the tax)

(2005/C 296/06)

(Language of the case: English)

In Case C-291/03: reference for a preliminary ruling under Article 234 EC from the VAT and Duties Tribunal, Manchester (United Kingdom), made by decision of 30 June 2003, received at the Court on 4 July 2003, in the proceedings between MyTravel plc and Commissioners of Customs & Excise — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet (Rapporteur), J.-P. Puissochet, S. von Bahr and U. Lõhmus, Judges; P. Léger, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 6 October 2005, the operative part of which is as follows:

1. *A travel agent or a tour operator who has completed his value added tax return for a tax period using the method laid down by the national rules which transpose into domestic law 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 may recalculate his value added tax liability in accordance with the method held by the Court to comply with Community law, under the conditions laid down by national law, which have to observe the principles of equivalence and effectiveness.*

2. *Article 26 of Sixth Directive 77/388 must be interpreted as meaning that a travel agent or tour operator who, in return for a package price, supplies to a traveller services bought in from third parties and in-house services must, in principle, identify the part of the package corresponding to his in-house services on the basis of their market value where that value can be established. In such a case, a taxable person may use the criterion of actual costs only if he proves that this criterion accurately reflects the actual structure of the package. Application of the criterion of market value is not subject to the condition that it must be simpler than application of the actual cost method or to the condition that it must produce a value added tax liability identical or close to that which would result from using the actual cost method. Accordingly:*

   — *a travel agent or tour operator may not use the market value method at his own discretion and*

— *that method is applicable to in-house services whose market value may be established even if, in the same tax period, the value of certain in-house components of the package cannot be established inasmuch as the taxable person does not sell similar services on a non-package basis.*

3. *It is for the national tribunal to establish, in the light of the circumstances of the main proceedings, the market value of the flights supplied in the main proceedings as part of package holidays. The national tribunal may establish this market value from average values. In this context, the market based on seats sold to other tour operators may constitute the most appropriate market.*

([1]) OJ C 213 of 06.09.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 13 October 2005

in Case C-458/03: Reference for a preliminary ruling from the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen, Parking Brixen GmbH v Gemeinde Brixen, Stadtwerke Brixen AG ([1])

(Public procurement — Procedures for the award of public contracts — Service concession — Management of public pay car parks)

(2005/C 296/07)

(Language of the case: German)

In Case C-458/03: Reference for a preliminary ruling under Article 234 EC from the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen (Italy), made by decision of 23 July 2003, received at the Court on 30 October 2003, in the proceedings between Parking Brixen GmbH and Gemeinde Brixen and Stadtwerke Brixen AG — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Schiemann, K. Lenaerts, J.N. Cunha Rodrigues (Rapporteur) and E. Juhász, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 13 October 2005, the operative part of which is as follows:

1. *The award, by a public authority to a service provider, of the management of a public pay car park, in consideration for which that provider is remunerated by sums paid by third parties for the use of that car park, is a public service concession to which Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts does not apply.*

2. *Articles 43 EC and 49 EC, and the principles of equal treatment, non-discrimination and transparency, are to be interpreted as precluding a public authority from awarding, without putting it out to tender, a public service concession to a company limited by shares which resulted from the conversion of a special undertaking of that public authority, whose objects have been extended to significant new areas, whose capital must obligatorily be opened in the short term to other capital, the geographical area of whose activities has been extended to the entire country and abroad, and whose Administrative Board possesses very broad management powers which it can exercise independently.*

([1]) OJ C 7 of 10.01.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 October 2005

in Case C-502/03: Commission of the European Communities v Hellenic 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 — Articles 4, 8 and 9)

(2005/C 296/08)

(Language of the case: Greek)

In Case C-502/03 **Commission of the European Communities** (Agent: M. Konstantinidis) v **Hellenic Republic** (Agent: E. Skandalou) — action under Article 226 EC for failure to fulfil obligations, brought on 26 November 2003 — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, R. Schintgen and J. Klučka (Rapporteur), Judges; L. A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 6 October 2005, in which it:

1. *Declares that, by failing to take all the measures necessary to ensure compliance with Articles 4, 8 and 9 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 47, 21.02.2004

JUDGMENT OF THE COURT

(First Chamber)

of 13 October 2005

in Case C-522/03: reference for a preliminary ruling from the Oberlandesgericht München Scania Finance France SA v Rockinger Spezialfabrik für Anhängerkupplungen GmbH & Co. ([1])

(Brussels Convention — Recognition and enforcement — Grounds for refusal — Meaning of 'duly served')

(2005/C 296/09)

(Language of the case: German)

In Case C-522/03: reference for a preliminary ruling pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, from the Oberlandesgericht München (Germany), made by decision of 31 October 2003, registered at the Court on 15 December 2003 in the proceedings pending before that court between Scania Finance France SA and Rockinger Spezialfabrik für Anhängerkupplungen GmbH & Co., — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, K. Schiemann, K. Lenaerts, E. Juhász and M. Ilešič, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 13 October 2005, the operative part of which is as follows:

Article 27 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, and the first paragraph of Article IV of the Protocol annexed to that convention, must be interpreted as meaning that, where a relevant international convention is applicable between the State in which the judgment is given and the State in which recognition is sought, the question whether the document instituting the proceedings was duly served must be determined in the light of the provisions of that convention, without prejudice to the use of direct transmission between public officers, where the State in which recognition is sought has not officially objected, in accordance with the second paragraph of Article IV of the Protocol.

([1]) OJ C 47, 21.02.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 6 October 2005

in Case C-9/04: Reference for a preliminary ruling from the Hoge Raad der Nederlanden in criminal proceedings against Geharo BV ([1])

(Directive 88/378/EEC — Toys — Directive 91/338/EEC — Maximum cadmium content permitted)

(2005/C 296/10)

(Language of the case: Dutch)

In Case C-9/04: reference for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 23 December 2003, received at the Court on 12 January 2004, in criminal proceedings against Geharo BV — the Court (First Chamber) composed of P. Jann, President of the Chamber, K. Lenaerts (Rapporteur), N. Colneric, K. Schiemann and E. Levits, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 6 October 2005, in which it:

Declares that, the second sentence of Article 1 of Council Directive 91/338/EEC of 18 June 1991 amending for the 10th time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations is to be interpreted as meaning that it does not preclude the prohibition in that Directive of the marketing of products with a cadmium content in excess of an authorised maximum amount from applying to toys covered by Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys.

([1]) OJ C 59, 06.03.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 6 October 2005

in Case C-120/04: reference for a preliminary ruling from the Oberlandesgericht Düsseldorf in Medion AG v Thomson multimedia Sales Germany & Austria GmbH [1]

(Trade marks — Directive 89/104/EEC — Article 5(1)(b) — Likelihood of confusion — Use of the trade mark by a third party — Composite sign including the name of another party followed by the trade mark)

(2005/C 296/11)

(Language of the case: German)

In Case C-120/04: reference for a preliminary ruling under Article 234 EC from the Oberlandesgericht Düsseldorf (Germany), made by decision of 17 February 2004, received at the Court on 5 March 2004, in the proceedings between Medion AG and Thomson multimedia Sales Germany & Austria GmbH — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, G. Arestis and J. Klučka, Judges; F.G. Jacobs, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 6 October 2005, the operative part of which is as follows:

Article 5(1)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that where the goods or services are identical there may be a likelihood of confusion on the part of the public where the contested sign is composed by juxtaposing the company name of another party and a registered mark which has normal distinctiveness and which, without alone determining the overall impression conveyed by the composite sign, still has an independent distinctive role therein.

[1] OJ C 106 of 30.04.2004.

JUDGMENT OF THE COURT

(Second Chamber)

of 13 October 2005

in Case C-200/04: Reference for a preliminary ruling from the Bundesfinanzhof, Finanzamt Heidelberg v ISt internationale Sprach- und Studienreisen GmbH [1]

(Sixth VAT Directive — Special scheme for travel agents and tour operators — Article 26(1) — Scope — Package comprising travel to the host State and/or the stay in that State and language tuition — Principal service and ancillary service — Definition — Directive 90/314/EEC on package travel, package holidays and package tours)

(2005/C 296/12)

(Language of the case: German)

In Case C-200/04: reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 18 March 2004, received at the Court on 5 May 2004, in the proceedings between Finanzamt Heidelberg and ISt internationale Sprach- und Studienreisen GmbH — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen, R. Silva de Lapuerta, P. Kūris and G. Arestis (Rapporteur), Judges; M. Poiares Maduro, Advocate General; M. Ferreira, Principal Administrator, for the Registrar, gave a judgment on 13 October 2005, the operative part of which is as follows:

Article 26 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, should be interpreted as meaning that it applies to a trader who offers services such as the 'High School' and 'College' programmes involving the organisation of language and study trips abroad and which, in consideration of the payment of an all-inclusive sum, provides in its own name to its customers a stay abroad of three to 10 months and buys in services from other taxable persons for that purpose.

[1] OJ C 190 of 24.07.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 13 October 2005

in Case C-379/04: reference for a preliminary ruling from the Landgericht Würzburg, Richard Dahms GmbH v Fränkischer Weinbauverband eV [1]

(Wine sector products — Regulation (EC) No 753/2002 — Article 21 — Direct effect — Wine and sparkling wine competitions — Competition entry fee)

(2005/C 296/13)

(Language of the case: German)

In Case C-379/04: reference for a preliminary ruling under Article 234 EC from the Landgericht Würzburg (Germany), made by decision of 23 August 2004, received at the Court on 3 September 2004, in the proceedings between Richard Dahms GmbH and Fränkischer Weinbauverband eV, — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. La Pergola, A. Borg Barthet, U. Lõhmus (Rapporteur) and A. Ó Caoimh, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 13 October 2005, the operative part of which is as follows:

Article 21 of Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products must be interpreted as meaning that entrants or potential entrants to a wine competition cannot rely on that provision to contest the conditions for the organisation of that competition and, in particular, the rules determining the entry fees.

[1] OJ C 262 of 23.10.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 6 October 2005

in Case C-429/04: *Commission of the European Communities* v *Kingdom of Belgium* [1]

(Failure of a Member State to fulfil obligations — Directive 2001/96/EC — Harmonised requirements and procedures for the safe loading and unloading of bulk carriers — Failure to transpose within the prescribed period)

(2005/C 296/14)

(Language of the case: Dutch)

In Case C-429/04: action for failure to fulfil obligations under Article 226 EC brought on the 6 October 2004, ***Commission of the European Communities*** (Agents: K. Simonsson and W. Wils) v ***Kingdom of Belgium*** (Agents: D. Haven and M. Wimmer), the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, C Gulmann and G. Arestis (Rapporteur), Judges, Advocate General: C. Stix-Hackl, Registrar: R. Grass, has given a judgment on the 6 October 2005 in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative measures necessary to comply with Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers, the Kingdom of Belgium has failed to fulfil its obligations under this directive.*

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

[1] OJ C 284, 20.11.2004

ORDER OF THE COURT

(Second Chamber)

of 14 July 2005

in Case C-70/04: Swiss Confederation v Commission of the European Communities [1]

(External relations — EC-Switzerland Agreement on air transport — Action for annulment brought by a non-member State — Swiss Confederation — Commission Decision 2004/12/EC — German measures relating to the approaches to Zurich airport — Council Regulation (EEC) No 2408/92 — Council Decision 2004/407/EC, Euratom of 26 April 2004 amending Articles 51 and 54 of the Protocol on the Statute of the Court of Justice — Referral to the Court of First Instance)

(2005/C 296/15)

(Language of the case: German)

In Case C-70/04: **Swiss Confederation**, (lawyers: S. Hirsbrunner and U. Soltész) against **Commission of the European Communities** (Agents: F. Benyon, M. Huttunen and M. Niejahr), supported by: **Federal Republic of Germany** (Agents: C.-D. Quassowski and A. Tiemann, and by T. Masing, lawyer) — action for annulment under Article 230 EC, read in conjunction with Article 20 of the Agreement between the European Community and the Swiss Confederation on air transport, brought on 13 February 2004 — the Court (Second Chamber), composed of C. W. A. Timmermans (Rapporteur), President of the Chamber, R. Silva de Lapuerta, J. Makarczyk, P. Kūris and G. Arestis, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, made an order on 14 July 2005, the operative part of which is as follows:

Case C-70/04 is referred to the Court of First Instance of the European Communities.

