ISSN 1725-2423

Official Journal of the European Union

C 300

Volume 47

English edition

Information and Notices

4 December 2004

Notice No | Contents | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Second Chamber)

of 7 October 2004

in Case C-153/01: Kingdom of Spain v Commission of the European Communities ([1])

(EAGGF — Clearance of accounts — Financial years 1996 to 1998 — Decision 2001/137/EC)

(2004/C 300/01)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-153/01: action for partial annulment under Article 230 EC, brought on 9 April 2001, by Kingdom of Spain (Agent: S. Ortiz Vaamonde) against Commission of the European Communities (Agent: S. Pardo Quintillán) — the Court (Second Chamber), composed of: C. W. A. Timmermans, President of the Chamber, C. Gulmann, J. N. Cunha Rodrigues, R. Schintgen and F. Macken (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 7 October 2004, in which it:

1. *Annuls Commission Decision 2001/137/EC of 5 February 2001 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 applies to the Kingdom of Spain a financial correction corresponding to the sum of 2 426 259 870 ESP in respect of interest due under the additional milk levy scheme;*

2. *Dismisses the remainder of the action;*

3. *Orders the Kingdom of Spain to pay four fifths of the costs;*

4. *Orders the Commission of the European Communities to pay one fifth of the costs.*

([1]) OJ C 186 of 30.6.2001.

JUDGMENT OF THE COURT

(First Chamber)

of 7 October 2004

in Case C-255/01 (reference for a preliminary ruling from the Simvoulio tis Epikratias): Panagiotis Markopoulos and Others v Ypourgos Anaptyxis and Others ([1])

(Reference for a preliminary ruling — Eighth Directive 84/253/EEC — Articles 11 and 15 — Approval of persons responsible for statutory auditing of accounting documents — Possibility of approving persons who have not passed an examination of professional competence — Conditions on which nationals of other Member States may be approved)

(2004/C 300/02)

(Language of the case: Greek)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-255/01: reference for a preliminary ruling under Article 234 EC from the Simvoulio tis Epikratias (Greece), made by decision of 12 June 2001, received at the Court on 3 July 2001, in the proceedings: between Panagiotis Markopoulos and Others and Ypourgos Anaptyxis, Soma Orkoton Elegkton, interveners: Georgios Samothrakis and Others, and Christos Panagiotidis — the Court (First Chamber), composed of: P. Jann, President of the Chamber, R. Silva de Lapuerta, K. Lenaerts, S. von Bahr and K. Schiemann (Rapporteur), Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 7 October 2004, in which it has ruled:

1. *Article 15 of Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents permits all the Member States to approve persons who satisfy the conditions laid down in that article, namely, persons who have the qualifications in the Member State concerned to carry out the statutory auditing of the documents referred to in Article 1(1) and who did so until the date fixed in Article 15, without their being required first to have passed an examination of professional competence.*

   Nevertheless, it is contrary to Article 15 for a Member State to exercise the power provided for therein after the expiry of a period of a year starting to run from the date of application of the national provisions transposing the directive, which date may in no circumstances fall after 1 January 1990.

2. *Article 11 of the Eighth Directive enables a host Member State to approve, for the purpose of carrying out the statutory auditing of accounting documents, professional persons already approved in another Member State, without requiring them to pass an examination of professional competence, if the competent authorities of the host Member State consider their qualifications to be equivalent to those required under the national legislation of the host Member State, in accordance with the directive.*

([1]) OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT

(Grand Chamber)

of 5 October 2004

in Joined Cases C-397/01 to C-403/01 (reference for a preliminary ruling from the Arbeitsgericht Lörrach): Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süß (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01), Matthias Döbele (C-403/01) v Deutsches Rotes Kreuz, Kreisverband Waldshut eV ([1])

(Social policy — Protection of the health and safety of workers — Directive 93/104/EC — Scope — Emergency workers in attendance in ambulances in the framework of an emergency service run by the German Red Cross — Definition of 'road transport' — Maximum weekly working time — Principle — Direct effect — Derogation — Conditions)

(2004/C 300/03)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Joined Cases C-397/01 to C-403/01: reference for a preliminary ruling under Article 234 EC from the Arbeitsgericht Lörrach (Germany), made by orders of 26 September 2001, received at the Court on 12 October 2001, in the proceedings between Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süß (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01), Matthias Döbele (C-403/01) and Deutsches Rotes Kreuz, Kreisverband Waldshut eV — the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen (Rapporteur), F. Macken, N. Colneric, S. von Bahr and K. Lenaerts, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 5 October 2004, in which it has ruled:

1. (a) *Article 2 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work and Article 1(3) of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time must be construed as meaning that the activity of emergency workers, carried out in the framework of an emergency medical service, such as that at issue before the national court, falls within the scope of the directives.*

   (b) *On a proper construction, the concept of 'road transport' in Article 1(3) of Directive 93/104 does not encompass the activity of an emergency medical service, even though the latter includes using a vehicle and accompanying a patient on the journey to hospital.*

