

Article 190 was infringed in so far as the decision adopted by the Council contained no statement of reasons whatsoever.

(<sup>1</sup>) OJ No L 257, 5. 10. 1994, p. 20.

**Action brought on 5 December 1994 by L'Union Internationale des Chemins de fer (UIC) and N.V. Nederlandse Spoorwegen against the Commission of the European Communities**

(Case T-384/94)

(94/C 386/44)

*(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 5 December 1994 by L'Union Internationale des Chemins de fer (UIC) and N.V. Nederlandse Spoorwegen, represented by E. H. Pijnacker Hordijk, advocaat of Boden de Bandt de Brauw Jeantet Lagerlöf & Uría, with an address for service in Luxembourg at the offices of Luc Frieden, 62 avenue Guillaume.

The applicant claims that the Court should:

- declare Commission Decision 94/663/EC void in its entirety;
- in the alternative: declare void Article 2 of Commission Decision 94/663/EC as well as Article 1 of the said Decision in so far as the duration of the exemption is limited to a period of less than twenty years;
- take any further or alternative measures which the court may deem appropriate;
- order the Commission to pay the costs.

*Pleas in law and main arguments:*

Through the present application the applicants seek the annulment of Commission Decision 94/663/EC of 21 September 1994 relating to a proceeding pursuant to Article 85 of the EC Treaty and Article 53 of the EEA Agreement (IV/34.600 — Night Services) that provides for a conditional exemption of limited duration from the prohibition of Article 85 (1) of the EC Treaty with respect to certain agreements as between a British railway undertaking European passenger Services Limited, the French railway undertaking Société Nationale des Chemins de fer Français, the German railway undertaking Deutsche Bahn AG, and the Dutch national railway undertaking N.V. Nederlandse Spoorwegen. The grounds, on the basis of which the legality of the contested Decision is challenged, can be summarized as follows:

- (a) Violation of Article 85 of the EC Treaty and of Article 2 of Council Regulation (EEC) No 1017/68 of 19 July 1968, applying rules of competition to transport by rail, road and inland waterway, and/or manifest error

in the appreciation of the relevant facts and/or violation of the obligation duly to state the reason underlying its decisions, in that the Commission has held that the formation of the agreement in question, concerning overnight passenger rail services between destinations in the United Kingdom and the continent through the Channel Tunnel, has as its object and effect a restriction of competition;

- (b) misuse of powers and/or violation of Regulation (EEC) No 1017/68 in conjunction with Directive 91/440, in that the Commission applies Article 85 (1) and (3) of the EC Treaty in a way that deprives Council Directive 91/440 of its full effects; and
- (c) violation of Article 85 (3) of the EC Treaty and Article 5 of Regulation No 1017/68, and/or of the principles of proportionality and legal certainty, in that the duration of the exemption is excessively short.

**Action brought on 13 December 1994 by Société Nationale des Chemins de Fer Français (SNCF) against the Commission of the European Communities**

(Case T-388/94)

(94/C 386/45)

*(Language of the case: French)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 December 1994 by Société Nationale des Chemins de Fer Français (SNCF), the head office of which is in Paris, represented by Chantal Momège, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume.

The applicant claims that the Court should:

- as a primary measure, annul the Commission decision of 21 September 1994 in Case IV/34.600 — Night Services,
- in the alternative, annul Article 2 of the decision, in that the condition imposed is unjustified, and Article 1, in that the Commission has granted an exemption for a period of less than 20 years,
- take such measure or measures as it deems appropriate,
- order the Commission to pay the costs.

*Pleas in law and main arguments:*

The pleas in law and main arguments are the same as those in Cases T-374/94, T-375/94 and T-384/94.