[1] OJ C 94, 17.04.2004

ORDER OF THE COURT

(Sixth Chamber)

of 22 June 2005

in Case C-190/04 P: Graham French, John Steven Neiger, Michael Leighton v Council of the European Union, Commission of the European Communities, John Pascoe, Richard Micklethwait, Ruth Margaret Micklethwait [1]

(Appeal — Action for damages — Unsubstantiated refusal of a United Kingdom court of last resort to refer a question to the Court of Justice for a preliminary ruling — Failure to adopt measures on the part of the Council and the Commission — Non-contractual liability of the Community — Clear inadmissibility)

(2005/C 296/16)

(Language of the case: English)

In Case C-190/04 P: Graham French, John Steven Neiger, Michael Leighton, (lawyer: J. Barnett) the other parties to the proceedings being: Council of the European Union, (Agents: M. Sims and M. Bauer), Commission of the European Communities (Agents: C. Docksey and M. Shotter) John Pascoe, Richard Micklethwait, Ruth Margaret Micklethwait — appeal under Article 56 of the Statute of the Court of Justice lodged on 23 April 2004, the Court (Sixth Chamber), composed of A. Borg Barthet, President of the Chamber, J.-P. Puissochet and U. Lõhmus (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, made an order on 22 June 2005, the operative part of which is as follows

1. *The appeal is dismissed.*

2. *Mr French, Mr Neiger and Mr Leighton shall pay the costs.*

[1] OJ C 156 of 12.06.2004

ORDER OF THE COURT

(Sixth Chamber)

of 22 June 2005

in Case C-281/04 P: Michael Leighton, Graham French, John Steven Neiger v Council of the European Union, Commission of the European Communities, John Pascoe, Richard Micklethwait, Ruth Margaret Micklethwait [1]

(Appeal — Action for failure to act — Failure to commence proceedings for failure to fulfil obligations — Non-contractual liability of the Community — Clear inadmissibility)

(2005/C 296/17)

(Language of the case: English)

In Case C-281/04 P: Michael Leighton, Graham French, John Steven Neiger, (lawyer: J. Barnett) the other parties to the proceedings being Council of the European Union, Commission of the European Communities, (Agents: E. Traversa and M. Shotter), John Pascoe, Richard Micklethwait, Ruth Margaret Micklethwait — appeal under Article 56 of the Statute of the Court of Justice lodged on 25 June 2004, the Court (Sixth Chamber), composed of A. Borg Barthet, President of the Chamber, J.-P. Puissochet and U. Lõhmus (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, made an order on 22 June 2005, the operative part of which is as follows

1. *The appeal is dismissed.*

2. *Mr Leighton, Mr French and Mr Neiger shall pay the costs.*

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[1] OJ C 288 of 11.09.2004.

Reference for a preliminary ruling from the Centrale Raad van Beroep by order of that court of 15 July 2005 in D.P.W. Hendrix v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen

(Case C-287/05)

(2005/C 296/18)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Centrale Raad van Beroep (Higher Social Security Court) of 15 July 2005, received at the Court Registry on 18 July 2005, for a preliminary ruling in the proceedings between D.P.W. Hendrix and Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen on the following questions:

1. Must a benefit under the Wajong, listed in Annex IIa to Regulation No 1408/71, [1] be deemed to be a special non-contributory benefit, as referred to in Article 4(2)a of Regulation No 1408/71, with the result that only the coordinating provision introduced by Article 10a of Regulation No 1408/71 must be applied to persons such as the appellant in the main proceedings? In answering this question does it make any difference whether the person concerned originally received a benefit (funded by contributions) for disabled young persons under the AAW which was converted by operation of the law into a Wajong benefit as of 1 January 1998?

2. If the answer to Question 1 is in the affirmative: can a worker rely on Article 39 EC, as implemented by Article 7 of Regulation No 1612/68, [2] against the Member State of which he is a national where he has worked solely in that Member State but resides in the territory of another Member State?

3. If the answers to Question 1 and 2 are in the affirmative: must Article 39 EC, as implemented by Article 7(2) of Regulation No 1612/68, be understood as meaning that a provision of legislation which makes the grant or continuation of a benefit conditional on the person concerned being resident in the territory of the Member State whose legislation is at issue is always compatible therewith where that legislation provides for a special non-contributory benefit, as referred to in Article 4(2)a of Regulation No 1408/71, and is listed in Annex IIa to that regulation?

4. If the answer to Questions 1 and 2 is in the affirmative and the answer to Question 3 is in the negative: must Community law (including, inter alia, Article 7(2) of Regulation No 1612/68 and Article 39 EC and Articles 12 EC and 18 EC) be understood as meaning that sufficient justification can be found in the nature of the Wajong to invoke the residence condition against a citizen of the Union who is in full-time employment in the Netherlands and in that regard is subject solely to Netherlands legislation?

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[1] Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition, 1971 (II), p. 416).

[2] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968 (II), p. 475).

Reference for a preliminary ruling from the Hajdú-Bihar Megyei Bíróság by order of that court of 3 March 2005 in Ákos Nádasdi v Vám- és Pénzügyőrség Észak-Alföldi Regionális Parancsnoksága

(Case C-290/05)

(2005/C 296/19)

(Language of the case: Hungarian)

Reference has been made to the Court of Justice of the European Communities by order of the Hajdú-Bihar Megyei Bíróság (Hungary) of 3 March 2005, received at the Court Registry on 19 July 2005, for a preliminary ruling in the proceedings between Ákos Nádasdi and Vám- és Pénzügyőrség Észak-Alföldi Regionális Parancsnoksága on the following questions:

1. Does the first paragraph of Article 90 EC allow Member States to maintain in force a duty on used motor vehicles from other Member States, when that duty is wholly independent of the value of the vehicle and the amount is determined solely on the basis of the technical characteristics of the vehicle (engine type, engine capacity) and its environmental classification?

2. If the answer to the first question is in the affirmative, is Law No CX of 2003 on registration duty, which is applicable in this case, compatible, as regards imported used motor vehicles, with the first paragraph of Article 90 EC when the registration duty is not payable on motor vehicles which were placed in circulation in Hungary before the law in question entered into force?

Reference for a preliminary ruling from the Raad van State by order of that court of 13 July 2005 in the proceedings between Minister voor Vreemdelingenzaken en Integratie and R.N.G. Eind

(Case C-291/05)

(2005/C 296/20)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Raad van State (Council of State) of 13 July 2005, received at the Court Registry on 20 July 2005, for a preliminary ruling in the proceedings between Minister voor Vreemdelingenzaken en Integratie (Minister for Alien Affairs and Integration) and R.N.G. Eind on the following questions:

Ia. If a national of a non-member country is regarded by a host Member State as a family member of a worker within the terms of Article 10 of Regulation (EEC) No 1612/68 ([1]) of the Council of 15 October 1968 on freedom of movement for workers within the Community, and if the validity of the residence permit granted by that Member State has not yet lapsed, does this mean that the Member State of which the worker is a national may not, for that very reason, deny the national of the non-member country the right of entry and residence on the return of the worker?

Ib. If the previous question has to be answered in the negative, is the Member State itself permitted to determine whether the national of the non-member country satisfies the conditions for entry and residence based on national law on his or her entry, or should that Member State first determine whether the national of the non-member country may still derive rights from Community law as a family member of the worker?

II. Does it make any difference to the answers to the questions under Ia and Ib if, prior to his or her stay in the host Member State, the national of the non-member country has had no right of residence based on national law in the Member State of which the worker is a national?

IIIa. If the Member State of which a worker (the reference person) is a national is permitted, on the worker's return, itself to determine whether the conditions laid down in Community law for the issue of a residence permit as a family member are still fulfilled, does a national of a non-member country who is a family member of the reference person, who returns from the host Member State to the Member State of which he is a national in order to seek employment there, have a right of residence in the latter Member State and, if so, for how long?

IIIb. Does that right also exist if the reference person does not perform any genuine and actual work in the latter Member State and cannot, or can no longer, be regarded as seeking employment, in the context of Council Directive 90/364/EEC ([2]) of 28 June 1990 on the right of residence, given *inter alia* that the reference person is in receipt of a welfare benefit by virtue of his Netherlands nationality?

IV. What significance for the answers to the previous questions is to be attached to the fact that the national of the non-member country is a family member of a citizen of the Union who has exercised the right he enjoys under Article 18 of the Treaty establishing the European Community and has returned to the Member State of which he is a national?

(1) OJ, English Special Edition 1968(II), p. 475.
(2) OJ 1990 L 180, p. 26.

Reference for a preliminary ruling from the Raad van State (Council of State) by order of that court of 19 July 2005 in Minister for immigration and integration v Mr I. Günes

(Case C-296/05)

(2005/C 296/21)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Raad van State (Council of State) of 19 July 2005, received at the Court Registry on 22 July 2005, for a preliminary ruling in the proceedings between the Minister for immigration and integration and Mr I. Günes on the following questions:

1. Must the concept of restriction in Article 41(1) of the additional protocol be interpreted as subsuming within it the requirement of a temporary residence authorisation to be applied for, under Article 3.71, first paragraph, of the Vb 2000, by a foreigner who is a Turkish national in that country or the country of permanent residence and in regard to which he must await a decision prior to coming to the Netherlands in the absence of which his application for leave to remain must be rejected?

2a. If the reply to Question 1 is affirmative, must Article 41(1) of the additional protocol then be construed as meaning that a new restriction within the meaning of that provision is also constituted by a tightening of the national rules in regard to the requirement to be in possession of a temporary residence authorisation following a post-January 1973 relaxation of that requirement?

2b. Is the reply to Question 2a different if the relaxation concerning the requirement of possession of a temporary residence authorisation was effected not in regard to the regulatory provision itself but in regard to policy and implementing practice?

Action brought on 22 July 2005 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-297/05)

(2005/C 296/22)

(Language of the case: Dutch)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 22 July 2005 by the Commission of the European Communities, represented by Michel van Beek and Désirée Zijlstra, acting as Agents.

The applicant claims that the Court should:

1. declare that, by requiring motor vehicles which have previously been registered in another Member State to undergo a technical examination before they can be registered in the Netherlands, where no such examination is required in the case where a motor vehicle previously registered in the Netherlands is transferred to the ownership or control of another person established there, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 EC and 30 EC;

2. order the Kingdom of the Netherlands to pay the costs of the proceedings.

Pleas in law and main arguments

The technical examinations which the Netherlands require motor vehicles previously registered in another Member State to undergo as a precondition of entry in the national vehicle licence plate register cannot be justified in the light of the objectives mentioned in Article 30 EC or for the purpose of meeting any mandatory requirement as recognised in the Court's case-law.

Appeal brought on 10 August 2005 by Creative Technology Ltd against the judgment delivered on 25 May 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-352/02 between Creative Technology Ltd and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being José Vila Ortiz

(Case C-314/05 P)

(2005/C 296/23)

(Language of the case: English)

An appeal against the judgment delivered on 25 May 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in case T-352/02 ([1]) between Creative Technology Ltd and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being José Vila Ortiz, was brought before the Court of Justice of the European Communities on 10 August 2005 by Creative Technology Ltd, established in Singapore (Singapore), represented by Stephen Jones and Paul Rawlinson, Solicitors.

The Appellant claims that the Court should:

i) Set aside the judgment

ii) Set aside the Decision of the Board of Appeal

iii) Annul decision of the Opposition Division No 145/2001 be annulled

iv) Allow the Applicant's Trade Mark to proceed to registration

v) Order that the Opponent pays to the Applicant/Appellant the costs incurred by the Applicant/Appellant in connection with this appeal and the appeal before the CFI, the Board of Appeal and the opposition before the Opposition Division.

Pleas in law and main arguments:

The Appellant submits that the Community Trade Mark Application for the word PC WORKS is not confusingly similar to the earlier Spanish trade mark for the figurative mark that includes the words W WORK PRO. It is submitted that the Opposition Division, the Fourth Board of Appeal and the Court of First Instance erred in their respective analysis of the global appreciation of the marks in question and in particular the undue weight given to the WORK element present in both marks.

It is further submitted that the Opposition Division, the Fourth Board of Appeal and the Court of First Instance failed to recognise that the goods in question are not casual purchases but bought by consumers after careful consideration and in particular that they failed to appreciate the proper characteristics of the reasonably well-informed and observant and circumspect member of the relevant public in that such a member of the relevant public in this case would not buy those goods without close examination.

Accordingly, it was wrong of the Court of First Instance to uphold the decisions of the Opposition Division and the Fourth Board of Appeal and reject the application in its entirety.

