annul, so far as necessary, the implied decision rejecting the complaint on 23 January 1994;

— consequently, reinstate the applicant in all his duties, in the same grade and step, with effect from the date of the decision complained of;

— consequently, order the defendant to pay the applicant all arrears of salary owing from 25 June 1993 until the date of the Court's decision, including all the benefits to which the applicant is entitled, plus interest at the rate of 10 % per year calculated as from each due date for payment of salary;

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

Pleas in law and main arguments adduced in support:

The applicant challenges the decision of the appointing authority of the Court of Auditors removing him from his post as a disciplinary measure following the distribution of two documents in which, according to the appointing authority, he had breached his obligations under the Staff Regulations.

The pleas in law and main arguments are similar to those set out in Case T-522/93.

The applicant argues that the defendant has misinterpreted the first paragraph of Article 12, the first paragraph of Article 21, and Article 86 of the Staff Regulations, and disregarded general principles of law such as freedom of expression and opinion, proportionality, and the requirement that every administrative action should be supported by legally relevant reasoning not vitiated by errors of law or fact.

More particularly, the applicant argues that the appointing authority has neither demonstrated nor produced evidence to demonstrate the public nature of the expression of opinion being criticized, or of the detriment to the dignity of the applicant's own office, which cannot be assimilated to a potential detriment to the dignity of other officials or members of the institution.

Action brought on 11 April 1994 by Kernkraftwerke Lippe-Ems GmbH against the Commission of the European Communities

(Case T-149/94)

(94/C 146/23)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 April 1994 by Kernkraftwerke Lippe-Ems GmbH of Dortmund, represented by Bernd Kunth, Gerhard Wiedemann and Manfred Ungemach, Rechtsanwälte, of Düsseldorf, with an address for service at the Chambers of Alex Bonn, 62 Avenue Guillaume, Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision of 4 February 1994 (K(94) 243 final) [1];

— order the Commission to pay the costs of the action, including the costs of the prelitigation procedure.

Pleas in law and main arguments adduced in support:

The applicant, which owns and operates a nuclear power station, challenges the Commission's decision of 4 February 1992 (94/95/Euratom). On 29 November 1993, the applicant submitted to the Euratom Supply Agency (hereinafter referred to as 'the Agency') a contract with the British company British Nuclear Fuels plc for the supply of natural uranium, which the Agency did not sign until 6 January 1994. Before that date, the applicant made a submission to the Commission, pursuant to the second paragraph of Article 53 of the Euratom Treaty, complaining that the Agency had failed to give its decision on the conclusion of the contract within 10 working days from the date of receipt thereof, as required by the Agency Rules.

The Commission rejected the applicant's submission, which had in the meantime been expanded to argue that the Agency's decision on the conclusion of the contract was unlawful because it was accompanied by a condition of origin. In rejecting the submission, the Commission took the view that the Agency's time for making its decision did not begin when the supply contract was fully submitted under the Agency Rules, but started to run only when information which had been requested separately was provided.

The applicant argues that, by calculating the period for decision from the time the additional information was received rather than from the time the contract was submitted, contrary to the wording of Article 5 *bis* (f) of the Agency Rules, the Commission is in breach of that regulation. Under the simplified procedure, the Commission does not, in the applicant's view, have any room for discretion in making its decision. By disregarding the express wording of the Agency Rules, the Commission infringed the law on the implementation of the Euratom Treaty.

The 'policy of diversifying sources of Community supply', with which the Commission purported to justify the obtaining of further information, is likewise in breach of the Agency Rules and has no basis in the Euratom Treaty. For that reason alone, the Agency had no right to require more information than was specified in the Agency Rules. Moreover, the Commission did not state the legal principles on which the Agency's supply policy was based, and is therefore in breach of the duty to give reasons.

The remaining arguments to be deduced from the Commission's decision, and which purport to justify its divergent interpretation of the Agency Rules, do not bear examination and infringe further principles of Community law.

For example, the additional information required from the parties to the supply contract to assist the Agency in making its decision on the conclusion of the contract was not necessary; the decision could have been supplemented by the condition of origin, introduced (unlawfully) into the supply contract for uranium, in any event.

The Commission also, and in disregard of its duty to give reasons, failed to state why it was not possible for the Agency to otain the additional information within the period for decision laid down by the Agency Rules. If it does not approach the contracting parties with the request for further information until the end of the period for decision, the delay thereby caused in reaching the decision becomes disproportionate.

Finally, the administrative practice of the Agency sanctioned by the Commission makes it possible, by means of requests for further information, to extend the period for decision substantially. That period is restricted in the interests of commercial efficiency. Such extension would subject business to an unacceptable degree of legal uncerntainty, contrary to the principle that the administration cannot encroach on rights without specific legal authority.

(1) OJ No L 48, 19. 2. 1994, p. 45.

Action brought on 13 April 1994 by British Steel plc against the Commission of the European Communities

(Case T-151/94)

(94/C 146/24)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 April 1994 by British Steel plc, represented by Mr Philip G. H. Collins and Mr John E. Pheasant, solicitors of Lovell White Durrant, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11, Rue Goethe

The applicant claims that the Court should:

(a) annul the decision;

(b) cancel the fine imposed by the decision;

(c) in the event that the decision is upheld in whole or in part, to reduce the fine imposed by the decision to such amount as the Court considers appropriate in all the circumstances;

(d) in the event that the Court cancels or reduces the fine pursuant to (b) or (c) above, to order the Commission to repay to the applicant the fine or such part thereof already paid by the applicant at the date of the Court's judgment together with interest thereon at a rate to be agreed or, in default of agreement, at a rate to be determined by the Court;

(e) annul the contested provisions of the Commission's letter;

(f) substitute for the contested provisions of the Commission's letter the non-discriminatory terms as to the rate of interest payable such as those contained in Article 5 of the decision;

(g) order the Commission to pay the applicant's costs.

Pleas in law and main arguments adduced in support:

The applicant, one of the companies to which the decision of the Commission dated 16 February 1994 is addressed, contests this decision, in so far as Article 1 thereof finds it to have participated, through the European Confederation of Iron and Steel, in agreements, decisions and concerted practices which had as their object or effect the fixing of prices, the sharing of markets and the exchange of confidential information, all these constituting infringements to the ECSC competition rules relating to the beams market.

The applicant claims that in applying the provisions of the ECSC Treaty, and more particularly Article 65 thereof, the Commission has wrongfully sought to rely on principles established under the EC Treaty. It states that the Commission seeks in the contested decision to characterize the steel market as one in which conditions of free competition are expected to be applied, any interference with those conditions being considered to infringe the ECSC competition rules. However, both the recent history of the steel industry and the provisions of this Treaty show that the free market model of the EC Treaty has not been, and cannot be, applied to the steel industry under the ECSC Treaty, which is founded on the basis of a wider interventionism. Furthermore, any such alignment of the competition rules of the EC and the ECSC Treaties could never be effected retroactively and without due notice and guidance to interested undertakings so that they have the opportunity to adjust their conduct accoringly.

The applicant pleads infringement of its rights of defence. Given that during the course of the procedure leading to the decision, a number of the issues which are the subject of the decision were addressed by all the steel producers concerned, and given the fact that the use that the Commission has made of its extensive management powers over the steel industry and the knowledge it obtained about the activities of steel producers, it was highly material to its defence and the allegations made against it that it should be made aware of the Commission's knowledge of, and position on, a number of material matters. However, the defendant institution has declined to make any evidence available to the applicant.