Hence, it is submitted that this appeal against the decision of the Opposition Division, the Fourth Board of Appeal and the Court of First Instance ought to be allowed, and the decisions of the Opposition Division, the Fourth Board of Appeal and the Court of First Instance ought to be annulled in their entirety. The Applicant/Appellant also seeks costs in these appeal proceedings and the proceedings before the Opposition Division, the Fourth Board of Appeal and the Court of First Instance.

([1]) OJ C182, 23.07.05, p. 35

Appeal brought on 28 July 2005 (received by fax on 27 July 2005) by Plus Warenhandelsgesellschaft mbH against the judgment of the Court of First Instance (Fourth Chamber) of 22 June 2005 in Case T-34/04 *Plus Warenhandelsgesellschaft mbH* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)*

(Case C-324/05 P)

(2005/C 296/24)

(Language of the case: German)

On 28 July 2005 (received by fax on 27 July 2005), Plus Warenhandelsgesellschaft mbH, represented by P.H. Kort, M.W. Husemann and B. Piepenbrink, of Kort Rechtsanwälte (GBR), Ellerstraße 123/125, D-40227 Düsseldorf, Germany, brought an appeal before the Court of Justice of the European Communities against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 22 June 2005 in Case T-34/04 *Plus Warenhandelsgesellschaft mbH* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*.

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance (Fourth Chamber) of 22 June 2005 in Case T-34/04 ([1]);

— give final judgment on the case and find in favour of the application made at first instance, or, in the alternative, refer the case back to the Court of First Instance;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Grounds of appeal and main arguments (Case C-324/05 P)

By its appeal the appellant is seeking to prevent the use of the word mark 'POWER' in the trade mark applied for ('TURKISH POWER') from leading to a taking over of the rights associated with the earlier mark. It substantiates its appeal against the abovementioned judgment by alleging legal error in the application of current Community law on Community trade marks and that, by the judgment under appeal, the Court of First Instance changed its decision-making practice and infringed the principle of equal treatment:

1. The Court of First Instance failed to recognise that the rights of the earlier mark are infringed by the incorporation of the separate formative word mark 'POWER' in the trade mark applied for. The extent of the protection granted by the German authorities for the word 'POWER' is unlimited and consequently, the goods in question have the exclusive trade mark rights. It must remain possible and without restriction for the earlier trade mark to be combined with free-standing verbal or graphic elements, if this is required for it to be marketed. However, the judgment under appeal restricts the appellant's creative freedom.

2. The Court of First Instance failed to recognise that the trade mark applied for reuses the word contained in the earlier trade mark in a formative way and has taken it over as a trade mark. The dominance of the word 'POWER' in the trade mark applied for is not offset by the word 'TURKISH', since this, in a manner characteristic of the tobacco industry, alludes to the tobacco designation 'Turkish blend' frequently used in that industry. It can thus be considered as a reference to the Turkish origin of the tobacco mixture which is put together with the word 'POWER' to form the name of a trade mark. Therefore, the Court of First Instance erred in taking the view that the word combination 'TURKISH POWER' has a suggestive effect independent of the word 'POWER'.

3. The Court of First Instance erroneously concluded that there were sufficient aural differences between the two conflicting marks, since the danger of aural confusion between the two is sufficient in itself to prevent registration of the trade mark applied for. As regards the visual similarities of the two marks, the Court of First Instance failed to consider that, from a visual perspective also, trade marks are predominantly characterised by the words of which they are composed, because consumers are more familiar with words than with images and can remember them more easily. The conclusion that the words which make up the trade mark applied for are dominated by the visual element is therefore unfounded.

4. The Court of First Instance erroneously assumed that the relevant public is particularly attentive: it is not established that consumers are more attentive when buying cigarettes than when buying groceries or other consumer goods. Even if particular attentiveness could none the less be assumed, it cannot be ruled out that the word mark 'POWER' will make customers think of the earlier mark and that the trade mark applied for would immediately be brought into connection with the appellant's company, that is to say, as a sub-brand of a Turkish mix of 'POWER' tobacco.

([1]) OJ 2005 C 205, p. 21.

Appeal brought on 15 September 2005 (fax 9 September 2005) by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment delivered on 15 June 2005 by the Third Chamber of the Court of First Instance of the European Communities in Case T-7/04 between Shaker di L. Laudato & C. Sas and the Office for Harmonisation in the Internal Market, the other party to the proceedings being Limiñana y Botella, SL

(Case C-334/05 P)

(2005/C 296/25)

(Language of the case: Italian)

An appeal against the judgment of the Third Chamber of the Court of First Instance of the European Communities of 15 June 2005 in Case T-7/04 between Shaker di L. Laudato & C. Sas and the Office for Harmonisation in the Internal Market was brought before the Court of Justice of the European Communities on 15 September 2005 by the Office for Harmonisation in the Internal Market, represented by O. Montalto and M. Capostagno, acting as Agents, the other party to the proceedings being Limiñana y Botella, SL.

The applicant claims that the Court should:

1. set aside the judgment under appeal;

2. order the Shaker to pay the costs.

Pleas in law and main arguments

The applicant considers that the judgment of the Court of First Instance under appeal in this case is vitiated by misinterpretation and misapplication of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

It is settled principle that the assessment of likelihood of confusion between trade marks under Article 8(1)(b) of the regulation on the Community trade mark is based on two distinct elements: first, an analytical comparison between both the signs and the goods, and then a concise evaluation of the results obtained in order to determine whether the average consumer of the goods in question might believe that those goods come from the same undertaking or from economically-linked undertakings. In particular, as regards the comparison between the signs, the analysis directed at establishing whether the signs are similar must take into consideration the visual, phonetic and conceptual aspects to arrive at a global assessment based on the general impression given by the marks themselves, taking particular account of their distinctive and dominant components.

The applicant claims that the Court of First Instance failed to give effect to the principle cited above and, in particular, it dismissed the possibility of confusion, basing its assessment exclusively on the visual perception of the contested mark, without taking any account of the further elements which may not be ignored in the overall assessment the likelihood of confusion.

The applicant also submits that the judgment under appeal is vitiated by manifest inconsistency and illogicality.

Reference for a preliminary ruling from the Tribunal Départemental des Pensions Militaires du Morbihan by order of that court of 7 September 2005 in Ameur Echouikh v Secrétaire d'État aux Anciens Combatants

(Case C-0336/05)

(2005/C 296/26)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Départemental Des Pensions Militaires de Morbihan (Armed Services Pensions Tribunal for the Department of Morbihan) of 7 September 2005, received at the Court Registry on 15 September 2005, for a preliminary ruling in the proceedings between Ameur Echouikh and the Secrétaire D' Etat aux Anciens Combatants on the following questions:

1. Do Articles 64 and 65 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 26 February 1996, have direct effect ?

2. If, for whatever reason, the Euro-Mediterranean Agreement is not found to be applicable in the present case, are Articles 40 to 42 of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976, which the Euro-Mediterranean Agreement is intended to replace, to be regarded as having direct effect ?

3. Does a Moroccan national who has served in a Member State's armed forces, including service beyond that State's territorial boundaries, fall within the category of 'workers' within the meaning of Articles 64 and 65 of the above-mentioned 1996 Euro-Mediterranean Agreement and within the meaning of Articles 40 to 42 of the above-mentioned 1976 Cooperation Agreement?

4. Irrespective of whether the provisions of the above-mentioned Agreements signed with the Kingdom of Morocco in 1976 and 1996 are directly effective, can a Moroccan national, provided that he falls within the category of 'workers' within the meaning of these provisions in the Community legal order, invoke the direct applicability of the general principle of non-discrimination based on nationality enshrined in Article 12 of the EC Treaty and Article 14 of the European Convention for the protection of human rights and fundamental freedoms?

5. Does an armed services invalidity pension claimed by a Moroccan national who has served in the armed forces of a Member State in respect of the sequelae of an accident or illness occurring in the course of such military service fall within the category of remuneration for work covered by Article 64 of the above-mentioned 1996 Euro-Mediterranean Agreement or within the category of social security benefits covered by Article 65 of that Agreement ?

6. Do Articles 64 and 65 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 26 February 1996 and, prior to the entry into force of that Agreement, Articles 40 to 42 of the Cooperation Agreement between the European Economic Community and Kingdom of Morocco, signed in Rabat on 27 April 1976, or, failing that, Article 12 (formerly Article 6) of the EC Treaty and Article 14 of the European Convention for the protection of human rights and fundamental freedoms, preclude a Member State from relying on restrictive provisions in its national legislation connected to the nationality of a Moroccan national in order to:

   — refuse to grant him an armed services invalidity pension that it would have granted, without that restriction, to its own nationals who, like him, are permanently resident in its territory, and who find themselves in the same position as him, having served in the armed forces of that Member State in the same circumstances as him?

— apply to him different conditions from those it applies to its own nationals with regard to the granting, method of calculation and duration of armed services pensions intended to compensate for the sequelae of accidents or illnesses arising in the course of service in its armed forces?

7. Does the fact that the person concerned was not working at the time when he made his pension claim and that the accident or illness on which this claim is based arose whilst he was formerly engaged in active military service, namely between 19 August 1949 and 16 August 1964, outside the territorial boundaries of the Member State he was serving in the capacity of a soldier, namely in Saigon, affect the replies to the preceding questions?

Reference for a preliminary ruling from the Oberlandesgericht München by order of that court of 9 September 2005 in the criminal proceedings against Stefan Kremer

(Case C-340/05)

(2005/C 296/27)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht München (Germany) of 9 September 2005, received at the Court Registry on 19 September 2005, for a preliminary ruling in the criminal proceedings against Stefan Kremer.

The reference concerns the case where the driving licence of a person in a Member State (host State) has been withdrawn by the administrative authorities due to unfitness to drive or the acquisition of such a licence has been refused, the acquisition of a new driving licence in that host State is dependant on the applicant obtaining a medical/psychological certificate proving his fitness to drive in accordance with the provisions of that host State, the applicant fails to obtain this, and subsequently — before expiration of the driving ban in the host Member State — he acquires a driving licence in another Member State (issuing State).

The following questions are referred for a preliminary ruling:

Does Article 8(4) of Council Directive 91/439/EEC [1] permit, in such a case, the host State to adopt a legal rule under which a driving licence from an issuing State may be used in the host State only on application and after examination as to whether the conditions for the measure under Article 8(2) of the directive have ceased to apply,

or, does it follow from the principle of mutual recognition of driving licenses laid down in Article 1(2) of the directive and from the requirement that Article 8(4) of the directive should be narrowly construed, that the host State must recognise the validity of the driving licence without a prior control procedure and that that host State merely has the authority to deny the right to use the driving licence in the host State if reasons (still) exist which justify the application of measures under Article 8(2) of the directive?

[1] OJ L 237, p. 1.

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

(Case C-355/05)

(2005/C 296/28)

(Language of the case: English)

An action against Ireland was brought before the Court of Justice of the European Communities on 22 September 2005 by the Commission of the European Communities, represented by Mr. Bernhard Schima and Ms. Doyin Lawumni, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that by failing to adopt all of the laws, regulations or administrative provisions necessary to comply with Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC [1] or, in any event, by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 33 of the Directive.

2. order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 1 July 2004.

[1] OJ L 176, 15.7. 2003

Action brought on 23 September 2005 by the Commission of the European Communities against the Kingdom of Spain

(Case C-358/05)

(2005/C 296/29)

(Language of the case: Spanish)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 23 September 2005 by the Commission of the European Communities, represented by B. Schima and S. Pardo Qunitillán, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court of Justice should:

— declare that, by not having adopted all the laws, regulations and administrative provisions needed to comply with Directive 2003/54/EC ([1]) of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC or, in any event, by having failed to give notice of such provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under Article 30 of that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period within which the directive should have been transposed into national law expired on 1 July 2004.

([1]) OJ L 176, 15.7.2002, p. 37.

Action brought on 26 September 2005 by the Commission of the European Communities against the Kingdom of Spain

(Case C-361/05)

(2005/C 296/30)

(Language of the case: Spanish)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 26 September 2005 by the Commission of the European Communities, represented by I. Martínez del Peral and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that

— by failing to fulfil its obligations under Articles 4, 9 and 13 of Council Directive 75/442/EEC ([1]), as amended by Council Directive 91/156/EEC ([2]), and Article 14 of Council Directive 99/31/EC ([3]), in that it has not taken the measures necessary to ensure that the landfill sites at Níjar and Hoyo de Miguel comply with the obligations arising from those directives;

— by also failing to fulfil its obligations under Articles 4, 9 and 13 of Directive 75/442/EEC, as amended by Directive 91/156/EEC, and Article 14 of Directive 99/31/EC, in that it has not taken the measures necessary to ensure that the landfill site at Cueva del Mojón complies with the obligations arising from those directives, not having received from the Spanish authorities information which contradicts the compla int received in respect of the landfill site at Cueva del Mojón, situated in La Mojonera,

the Kingdom of Spain has failed to fulfil its obligations under the provisions cited in the previous paragraph;

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

Pleas in law and main arguments

The persistence of the problem with those landfill sites has led to significant degradation of the environment over a prolonged period of time, and without any intervention by the competent authorities, in spite of requests by the Commission.

The waste in the illegal landfill sites releases into the soil, air and water chemical substances which endanger human health, contaminates surface and ground waters and the atmosphere, as well as plants and animals. Moreover, the illegal incineration and the fires which ignite spontaneously because of the inflammable nature of the waste in the unsupervised landfill sites give rise to many fires with disastrous consequences for the environment.

([1]) of 15 July 1975 on waste, OJ L 194 of 25.7.75, p. 39.
([2]) of 18 March 1991 OJ L 78 of 26.3.1991, p. 32.
([3]) of 26 April 1999, on the landfill of waste, OJ l 182 of 16.7.1999, p. 1.

Action brought on 27 September 2005 by Commission of the European Communities against the Kingdom of the Netherlands

(Case C-364/05)

(2005/C 296/31)

(Language of the case: Dutch)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 27 September 2005 by the Commission of the European Communities, represented by Michel van Beek, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that the Kingdom of the Netherlands,

by failing to adopt the legislative and administrative measures necessary to comply with Directive 2001/20/EC ([1]) of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use

by failing to adopt the legislative and administrative measures necessary to comply with Commission Directive 2003/94/EC ([2]) of 8 October 2003 laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use

or in any event by failing to notify such measures to the Commission

has failed to fulfil its obligations under those directives;

— order the Kingdom of the Netherlands to pay the costs

Pleas in law and main arguments

The first paragraph of Article 22 of Directive 2001/20 provides that Member States are to bring the necessary legislative and administrative measures for complying with the directive into force by 1 May 2003 and inform the Commission accordingly. In the case of Directive 2003/94, Article 17 sets the deadline at 30 April 2004.

([1]) OJ 2001 L 121, p. 34.
([2]) OJ 2003 L 262, p. 22.

Action brought on 7 October 2005 by the Commission of the European Communities against the Hellenic Republic

(Case C-369/05)

(2005/C 296/32)

(Language of the case: Greek)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 7 October 2005 by the Commission of the European Communities, represented by M. Patakia, Legal Adviser in the Legal Service, and N. Yerrell, a member of the Legal Service, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA), ([1]) or in any event by failing to inform the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under that directive;

2. order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

— the period prescribed for transposing the directive into national law expired on 1 December 2003.

([1]) OJ L 302, 1.12.2000, p. 57.

Action brought on 7 October 2005 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-372/05)

(2005/C 296/33)

(Language of the case: German)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 7 October 2005 by the Commission of the European Communities, represented by Dr. Günter Wilms, acting as Agent, with an address for service in Luxembourg.

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

1. declare that, by refusing in the period from 1 January 1998 to 31 December 2002, to calculate and transfer own resources which were not levied on the import of military equipment exempt from duty and to pay to the Commission default interest as a result of not making available the own resources, the Federal Republic of Germany has failed to fulfil its obligations under Article 2, Article 9, Article 10 and Article 11 of Regulation No 1552/89 ([1]) and Regulation No 1150/2000 ([2]);

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

Pleas in law and main arguments

The Federal Republic of Germany granted exemptions from duty on the import of military goods as from 1 January 1998 and therefore paid no own resources. The defendant did not, despite the request made of it, calculate the amount of own resources which had not, on account of that exemption from duty, been paid and made available to the Commission in due time. Furthermore, the defendant refused to provide the detailed information relating to the actual imports which was needed in order to calculate the default interest and also refused to pay the default interest.

That exemption from duty constitutes a breach of Article 26 of the EC Treaty as well as of Article 20 of the Community Customs Code which cannot be justified by relying on Article 296 EC. Article 296 EC must, as an exception to the general principle of levying duty, be interpreted strictly and, in accordance with that strict interpretation, the Member State which wishes to rely on that provision must establish the existence of all the conditions for it to be applicable.

In the present case it means that it is for the German authorities to establish the extent to which the levying of duties jeopardises the essential security interests of the Federal Republic of Germany. The Member State must also establish that under the particular circumstances there was a concrete threat to state security. The German authorities, however, provided no concrete information or arguments as to how and why defence capabilities are impaired by the levy of certain duties. Other Member States levy duties on such imports without making the objection that this is a threat to their national security. In regard to those Member States, the acceptance of that exemption would be unjust and irresponsible as they would have to bear the financial consequences.

Nor can the taking into account of military secrecy, which has been argued by the German authorities, justify such a breach of Community law as the safeguarding of the confidentiality of sensitive data on the part of the Community institutions is only a procedural issue which cannot exempt the defendant from its substantive duty to pay the appropriate own resources to the Community.

The fact that Council Regulation No 150/2003 renders possible, subject to certain conditions, the suspension of import duties in respect of the specified goods after its coming into force on 1 January 2003 provides no basis for justifying a prior infringement of Community customs law: before the coming into force of that Regulation there had been no suspension of the Common Customs Tariff, the duties had to be levied and the appropriate own resources paid to the Community by 31 December 2002.

([1]) OJ 1989 L 155, p. 1
([2]) OJ 2000 L 130, p. 1

Removal from the register of Case C-333/02 ([1])

(2005/C 296/34)

(Language of the case: Italian)

By order of 4 April 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-333/02: Italian Republic v Commission of the European Communities.

([1]) OJ C 274, 9.11.2002.

Removal from the register of Case C-101/03 ([1])

(2005/C 296/35)

(Language of the case: Italian)

By order of 24 June 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-101/03 (reference for a preliminary ruling Tribunale di Milano, Sezione Prima Penale): in criminal proceedings against Alfonso Galeazzo, Marco Banatti.

([1]) OJ C 101, 26.4.2003.

Removal from the register of Case C-338/03 [1]

(2005/C 296/36)

(Language of the case: Italian)

By order of 14 July 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-338/03 (reference for a preliminary ruling from the Tribunale Civile e Penale di Perugia): in criminal proceedings against Rosario Alessandrello, Vicenzo Biccari, Daniel Buaron.

[1] OJ C 264, 1.11.2003.

Removal from the register of Case C-510/03 [1]

(2005/C 296/37)

(Language of the case: German)

By order of 21 July 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-510/03 Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 21, 24.1.2004.

Removal from the register of Case C-330/04 [1]

(2005/C 296/38)

(Language of the case: Italian)

By order of 22 June 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-330/04: Commission of the European Communities v Italian Republic.

[1] OJ C 262, 23.10.2004.

Removal from the register of Case C-478/04 [1]

(2005/C 296/39)

(Language of the case: Italian)

By order of 24 June 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-478/04 Commission of the European Communities v Italian Republic.

[1] OJ C 31, 5.2.2005.

Removal from the register of Case C-481/04 [1]

(2005/C 296/40)

(Language of the case: German)

By order of 6 June 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-481/04, in the case of Engin Torun against Stadt Augsburg, interested parties: the representative of the national interest before the Bundesverwaltungsgericht, and Landesanwaltschaft Bayern.

[1] OJ C 19, 22.1.2005.

Removal from the register of Case C-74/05 [1]

(2005/C 296/41)

(Language of the case: French)

By order of 27 April 2005, the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-74/05 Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 82, 2.4.2005.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 15 September 2005 — DaimlerChrysler v Commission

(Case T-325/01) [1]

(Competition — Article 81 EC — Agreements, decisions and concerted practices — Agency agreement — Distribution of motor vehicles — Economic unit — Measures designed to hinder parallel trade in motor vehicles — Price-fixing — Regulation (EC) No 1475/95 — Fine)

(2005/C 296/42)

Language of the case: German

Parties

Applicant(s): Daimler Chrysler AG (Stuttgart, Germany) (represented by: R. Bechtold and W. Bosch, lawyers)

Defendant(s): Commission of the European Communities (represented by: W. Mölls, Agent, assisted by H.-J. Freund, lawyer)

Application for

Primarly, annulment of Commission Decision 2002/58/EC of 10 October 2001 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/36.264 — Mercedes-Benz) (OJ 2002 L 257, p. 1) and, in the alternative, reduction in the fine imposed by that decision

Operative part of the judgment

The Court:

1) *Annuls Article 1 of Commission Decision 2002/758/EC of 10 October 2001 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/36.264 — Mercedes-Benz) save in so far as it finds that DaimlerChrysler AG and its legal predecessors Daimler-Benz AG and Mercedes-Benz AG have themselves or through their subsidiary Mercedes-Benz Belgium SA infringed Article 81(1) EC by participating in agreements to restrict the granting of discounts in Belgium, those agreements having been concluded on 20 April 1995 and terminated on 10 July 1999;*

2) *Annuls Article 2 with the exception of the first sentence;*

3) *Annuls Article 3 of Decision 2002/758 in so far as it sets the amount of the fine imposed on the applicant at EUR 71.825 million;*

4) *Sets the amount of the fine imposed by Article 3 of Decision 2002/758 for the infringement relating to price-fixing in Belgium at EUR 9.8 million;*

5) *Dismisses the remainder of the action;*

6) *Orders the Commission to bear its own costs and to pay 60 % of those incurred by the applicant, and the applicant to bear 40 % its own costs.*

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[1] OJ C 68 of 16.3.2002.

Judgment of the Court of First Instance of 6 October 2005 — Sumitomo Chemical and Sumika Fine Chemicals v Commission

(Joined Cases T-22/02 and T-23/02) [1]

(Competition — Cartels in the vitamin sector — Commission Decision finding infringements that have ceased and not imposing fines — Regulation (EEC) No 2988/74 — Time-limit on the power of the Commission to impose fines or penalties — Principle of legal certainty — Presumption of innocence — Legitimate interest in finding that infringements have been committed)

(2005/C 296/43)

Language of the case: English

Parties

Applicant(s): Sumitomo Chemical Co. Ltd (Tokyo, Japan) and Sumika Fine Chemicals Co. Ltd (Osaka, Japan)) (represented by M. Klusmann, lawyer, and V. Turner, Solicitor)

Defendant(s): Commission of the European Communities (represented by L. Pignataro-Nolin and A. Whelan, agents)

Application for

annulment of Commission Decision 2003/2/EC of 21 November 2001 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/E-1/37.512 — Vitamins) (OJ 2003 L 6, p. 1) in so far as it concerns the applicants

Operative part of the judgment

The Court:

1) *Annuls Commission Decision 2003/2/EC of 21 November 2001 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/E-1/37.512 — Vitamins) in so far as it concerns the applicants;*

2) *Orders the defendant to pay the costs.*

([1]) OJ C 109 of 4.5.2002.

Judgment of the Court of First Instance of 27 September 2005 — Common Market Fertilizers v Commission of the European Communities

(Joined Cases T-134/03 and T-135/03) ([1])

(Remission of import duties — Article 1(3) of Regulation (EC) No 3319/94 — Invoicing direct to importer — 'Group of experts' within the meaning of Article 907 of Regulation (EEC) No 2454/93 — Rights of the defence — 'Obvious negligence' within the meaning of Article 239 of Regulation (EEC) No 2913/92 — Obligation to state reasons)

(2005/C 296/44)

Language of the case: French

Parties

Applicant(s): Common Market Fertilizers (Brussels, Belgium) (represented by A. Sutton and N. Flandin, lawyers)

Defendant(s): Commission of the European Communities (represented by X. Lewis, Agent)

Application for

annulment of Commission Decisions C (2002) 5217 final and C (2002) 5218 final of 20 December 2002 finding that the remission of import duties was not justified in a particular case.

Operative part of the judgment

The Court:

1) *Dismisses the applications.*

2) *Orders the applicant, in addition to bearing its own costs, to pay those incurred by the Commission.*

([1]) OJ C 158, 5.7.2003.

Judgment of the Court of First Instance of 5 October 2005 — Rasmussen v Commission

(Case T-203/03) ([1])

(Officials — False statements concerning mission expenses — Disciplinary proceedings — Reprimand — Rules on languages — Medical confidentiality)

(2005/C 296/45)

Language of the case: French

Parties

Applicant(s): Lars Bo Rasmussen (Hellerup, Denmark) (represented by: G. Bouneou and F. Frabetti, lawyers)

Defendant(s): Commission of the European Communities (represented by: J. Currall and V. Joris and subsequently by V. Joris and M. Patkova, Agents)

Application for

(i) annulment of the Commission's decision of 1 July 2002 imposing on the applicant the disciplinary measure of a reprimand for false statements concerning mission expenses, (ii) restitution of amounts recovered pursuant to Article 85 of the Staff Regulations of Officials of the European Communities and (iii) compensation for the non-material damage allegedly sustained

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the applicant to bear his own costs and half of the costs incurred by the Commission;*

3) *Orders the Commission to bear half of its own costs.*

([1]) OJ C 200, 23.8.2003.

Judgment of the Court of First Instance of 5 October 2005 — Land Oberösterreich and Austria v Commission

(Joined Cases T-366/03 and T-235/04) ([1])

(Approximation of laws — National provisions derogating from a harmonisation measure — Ban on the use of genetically modified organisms in Upper Austria — Conditions for application of Article 95(5) EC)

(2005/C 296/46)

Language of the case: German

Parties

Applicant(s): Land Oberösterreich (represented by: F. Mittendorfer, lawyer) and Republic of Austria (represented by: H. Hauer and H. Dossi, Agents)

Defendant(s): Commission of the European Communities (represented by: M. Patakia and U. Wölker, Agents)

Application for

annulment of Commission Decision 2003/653/EC of 2 September 2003 relating to national provisions on banning the use of genetically modified organisms in the region of Upper Austria notified by the Republic of Austria pursuant to Article 95(5) of the EC Treaty (OJ 2003 L 230, p. 34)

Operative part of the judgment

The Court:

1) *Dismisses the actions;*

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

([1]) OJ C 35, 7.2.2004.

Judgment of the Court of First Instance of 6 October 2005 — *Fischer* v *Court of Justice*

(Case T-404/03) ([1])

(Officials — Action for annulment — Invalidity — Half-time on medical grounds — Statement of reasons — Invalidity committee — Action for damages)

(2005/C 296/47)

Language of the case: French

Parties

Applicant(s): Pia Fischer (Konz-Roscheid, Germany) (represented by: C Marhuenda, lawyer)

Defendant(s): Court of Justice of the European Communities (represented by: M. Schauss, Agent)

Subject-matter of the case

Firstly, an application for annulment of the decisions of the appointing authority of 10 April and 6 June 2003 declaring that the applicant was not affected by complete and permanent invalidity making it impossible for her to carry out duties involved in a post in her career bracket and requesting her to return to work on a half-time basis on medical grounds for a total period of 13 weeks. Secondly, an application for the payment of 1 EUR as token damages for the non-material loss allegedly suffered.

Operative part of the judgment

1. *The appeal is dismissed in its entirety.*

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

([1]) OJ C 47, 21.2.2004

Judgment of the Court of First Instance of 5 October 2005 — Bunker & BKR v OHIM

(Case T-423/04) ([1])

(Community trade mark — Opposition — Application for a Community figurative mark containing the verbal element 'B.K.R.' — Earlier national word mark BK RODS — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2005/C 296/48)

Language of the case: Spanish

Parties

Applicant(s): Bunker & BKR, SL (Almansa, Spain) (represented by: J. Astiz Suárez, lawyer)

Defendant(s): Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. García Murillo, Agent,)

Other party or parties to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Marine Stock Ltd (Tortola, British Virgin Islands, United Kingdom) (represented by: M. de Justo Bailey, lawyer)

Application for

annulment of the decision of the Fourth Board of Appeal of OHIM of 30 June 2004 (Case R 0458/2002-4) concerning opposition proceedings between Bunker & BKR, SL and Marine Stock Ltd

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 June 2004 (Case R 0458/2002-4);*

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

3. *Orders the intervener to bear its own costs.*

([1]) OJ C 314, 18.12.2004.

Order of the Court of First Instance of 7 September 2005 — Krahl v Commission

(Case T-358/03) ([1])

(Officials — Service in a non-member country — Accommodation expenses — Actions — Time-limits — Mandatory — Late action — Inadmissible)

(2005/C 296/49)

Language of the case: French

Parties

Applicant(s): Sigfried Krahl (Zagreb, Croatia) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchel, lawyers)

Defendant(s): Commission of the European Communities (represented by: J. Currall and H. Krämer, Agents)

Application for

annulment of the Commission's decision refusing to reimburse all the accommodation expenses incurred by the applicant following his posting to Zagreb

Operative part of the Order

1. *The action is dismissed as inadmissible;*

2. *Each of the parties shall bear its own costs.*

([1]) OJ C 7, 10.1.2004.

Order of the Court of First Instance of 14 September 2005 — Ehcon v Commission

(Case T-140/04) ([1])

(Public service contracts — Call for tenders — Rejection of tenderer's offer — Non-contractual liability — Limitation period — Inadmissibility — Action clearly unfounded)

(2005/C 296/50)

Language of the case: Dutch

Parties

Applicant(s): Adviesbureau Ehcon BV (Reeuwijk, Netherlands) (represented by: M. Goedkoop, lawyer)

Defendant(s): Commission of the European Communities (represented by: L. Parpala and E. Manhaeve, Agents)

Application for

compensation for the damage allegedly suffered by the applicant because of the rejection of its tender under a call for tenders, published on 10 April 1996 (OJ 1996 C 232, p. 35), for services in relation to Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ 1980 L 229, p. 11).

Operative part of the Order

1. *The action is dismissed as partly inadmissible and partly clearly without foundation.*

2. *The applicant is to pay the costs.*

([1]) OJ C 146, 29.5.2004.

Order of the Court of First Instance of 19 September 2005 — Aseprofar and Edifa v Commission

(Case T-247/04) ([1])

(Action for annulment — Admissibility — Challengeable act — Failure to bring an action for failure to fulfil obligations — Notification 2002/C 244/03)

(2005/C 296/51)

Language of the case: Spanish

Parties

Applicant(s): Asociación de exportadores españoles de productos farmacéuticos (Aseprofar) and Española de desarrollo e impulso farmacéutico, SA (Edifa) (Madrid, Spain) (represented by: L. Ortiz Blanco, lawyer).

Defendant(s): Commission of the European Communities (represented by: G. Valero Jordana, Agent).

Application for

Annulment of the Commission's decision of 30 March 2004 to take no further action in respect of complaint P/2002/4609 and of the Commission's decision of 30 March 2004 to take no further action in respect of complaint P/2003/5119, as regards Article 29 EC.

Operative part of the Order

1. *The action is dismissed as inadmissible.*

2. *Asociación de exportadores españoles de productos farmacéuticos and Española de desarrollo e impulso farmacéutico, SA are ordered to pay the costs.*

([1]) OJ C 217 of 28.08.2004.

Order of the Court of First Instance of 8 September 2005 — Lorte and Others v Council

(Case T-287/04) ([1])

(Action for annulment — Regulations (EC) No 864/2004 and No 865/2004 — Support scheme in the olive oil sector — Natural and legal persons — Not of individual concern — Inadmissibility)

(2005/C 296/52)

Language of the case: Spanish.

Parties

Applicant(s): Lorte, SL (Seville, Spain), Oleo Unión, Federación empresarial de organizaciones de productores de aceite de oliva (Seville, Spain), Unión de organizaciones de productores de aceite de oliva (Unaproliva) (Jaén, Spain), (represented by: R. Illescas Ortiz, lawyer)

Defendant(s): Council of the European Union (represented by: M. Balta and F. Florindo Gijón, Agents)

Application for

Annulment of Council Regulation (EC) No 864/2004 of 29 April 2004 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ 2004 L 161, p. 48), and of Council Regulation (EC) No 865/2004 of 29 April 2004 on the common organisation of the market in olive oil and table olives and amending Regulation (EEC) No 827/68 (OJ 2004 L 161, p. 97).

Operative part of the Order

1. *The action is dismissed as inadmissible.*

2. *The applicants must bear their own costs and pay those incurred by the Council.*

3. *There is no need to adjudicate on the Commission's application for leave to intervene.*

([1]) OJ C 284 of 20.11.2004.

Order of the Court of First Instance of 8 September 2005 — ASAJA and Others v Council

(Joined Cases T-295/04 to T-297/04) ([1])

(Action for annulment — Regulation (EC) No 864/2004 — Support scheme in the olive oil sector — Natural and legal persons — Lack of individual concern — Inadmissibility)

(2005/C 296/53)

Language of the case: Spanish

Parties

Applicant(s): Centro Provincial de Jóvenes Agricultores de Jaén (ASAJA), Salvador Contreras Gila, José Ramiro López, Antonio Ramiro López, Cristóbal Gallego Martínez, Benito García Burgos and Antonio Rarras Rosa (Jaén, Spain) (represented by: J. Vásquez Medina, lawyer)

Defendant(s): Council of the European Union (represented by: M. Balta and F. Florindo Gijón, Agents)

Application for

annulment of Article 1(7) of Council Regulation (EC) No 864/2004 of 29 April 2004 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union.

Operative part of the Order

1. *The actions are dismissed as inadmissible.*

2. *The applicants will bear their own costs and those of the Council.*

3. *It is not necessary to adjudicate on the application to intervene lodged by the Commission.*

([1]) OJ C 251, 9.10.2004.

Order of the President of the Court of First Instance of 20 September 2005 — Deloitte Business Advisory v Commission

(Case T-195/05 R)

(Interim measures — Community tendering procedure — Loss of an opportunity — Urgency — Balance of interests)

(2005/C 296/54)

Language of the case: Dutch

Parties

Applicant(s): Deloitte Business Advisory (Brussels, Belgium) (represented by: D. Van Heuven, S. Ronse and S. Logie, lawyers)

Defendant(s): Commission of the European Communities (represented by: L. Pignataro-Nolin and E. Manhaeve, Agents)

Application for

interim measures seeking, first, an order suspending the operation of (1) the Commission decision rejecting the tender submitted, inter alia, by the applicant under a call for tenders bearing reference SANCO/2004/01/041 and (2) the decision to award the contract in question to a third party and, secondly, an order prohibiting the Commission (1) from informing the successful tenderer of the decision awarding the contract in question and (2) from proceeding with signature of the relevant contract, on pain of a periodic penalty payment.

Operative part of the Order

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

2. *Costs are reserved.*

Action brought on 12 July 2005 — Deutsche Telekom v OHIM

(Case T-257/05)

(2005/C 296/55)

Language in which the application was lodged: German

Parties

Applicant(s): Deutsche Telekom AG (Bonn, Germany) (represented by: J.-C. Gaedertz, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Forms of order sought

— The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of 2 May 2005 in appeal proceedings R 0620/2004-2; re-establish the applicant's rights (*restitutio in integrum*) in accordance with Article 78 of the Community trade mark regulation.

Pleas in law and main arguments

Community trade mark sought: The word mark 't' for goods and services in Classes 9, 16, 35, 36, 38, 39 and 41 — Registration No 2 893 865.

Decision of the examiner: Refusal to register.

Decision of the Board of Appeal: Dismissal of the application to re-establish the applicant's rights and dismissal of its appeal.

Pleas in law: The refusal to re-establish the applicant's rights in the appeal proceedings is unlawful since it is incorrect that the office organisation of the applicant's lawyers does not satisfy the requirements of Article 78(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

Action brought on 2 September 2005 — Aqua-Terra Bioprodukt v OHIM

(Case T-330/05)

(2005/C 296/56)

Language in which the application was lodged: German

Parties

Applicant(s): Aqua-Terra Bioprodukt GmbH (Griesheim, Germany) (represented by: P.A. Müller, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party or parties to the proceedings before the Board of Appeal of OHIM: De Ceuster Meststoffen NV (Sint-Katelijne-Waver, Belgium)

Forms of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market in appeal proceedings No R0984/2004-1, dated 1 July 2005;

— in the alternative, set aside and annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market in appeal proceedings No R0984/2004-1, dated 1 July 2005, in so far as 'biological substances, namely preparations for conditioning, reconstructing and recultivating sewage or for use in sewage treatment plants' are concerned.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'aqua terra' for goods in Classes 1 and 3 — Registration No 1 480 243

Proprietor of the mark or sign cited in the opposition proceedings: De Ceuster Meststoffen NV

Mark or sign cited in opposition: The national word mark 'AQUA-TERRA' for goods in Classes 1, 5 and 31

Decision of the Opposition Division: Upholds the opposition which was restricted in relation to the goods in Class 1 and refusal to register all the goods in Class 1

Decision of the Board of Appeal: Dismissal of the applicant's appeal

Pleas in law: The contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 40/94 due to an erroneous assessment of the likelihood of confusion of the two marks in opposition. Consideration was not taken of the individual goods and their similarity as required and a general evaluation was carried out instead.

Action brought on 5 September 2005 by Susanne Sorensen v Commission of the European Communities

(Case T-335/05)

(2005/C 296/57)

Language of the case: French

Parties:

Applicant(s): Susanne Sorensen (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal, lawyers)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul the decision appointing the applicant to the post of assistant, in that it fixes her classification in grade B*3, step 2;

— annul the decision to cancel all the points constituting the applicant's 'rucksack';

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, an official of the Commission, had initially been classified in grade C2. she was successful in open competition COM/B/1/02 (at level B5/B4) and was appointed, by the contested decision of 5 August 2004, in grade B*3, step 2. In support of her action, the applicant claims that there has been a breach of the competition notice and also of the vacancy notice, in so far as both notices provided for classification in grade B5 or B4. She claims, in the same context, that there has been a breach of Articles 4, 5, 29 and 31 of the Staff Regulations. Relying on the fact that some successful candidates in the competition were appointed before 1 May 2004 (the date of the entry into force of the amendments to the Staff Regulations) in grade B5 or B4, which correspond to grade B*5 or B*6 under the new denomination, the applicant also claims that there has been a breach of the principle of equal treatment and non-discrimination. She also contends that the principle that an official should have reasonable career prospects and the principle of protection of legitimate expectations have been breached, since she had a legitimate expectation of being appointed in grade B*5 or B*4. In that context, she claims that Article 12 of Annex XIII to the Staff Regulations, which also breaches the principle of legal certainty, is unlawful.

Action brought on 5 September 2005 — De Soeten v Council

(Case T-336/05)

(2005/C 296/58)

Language of the case: French

Parties

Applicant(s): Henders De Soeten (The Hague, Netherlands) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal, lawyers)

Defendant(s): Council of the European Union

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul the Council's decision rejecting the applicant's request for early retirement without any reduction in her pension rights;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The applicant is a former official of the Council, who has been in retirement since 1 July 2004. She submitted an application for entitlement to the measure referred to in Article 9(2) of Annex VIII to the Staff Regulations, which enables the Appointing Authority, in the interests of the service and on the basis of objective criteria and transparent procedures introduced by means of general implementing provisions, not to apply the reduction in pension provided for in Article 9(1)(b) to officials leaving the service before the age of 63.

By her action, the applicant contests the decision refusing to grant her that benefit. She submits that one of the candidates who qualified for that measure was assigned to the same department. The applicant therefore takes the view that the requirements of the service were the same in both cases and asserts that the above mentioned article and the general implementing provisions adopted by the Council have been infringed, since both her length of service and her merits were greater than those of the other candidate.

In addition, the applicant alleges that the Council committed a manifest error of assessment in so far as it held that the assessment of the criterion of the requirements of the service meant that regard should be had to the individual qualities of officials.

Action brought on 9 September 2005 — Raymond Claudel v Court of Auditors

(Case T-338/05)

(2005/C 296/59)

Language of the case: French

Parties

Applicant(s): Raymond Claudel (Merl, Luxembourg) (represented by: E. Boigelot, lawyer)

Defendant(s): Court of Auditors

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul paragraph 17(d) of the decision of the European Court of Auditors of 11 November 2004 (DEC 183/04/DEF), which does not acknowledge that the applicant carried out the duties of Head of Unit on 30 April 2004;

— award damages for pecuniary and non-pecuniary harm evaluated on an equitable basis at EUR 5 000, subject to an increase during the proceedings;

— order the defendant to pay the costs in any event.

Pleas in law and main arguments

The applicant is an official at the Court of Auditors in charge of the external relations service. By his action, he disputes the decision of the Court of Auditors, in so far as it does not recognise that he exercises the duties of Head of Unit and, accordingly, does not recognise that he is entitled to the bonus provided for in Article 44 of the Staff Regulations, as amended after 1 May 2004.

In support of his action, the applicant claims that there has been a breach of Article 44 of the Staff Regulations and of Article 7 of Annex XIII thereto, and also a manifest error of assessment in the description of his post. He also claims that there has been a breach of the duty to state reasons, of the principle of equal t4eatment, of the duty to have regard for the welfare of officials and also of the principle of sound administration. The applicant also claims damages for the harm which he alleges to have been sustained.

Action brought on 9 September 2005 — MacLean-Fogg/OHIM

(Case T-339/05)

(2005/C 296/60)

Language of the case: English

Parties

Applicant(s): MacLean-Fogg Company (Mundelein, USA) [represented by: H. Eichmann, G. Barth, U. Blumenröder, C. Niklas-Falter, M. Kinkeldey, K. Brandt, A. Franke, U. Stephani, B. Allekotte, E. Bertram, K. Lochner, B. Ertle, C. Neuhierl, S. Prückner, C. Schmitt, B. Mehnert, P. Lübbe, S. Brötje, lawyers]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trademarks and Designs) in the case R 1122/2004-1 of June 20, 2005;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'LOKTHREAD' for goods in class 6 (bolts, bolts of metal, nuts, nuts of metal) — application No 3 440 666

Decision of the examiner: Refusal of the application for all goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 as the trade mark has to be considered as a whole and not as composed of two English words and thus possesses a minimum degree of distinctiveness.

Action brought on 13 September 2005 — Adler Modemärkte/OHIM

(Case T-340/05)

(2005/C 296/61)

Language in which the application was lodged: English

Parties

Applicant(s): Adler Modemärkte GmbH (Haibach, Germany) [represented by: R. Kaase, lawyer]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party/parties to the proceedings before the Board of Appeal: BVM S.p.A. (Bologna, Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the OHIM of 23 May 2005 in Case R 434/2003-4 on the grounds that it does not comply with Art 8 (1)(b) of Regulation No 40/94;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'Eagle' for goods in classes 3, 18 and 25 — application No 1 595 909

Proprietor of the mark or sign cited in the opposition proceedings: BVM S.p.A.

Mark or sign cited: The national and international figurative mark and word mark 'Blue Eagle' for goods in classes 3, 18 and 25

Decision of the Opposition Division: Opposition upheld for all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as there is no likelihood of confusion between the conflicting trade marks. The overall impression of the two trade marks is substantially different and the component 'eagle' is not the dominating element of the opposition trade mark.

Action brought on 14 September 2005 — Henkel v OHIM

(Case T -342/05)

(2005/C 296/62)

Language in which the application was lodged: German

Parties

Applicant(s): Henkel KGaA (Düsseldorf, Germany) (represented by: C. Osterrieth, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party or parties to the proceedings before the Board of Appeal of OHIM: Serra Y Roca S.A. (Barcelona, Spain)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 14 July 2005 in the appeal proceedings R 0556/2003-1 regarding the application for Community trade mark No 1 284 470, served on 19 July 2005;

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: SERRA Y ROCA, S.A.

Community trade mark concerned: The word mark 'COR' for goods in Class 3 — application No 1 284 470

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: The national mark 'Dor' for goods in Classes 3, 5 and 21

Decision of the Opposition Division: Rejection of the opposition in respect of the goods 'scouring and abrasive preparations; soaps' in Class 3

Decision of the Board of Appeal: Dismissal of the applicant's appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 because of likelihood of confusion of the marks in question due to visual and aural similarity. In addition the applicant's mark has above average distinctive character due to intensive use.

Action brought on 5 September 2005 — V/Parliament

(Case T-345/05)

(2005/C 296/63)

Language of the case: English

Parties

Applicant(s): V. (Binsted, United Kingdom) [represented by: J. Lofthouse, barrister, M. Monan, C. Hayes, solicitors]

Defendant(s): European Parliament

Form of order sought

— declare void and annul the Decision of the European Parliament dated 5 July 2005 to waive the applicant's immunity;

— declare that the said Decision, even if valid, would in any event be void as to waiver of privilege, since it speaks only of immunity; and

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

Pleas in law and main arguments

The applicant is a Member of the European Parliament. Criminal proceedings were instituted against him following which the Parliament was requested to confirm that the applicant's prosecution might proceed in accordance with the 1965 Protocol on privileges and immunities of the European Communities and, in any event, waive any privilege or immunity so that the prosecution could proceed. By the contested Decision the Parliament decided to waive the applicant's immunity.

The applicant seeks the annulment of this Decision. He submits that the Decision was wrong in law in that it considers that Article 8 of the 1965 Protocol does not grant protection against judicial prosecution. He argues that the Parliament's reasoning is inconsistent, waiving something that it holds not to exist.

The applicant further contends that the Parliament did not carry out a fair and complete consideration of the facts and arguments of both sides. In this context the applicant also invokes a violation of Rule 7(7) of the Parliament's Rules of Procedure, to the extent that the Committee expressed an opinion on the merits of the prosecution whilst forbidden from doing so.

The applicant finally invokes the absence of full and adequate reasons for the contested Decision and submits that it was not reasonable or proportionate.

Action brought on 12 September 2005 — Procter & Gamble/OHIM

(Case T-346/05)

(2005/C 296/64)

Language of the case: English

Parties

Applicant(s): The Procter & Gamble Company (Cincinnati, USA) [represented by: G. Kuipers, lawyer]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the First Board of Appeal of the OHIM of 6 July 2005 (Case R 1188/2004-1), which was notified to P&G by letter of 11 July 2005, in so far as it finds that the mark does not satisfy the conditions as laid down in Article 7(1)(b) of Regulation No 40/94; and

— order the OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Three dimensional mark in form of a square white tablet showing a blue six-petalled floral design for goods in class 3 (washing and bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; preparations for the washing, cleaning and care of dishes; soaps) — application No 1 683 119

Decision of the examiner: Refusal of the application in respect of all the designated goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(b) of Council Regulation No 40/94.

Action brought on 12 September 2005 — Procter & Gamble/OHIM

(Case T-347/05)

(2005/C 296/65)

Language of the case: English

Parties

Applicant(s): The Procter & Gamble Company (Cincinnati, USA) [represented by: G. Kuipers, lawyers]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the First Board of Appeal of the OHIM of 6 July 2005 (Case R 1182/2004-1), which was notified to P&G by letter of 13 July 2005, in so far as it finds that the mark does not satisfy the conditions as laid down in Article 7(1)(b) of Regulation No 40/94; and

— order the OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Three dimensional mark in form of a square white tablet showing a green five-petalled floral design for goods in class 3 (washing and bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; preparations for the washing, cleaning and care of dishes; soaps) — application No 1 683 473

Decision of the examiner: Refusal of the application in respect of all the designated goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(b) of Council Regulation No 40/94.

Action brought on 7 September 2005 — Provincia di Imperia v Commission

(Case T-351/05)

(2005/C 296/66)

Language of the case: French

Parties

Applicant(s): Provincia di Imperia (Imperia, Italy) (represented by: S. Rostagno, lawyer, K. Platteau, lawyer)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul the contested decision and any related act;

— order the defendant to pay the costs

Pleas in law and main arguments

The present action seeks annulment of the Commission's decision of 30 June 2005 not to accept the proposal presented by the applicant in response to the call for proposals launched by the Commission in the context of Community co-financing in the sphere of innovative measures under Article 6 of the Regulation on the European Social Fund [1] for the planning period 2000-2006.

By the contested decision, the Commission informed the applicant that its proposal did not satisfy the evaluation criteria in the call for proposals. It based its decision on the fact that the applicant's proposal did not succeed in explaining the way in which it elaborates and takes into consideration the experience previously acquired in that sphere in Liguria and claimed that there are serious inconsistencies between the budget information supplied in Annex 6 and that supplied in Annex 7.

The applicant challenges the decision on two main points:

— it maintains that, contrary to the findings of the contested decision, there are no serious inconsistencies in the budget information supplied in the annexes to its proposal, in that it follows the model of a claim for subsidy published in the Applicant's Guide and the annex thereto forming an integral part of the call for proposals. The applicant does not dispute the existence of the difference between the budget information supplied in Annex 6 and that supplied in Annex 7, but maintains that that difference relates to the structure and the different information requested in both annexes; whereas Annex 6 provides only an indication of the direct eligible expenditure, Annex 7b requires the applicant to indicate both direct eligible expenditure and indirect eligible expenditure. The applicant claims, first, that there is no inconsistency between Annexes 6 and 7 to its proposal and, second, that its proposal complies meticulously and on all points with the model established by the Commission.

— the applicant also contends that it demonstrated sufficiently the way in which the proposal elaborates and takes into consideration the experience previously acquired in the sphere to which the innovative measure in question relates. It claims that the alleged failure to explain the connection between the proposal and the experience previously acquired is based on a reading of only one part of its proposal. A reading of the proposal as a whole would show the opposite.

The applicant further alleges that by the contested decision the Commission infringes the principle of legal certainty in that it does not follow the rules it has itself established on the manner of establishing the innovative nature of the project. More specifically, in the applicant's submission, in assessing the innovative nature of its project, the confined itself to one of the evaluation criteria, namely its method of constructing and developing the new project on the basis of previous experience, whereas its project was innovative from the aspect of a different evaluation criterion, namely a departure from the ordinary activities of the organisations concerned, a criterion also accepted in the Applicant's Guide.

In support of its claims, the applicant also alleges that the contested decision infringes Article 53 of the EC Treaty, Article 6 of Regulation No 1784/1999, the rules laid down in Notice No COM (2000) 894 final [2] and also the rules established by the Commission in the context of its call for proposals [3]. Last, the applicant maintains that the Commission has made a manifest error of assessment of the facts, has misused its powers and has infringed the principle of legal certainty.

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[1] Regulation (EC) No 1784/1999 of the European Parliament and of the Council of 12 July 1999 on the European Social Fund OJ L 213, 13/08/1999, p. 5.

[2] Commission Notice of 12 January 2000 on the implementation of innovation measures under Article 6 of the European Social Fund Regulation for the planning period 2000-2006.

[3] Notice entitled 'Budget heading 04.021000.00.11 – Innovative measures under Article 6 of the European Social Fund Regulation: "Innovative Approaches to the Management of Change" – Call for proposals VP/2003/021', OJ 2004 C 255, p. 11, and the ruler fixed in the Applicant's Guide forming an integral part of that notice.

Action brought on 16 September 2005 — Hellenic Republic v Commission

(Case T-352/05)

(2005/C 296/67)

Language of the case: Greek

Parties

Applicant(s): Hellenic Republic (represented by: G. Kanellopoulos and S. Kharitaki)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul or amend the contested decision of the Commission of 20 July 2005 refusing the request for Community financing of certain expenditure incurred by the Member States under the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, notified under No C(2005) 2756 and published as Decision 2005/579/EC [1]

— order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision the Commission, in clearing the accounts under Regulation (EEC) No 729/70 [2], disallowed from Community financing various expenditure incurred by the Hellenic Republic in the public storage, fruit and vegetables, tobacco and livestock premiums sectors.

The applicant seeks annulment of that decision, maintaining in principle that the entire clearance of accounts procedure is invalid because Article 7 of Regulation No 1258/1999 ([3]), in conjunction with Article 8 of Regulation No 1663/1995 ([4]), was infringed by reason of the fact that the consultation and bilateral contacts between the applicant and the Commission did not include the specific evaluation of the expenditure to be refused, while in addition the expenditure excluded was effected prior to the 24 months preceding the Commission's written communication. According to the applicant, the period of 24 months commences much later than the Commission considers.

As regards the correction in the public storage sector, the applicant considers that the Commission's corrections are based on a misinterpretation and misapplication of Regulations Nos 1258/1999, 296/1996 ([5]) and 2040/2000 ([6]), misconstruing the guidelines in Commission document VI/5330/97/23.12.97, and were made on the basis of a mistaken assessment of the facts, with vague or insufficient reasoning, going beyond the bounds of the Commission's discretion and contravening the principle of proportionality.

As regards the correction in the potato-growing and vineyard sectors, the applicant disputes the Commission's assessment as regards the facts, citing insufficient and contradictory reasoning, and infringement of the principle of proportionality. It considers, moreover, that the correction imposed should be limited to 2 % and that the correction should not in any event include the Department of the Dodecanese, where there is a land registry and consequently in that department especially it cannot be considered that there is any difficulty as regards on-the-spot checks.

In the fruit and vegetables sector, the applicant considers that the Commission was wrong not to regard as justified the late payment in a case in which the Greek authorities investigated the compatibility of the payment in question under national and Community law. The applicant relies additionally on the same pleas as were set out above concerning the storage sector.

With regard to tobacco, the applicant alleges misinterpretation and misapplication of the Community provisions, error as to the facts, insufficient statement of reasons and infringement of the guidance in documents VI 5330/97 and AGRI 17933/2000 concerning the requirement to carry out cross-checks with the data of a fully-functioning integrated administration and control system provided for by Regulation No 2848/98 ([7]), the carrying out of on-the-spot checks, of payments by cheque and supplementary and other checks.

Lastly, as regards the correction in the livestock sector (goat and sheepmeat), the applicant disputes the Commission's assessment of the facts and considers that the reasons given are mistaken. It also claims that the imposition of a flat-rate correction of 10 % is unlawful, constitutes a misinterpretation and misapplication of the guidance in document AGRI/6145/2000 and is disproportionate to the gravity of the deficiencies.

([1]) OJ L 199 of 29.07.2005, p. 84.

([2]) Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy, OJ English Special Edition 1970(I), p 218.

([3]) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy, OJ L 160 of 26.06.1999, p. 103.

([4]) Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section, OJ L 158 of 08.07.1995, p. 6.

([5]) Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88, OJ 1996 L 39, p. 5.

([6]) Council Regulation (EC) No 2040/2000 of 26 September 2000 on budgetary discipline, OJ 2000 L 244, p. 27.

([7]) Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards the premium scheme, production quotas and the specific aid to be granted to producer groups in the raw tobacco sector, OJ 1998 L 358, p. 17.

Action brought on 19 September 2005 — Zelenkovà/Parliament

(Case T-356/05)

(2005/C 296/68)

Language of the case: English

Parties

Applicant(s): Martina Zelenkovà (Brussels, Belgium) [represented by: G. Vandersanden, L. Levi, C. Ronzi, lawyers]

Defendant(s): European Parliament

Form of order sought

— Give the applicant the benefit of her conclusions i.e. the cancellation of the grading given in the 16 November 2004 recruitment decision of the Appointing Authority (the Parliament) which was to take effect on 1 December 2004 to grade the applicant at category A*, grade 5, step 2, implying the reinstatement of all the applicant's rights as deriving from a legal and regular employment, i.e. a legal and regular grading as of 1 December 2004, which means a former LA8 grading or its equivalent according to Articles 1-11 of Annex XIII of the Staff Regulation (A*7, with the relevant step according to the rules in force before 1 May 2004);

— the award (i) of damages with *'intérêts de retard'*, as compensation for the prejudice to the applicant's career, and (ii) other damages in form of a legal and regular pay, notably the application of the transitional provision contained in Article 21 of Annex XIII of the Staff Regulation in force as of 1 May 2004 or, alternatively, the lowering of contributions to the pension scheme based on the principle of equal pay. These rights will have to be duly evaluated at a later stage and are now evaluated, provisionally and *ex aequo et bono*, at a minimum of EUR 5 000 per year;

— order that the European Parliament shall pay all costs.

Pleas in law and main arguments

The applicant, an official appointed after the entry into force of the new Staff Regulations on 1 May 2004, but from a reserve list drawn up on the basis of a competition organised before that date, contests her appointment grade, fixed by the Parliament in accordance with the new regulations at A*5. She invokes the same pleas and arguments invoked by the applicants in Case T-58/05 ([1]).

([1]) OJ C 93, 16/04/05, p. 38

Action brought on 21 September 2005 — Nuovo Agricast v Commission of the European Communities

(Case T-362/05)

(2005/C 296/69)

Language of the case: Italian

Parties

Applicant(s): Nuovo Agricast s.r.l. (Cerignola, Italy) (represented by Michele Arcangelo Calabrese)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claims, subject to all procedural reservations, that the Court should declare that, by having acted unlawfully as set out in the application, the Commission has seriously and manifestly infringed Community law, and has caused the applicant financial damage, and must therefore be ordered to pay to the applicant:

(a) compensation of EUR 701 692,77 by way of indemnifying the damage consisting of failure to obtain the first part of the aid;

(b) compensation of EUR 701 692,77 by way of indemnifying the damage consisting of failure to obtain the second part of the aid;

(c) compensation of EUR 701 692,77 by way of indemnifying the damage consisting of failure to obtain the third part of the aid;

(d) interest on those sums as revalued;

(e) EUR 1 453 387,03, or whatever greater or lesser sum may be determined — possibly in agreement with the Commission — during the proceedings, as compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2002 compared with the income it would have had if the investment programme had been completed;

(f) interest on the sum under (e) as revalued;

(g) the costs of the proceedings, including those of the party's technical consultancy.

Pleas in law and main arguments

The applicant in this case, as in Cases T-139/03 ([1]), T-151/03 ([2]) and T-98/04 ([3]), charges the Commission with having acted unlawfully in the preliminary investigation in respect of State aid N 715/99, the result of which was a decision to grant authorisation without objections. That authorisation extended, for the six-year period 2000-2006, the State aid scheme referred to by Law No 488/92, which had previously in 1997 been authorised until 31 December 1999.

It is in this regard to be borne in mind that in accordance with the special administrative procedure for the obtaining of aid the Italian Government ought every six months to have issued invitations to tender, in which the undertakings concerned might have taken part. The financial resources used to fund the tender procedure would have been allocated to the undertakings in order of classification until exhausted. Having taken part in the third tender procedure, the applicant could not obtain aid because the resources intended for funding of its classification level had been exhausted.

The Italian Government, in proposing the investigation into aid No 715/99, asked the Commission to agree, in the first tender procedure under the new scheme, to the reformulation of applications submitted under the third and fourth notices to tender. The Commission, however, restricted its authorisation to the fourth invitation to tender.

In support of its claims, the applicant argues that the Commission:

— by having failed to initiate the formal investigation procedure when, once it had received the Italian Government's proposal for reformulation of the applications in respect of the third invitation to tender under the previous scheme, it considered that proposal incompatible with the common market, has infringed Article 88(2) of the Treaty and the principle of protection of the right to a fair hearing;

— has breached the principle of legal certainty;

— has committed an error of assessment.

According to the applicant, by making the compatibility with the common market of the proposal to allow undertakings taking part in the third tender procedure to reformulate their tender and by concluding, without the least discussion with the parties concerned, that the proposal was incompatible, the Commission has altered its decision to approve the 1997 scheme, which presupposed a previous investigation under Article 87 of the Treaty.

Furthermore, the applicant alleges that, by affecting and putting an end to pre-existing legal situations, the defendant has in fact revoked the authorisation decision of 1997, without observing the procedural guarantees provided by Regulation EC No 659/99 for cases of revocation of aid.

([1]) Order of the Court of First Instance of 8 June 2005, not published.

([2]) Order of the Court of First Instance of 8 June 2005, not yet published in the ECR.

([3]) Order of the Court of First Instance of 15 June 2005, not published.

Action brought on 21 September 2005 — COFRA s.r.l. v Commission of the European Communities

(Case T-363/05)

(2005/C 296/70)

Language of the case: Italian

Parties

Applicant(s): COFRA s.r.l. (Barletta (Italy)) (represented by Michele Arcangelo Calabrese, lawyer)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claims, subject to all procedural reservations, that the Court should declare that, by having acted unlawfully as set out in the application, the Commission has seriously and manifestly infringed Community law, and has caused the applicant financial damage and must therefore be ordered to pay the applicant compensation:

(a) of EUR 387 700,00, revalued in accordance with the ISTAT (Italian Central Statistical Office) indices of 26 June 2001 until the date of judgment;

(b) of EUR 387 700,00, revalued in accordance with the ISTAT indices of 26 June 2002 until the date of judgment;

(c) of EUR 387 700,00, revalued in accordance with the ISTAT indices of 26 June 2003 until the date of judgment;

(d) interest on those revalued sums,

and that the Court should order the defendant to pay the costs, including those of the party's technical consultancy.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-362/05 *Nuova Agricast* v *Commission*.

Action brought on 26 September 2005 — Austria v Commission

(Case T-368/05)

(2005/C 296/71)

Language of the case: German

Parties

Applicant(s): Republic of Austria (represented by: H. Dossi)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul Commission Decision C(2005)2685 of 15 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), and order the Commission to bear the costs of the proceedings;

— alternatively, annul Decision C(2005)2685 of 15 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it concerns the calculation and amount of the financial correction, and order the Commission to bear the costs of the proceedings;

— in the alternative, annul Decision C(2005)2685 of 15 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it concerns the expenditure of the accredited paying agency Agricultural Market Austria in the animal premia sector for the regions of Steiermark and Kärnten; or, in the further alternative, annul the Decision in relation to Steiermark and Kärnten in so far as it concerns the calculation and the amount of the financial correction, and order the Commission to bear the costs of the proceedings.

Pleas in law and main arguments

In the contested decision the Commission excluded from Community financing the expenditure itemised in the annex to the Decision because it does not comply with Community rules.

The applicant basis its action on two pleas. First of all, it claims that, in adopting its decision, the Commission infringed the Treaty and the norms applicable when implementing it. In particular, it alleges in this respect, infringement of Article 5(2)(c) of Regulation (EEC) No 729/70 [1] and Article 7(4) of Regulation (EC) No 1258/1999 [2] since a financial correction at the expense of the Republic of Austria would only have been admissible if the Republic of Austria had not complied with its obligations arising from Community law as regards controlling EAGGF expenditure and if this had had financial consequences for the EAGGF. According to the Republic of Austria, such cumulative conditions should not be applied in the present case. Moreover, with the contested decision, the Commission is in breach of its duty to cooperate in good faith with the Member States, as laid down in Article 10 EC.

The second plea alleges infringement of essential procedural requirements. The applicant claims that, with the contested decision, the Commission did not comply on important points with its duty to give reasons and it based the underlying arguments for its decision on statements based on insufficient fact finding.

[1] Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy.

[2] Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy.

Action brought on 23 September 2005 — Kingdom of Spain v Commission of the European Communities

(Case T-369/05)

(2005/C 296/72)

Language of the case: Spanish

Parties

Applicant(s): Kingdom of Spain (represented by: D. Fernando Diez Moreno)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul Commission Decision of 15 July 2005 (2005/555/2685) in so far as it refers to the financial corrections made in respect of Spain in relation to the conversion and restructuring of vineyards and the measures for the improvement of the production and marketing of honey; and

— order the Commission to pay the costs.

Pleas in law and main arguments

This action is brought against the Commission Decision of 15 July 2005 (2005/555/EC) excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the EAGGF. Among the exclusions contained in that decision are financial corrections which affect the Kingdom of Spain and apply to the fruit and vegetable sector, the milk sector, public storage, wine and tobacco, animal premiums and the honey sector.

This action refers exclusively to the correction of the amounts paid by way of compensation for loss of income in the wine sector (EUR 4 790 799,61) and the correction made for the inclusion of VAT in the EAGGF financing in the honey sector (EUR 58 315,34). The applicant takes the view that the Commission bases its arguments on a restrictive interpretation of Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1]. The Kingdom of Spain also challenges the VAT rules on the improvement of the production and marketing of honey.

The Spanish authorities take the view that:

— the loss of income is connected not to grubbing up, but to the very act of planting; and

— the Commission's argument that VAT cannot be regarded as an intervention intended to stabilise the markets, since it cannot be financed by the Guarantee Section of the EAGGF, has no legal basis.

(1) OJ L 179 of 14.7.1999, p. 1.

Action brought on 28 September 2005 — AIETC — Associazione Italiana Tecnico Economica del Cemento and Others v Commission

(Case T-371/05)

(2005/C 296/73)

Language of the case: Italian

Parties

Applicant(s): AITEC — Associazione Italiana Tecnico Economica del Cemento (Rome, Italy), BUZZI UNICEM S.P.A. (Casale Monferrato, Italy), ITALCEMENTI GROUP (Bergamo, Italy) (represented by: Massimo Merla, Claudio Tesauro, lawyers)

Defendant(s): Commission of the European Communities

Form of order sought

The applicants claim that the Court should:

— insofar as the Commission is unable to demonstrate that the mandate given to Commissioner Dimas authorised him to be a signatory to measures adopted concerning competition policy and, in particular, state aid, make a declaration that the Decision is null and of no effect;

— annul: **(i)** that part of the Decision in which, by stating that no objections are made to the national allocation plan ('NAP') (Article 2 of the Decision) and thereby approving the distribution of allowances among the sectors of industry set out in the plan, it sanctioned the discrimination inherent in that distribution which favoured undertakings in some sectors to the disadvantage of other undertakings; **(ii)** that part of the Decision which states that the intended authorisation of existing installations which are subject to an update of their permits to draw allowances from the new entrants reserve for the part of the modified installation which already existed before the permit update, even where the new entrants have not used up the allowances specifically reserved for them, is incompatible with criterion (10) of Annex III to Directive 2003/87/EC; and **(iii)** that part of the Decision which calls upon the Italian state to amend the NAP so that existing installations which are subject to an update of their permits are not allowed to draw allowances from the new entrants reserve for the part of the modified installation which already existed before the permit update (Article 2(b) of the Decision).

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

Pleas in law and main arguments

The subject of this action is the Decision of 25 May 2005 (1) in which the Commission gave its opinion on the compatibility of the national allocation plan for greenhouse gas emission allowances notified to it by Italy ('NAP') with the criteria listed in Annex III to Directive 2003/87 of the European Parliament and of the Council of 5 June 2002 (2).

First, the applicants seek to ascertain whether the Commissioner who was signatory to the contested measure is competent to adopt the Decision. In particular, they call upon the Court of First Instance to establish whether Commissioner Dimas has competence in relation to measures adopted concerning competition policy and, in particular, state aid, and to make a declaration, should there be sufficient grounds, that the contested measure is null and of no effect.

Secondly, the applicants contend that by examining the NAP, a measure that is liable to incorporate elements of state aid, without complying with the procedural provisions in Article 88 (2) and (3) EC, the Commission infringed that provision.

Thirdly, the applicants submit that when the Commission became aware that there were potential state aid aspects to the NAP, it infringed Article 87 EC, criterion (5) of Annex III to Directive 2003/87 EC and the principle of non-discrimination in that, by approving the distribution of allowances set out in the NAP, it gave its approval to the discrimination inherent in that distribution, which was to the detriment of cement producers.

The applicants submit fourthly that the Commission misapplied criterion (10) of Annex III to Directive 2003/87 EC in stating that *'Italy's intended authorisation of existing installations which are subject to an update of their permits to draw allowances from the new entrants reserve for the part of the modified installation which already existed before the permit update'* was contrary to that criterion. The Commission thereby infringed criterion (5) of Annex III to Directive 2003/87 EC and the principle of non-discrimination in that, by failing to take account of the specific nature of the sectors of industry affected by the implementation of the Directive as far as their capacity to increase production was concerned, it again placed cement producers at a disadvantage compared with other producers.

Lastly, the applicants claim that by approving the NAP notwithstanding the facts that it does not make express provision for undertakings to make appropriate preparations for the transfer of allowances or pooling of installations, that it provides for reference periods for the transfer of residual allowances other than a five-year period and that it imposes unjustifiable restrictions on the pooling of installations and does not make provision for the surrender of cancelled emission allowances, the Commission infringed Articles 11, 12, 13 and 28 of Directive 2003/87 EC.

([1]) Commission Decision of 25 May 2005 on the national allocation plan for the allocation of greenhouse gas emission allowances notified by Italy in accordance with Directive 2003/87 of the European Parliament and Council [C(2005)1527 fin, OJ C 226 of 15.09.2005, p. 2].

([2]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275 of 25 October 2005, p. 32).

Action brought on 26 September 2005 — the Italian Republic v the Commission

(Case T-373/05)

(2005/C 296/74)

Language of the case: Italian

Parties

Applicant(s): the Italian Republic (represented by: Paolo Gentili, Avvocato dello Stato)

Defendant(s): the Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

annul Commission decision C(2005)2756 of 20 July 2005 insofar as it imposes an overall adjustment on the tobacco aid scheme operated by the Italian Republic amounting to 5 % of the expenditure declared in 2001 and 2002 for the 2000 harvest and order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The Italian government has brought an action before the Court of First Instance of the European Communities challenging Commission Decision C(2005) 2756 of 20 July 2005, notification of which was given on that date, insofar as it makes an overall financial adjustment to the tobacco aid scheme amounting to 5 % of the expenditure declared in 2001 and 2002 for the marketing year 2000.

In support of its action the Italian government argues:

1) that Decision C(2005) 2756 of 20 July 2005 contains an inadequate statement of reasons in relation to Article 253 of the Treaty and that the Commission has misused its powers by distorting the facts in that the contested decision makes an overall adjustment to the aid granted for tobacco production in the marketing year 2000 without providing an appropriately detailed statement of reasons as to the rules allegedly infringed or indeed any factual grounds that could justify the decision;

2) that Article 7(4) of Regulation (EC) No 1258/1999 ([1]) was infringed and misapplied in that the decision to make an overall adjustment to the aid granted for tobacco production in the marketing year 2000 lacks the detailed statement of grounds which is a necessary requirement of that provision.

([1]) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ L 160, 26/6/1999, p. 103).

Action brought on 7 October 2005 — Azienda Agricola le Canne v Commission

(Case T-375/05)

(2005/C 296/75)

Language of the case: Italian

Parties

Applicant(s): Azienda Agricola le Canne (Porto Viro, Italy) (represented by: Giuseppe Carraio and Francesco Mazzonetto, lawyers)

Defendant(s): Commission

Form of order sought

The applicant(s) claim(s) that the Court should:

— declare the contested Commission Decision C(2005)2939 of 26 July 2005 null and void insofar as it reduces the aid granted to Azienda Agricola Le Canne s.r.l. by Decision C(90)1923/99 of 30 October 1990 pursuant to Regulation (EEC) No 4028/86;

— order the Commission to pay damages to make good the loss allegedly suffered in an amount not less than the portion of the subsidies not yet paid, with interest at the rate charged to the applicant by the bank on the whole balance of the sums originally owed on the basis of Decision C(90)1923/99 of 30 October 1990, to run from the date of the annulled decision (27 October 1995) until payment of the total aid owed;

— order the Commission to pay the costs.

Pleas in law and main arguments

The application seeks the annulment of Commission Decision C(2005)2939 of 26 July 2005 which reduces aid granted under Regulation (EEC) No 4028/86 for the project entitled: 'Modernisation of the aquaculture production unit in Rosolina (Veneto)'. The applicant relies on four pleas in support of its claims:

1. By the first plea, it is submitted, as a preliminary issue, that, as regards the investigation of the alleged irregularities, the administrative action taken by the Commission to reduce the subsidy already granted for co-financing is time-barred. It is submitted in that connection that Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests was infringed. ([1])

2. By its second plea the applicant alleges that the Commission breached its obligation to implement the ruling in the judgment of 5 March 2002, ([2]) in that, although it was entitled, in the new decision intended to replace the annulled decision of 11 July 2000, to review the whole matter, it had to do so within the limits and subject to the procedural requirements of the complaint of 23 November 1999 which is still open and has not been closed as a result of the annulment of the above decision. However, it was not entitled to submit further complaints not raised before that time.

   Moreover, the Commission, while recognising implicitly that most of the amount reduced in the previous, now annulled, decision reducing aid was in fact due, did not acknowledge that default interest was due on the amounts unlawfully withheld.

3. The third plea raises a complaint that Article 44(1) of the cited Regulation (EEC) No 4028/86 does not include the irregularity of which the applicant is accused in the contested decision among the conditions, listed exhaustively therein, for the reduction of aid: that is to say, the irregularity consisting in the fact that in the course of carrying out the work eligible for aid the contracting undertaking acquired a holding in the capital of the company awarded the contract.

4. By its fourth plea, which alleges breach of the principles of equal treatment, proportionality and reasonableness, and the principle of free movement of capital, the applicant submits in the alternative that the criterion used by the Commission to calculate the contested reduction was arbitrary, in that it applied the same reduction indiscriminately to all the periods considered, without taking account of the fact that the percentage of the holding of the contracting undertaking in the company capital of the beneficiary changed gradually over time.

([1]) OJ 1995 L 312, 23.12.1995, p. 1.

([2]) Case T-241/00 *Azienda Agricola Le Canne* v *Commission* [2002] ECR II-1251.

CIVIL SERVICE TRIBUNAL

Communication

(2005/C 296/76)

On 9 November 2005, Waltraud Hakenberg was appointed Registrar of the European Union Civil Service Tribunal for a term of six years, in accordance with Article 3(4) of Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal, and Articles 20 and 7 of the Rules of Procedure of the Court of First Instance.

III

(Notices)

(2005/C 296/77)

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

OJ C 281, 12.11.2005

Past publications

OJ C 271, 29.10.2005

OJ C 257, 15.10.2005

OJ C 243, 1.10.2005

OJ C 229, 17.9.2005

OJ C 217, 3.9.2005

OJ C 205, 20.8.2005

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