2. *The first indent of Article 18(1)(b)(i) of Directive 93/104 is to be construed as requiring consent to be expressly and freely given by each worker individually if the 48-hour maximum period of weekly working time, as laid down in Article 6 of the directive, is to be validly extended. In that connection, it is not sufficient that the relevant worker's employment contract refers to a collective agreement which permits such an extension.*

3. *Article 6, point 2, of Directive 93/104 must be interpreted, in circumstances such as those in the main proceedings, as precluding legislation in a Member State the effect of which, as regards periods of duty time ('Arbeitsbereitschaft') completed by emergency workers in the framework of the emergency medical service of a body such as the Deutsches Rotes Kreuz, is to permit, including by means of a collective agreement or works agreement based on such an agreement, the 48-hour maximum period of weekly working time laid down by that provision to be exceeded;*

   — *Article 6(2) of Directive 93/104 fulfils all the conditions necessary for it to have direct effect;*

— *when hearing a case between individuals the national court is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive. In the main proceedings, the national court must thus do whatever lies within its jurisdiction to ensure that the maximum period of weekly working time, which is set at 48 hours by Article 6(2) of Directive 93/104, is not exceeded.*

([1]) OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT

(sitting as a full Court)

of 5 October 2004

in Case C-475/01: Commission of the European Communities v Hellenic Republic ([1])

(Failure of a Member State to fulfil obligations — Infringement of the first paragraph of Article 90 EC — Excise duty on alcohol and alcoholic beverages — Application to ouzo of a rate lower than that applied to other alcoholic beverages — Compliance of that rate with a directive which was not challenged within the time-limit laid down in Article 230 EC)

(2004/C 300/04)

(Language of the case: Greek)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-475/01: Action under Article 226 EC for failure to fulfil obligations, brought on 6 December 2001, Commission of the European Communities (Agents: E. Traversa and M. Kondou Durande), supported by United Kingdom of Great Britain and Northern Ireland (Agent: K. Manji) v Hellenic Republic (Agents: A. Samoni-Rantou and P. Milonopoulos) — the Court (sitting as a full Court), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen, F. Macken, N. Colneric and S. von Bahr (Rapporteur), Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 5 October 2004, in which it:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to pay the costs;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 68 of 16.3.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C36/02 (reference for a preliminary ruling from the Bundesverwaltungsgericht): Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn ([1])

(Freedom to provide services — Free movement of goods — Restrictions — Public policy — Human dignity — Protection of fundamental values laid down in the national constitution — 'Playing at killing')

(2004/C 300/05)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-36/02: reference for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decision of 24 October 2001, received at the Court on 12 February 2002, in the proceedings between Omega Spielhallen- und Automatenaufstellungs-GmbH and Oberbürgermeisterin der Bundesstadt Bonn — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas (Rapporteur), R. Silva de Lapuerta, K. Lenaerts and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 14 October 2004, in which it has ruled:

Community law does not preclude an economic activity consisting of the commercial exploitation of games simulating acts of homicide from being made subject to a national prohibition measure adopted on grounds of protecting public policy by reason of the fact that that activity is an affront to human dignity.

([1]) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 14 October 2004

in Case C-39/02 (reference for a preliminary ruling from the Højesteret): Mærsk Olie & Gas A/S v Firma M. de Haan en W. de Boer [1]

(Brussels Convention — Proceedings to establish a fund to limit liability in respect of the use of a ship — Action for damages — Article 21 — Lis pendens — Identical parties — Court first seised — Identical subject-matter and cause of action — None — Article 25 — 'Judgment' — Article 27(2) — Refusal to recognise)

(2004/C 300/06)

(Language of the case: Danish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-39/02: reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, brought by the Højesteret (Supreme Court) (Denmark), by decision of 8 February 2002, received at the Court on 13 February 2002, for a preliminary ruling in the proceedings pending before that court between Mærsk Olie & Gas A/S and Firma M. de Haan en W. de Boer — the Court (Third Chamber), composed of: A. Rosas, acting as President of the Third Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; P. Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 14 October 2004, in which it has ruled:

1. *An application to a court of a Contracting State by a shipowner for the establishment of a liability limitation fund, in which the potential victim of the damage is indicated, and an action for damages brought before a court of another Contracting State by that victim against the shipowner do not create a situation of lis pendens within the terms of Article 21 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.*

2. *A decision ordering the establishment of a liability limitation fund, such as that in the main proceedings in the present case, is a judgment within the terms of Article 25 of that Convention.*

3. *A decision to establish a liability limitation fund, in the absence of prior service on the claimant concerned, and even where the latter has appealed against that decision in order to challenge the jurisdiction of the court which delivered it, cannot be refused recognition in another Contracting State pursuant to Article 27(2) of that Convention, on condition that it was duly served on or notified to the defendant in good time.*

---

[1] OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 October 2004

in Case C-55/02: Commission of the European Communities v Portuguese Republic [1]

(Member State's failure to fulfil obligations — Articles 1, 6 and 7 of Directive 98/59/EC — Concept of 'collective redundancy' — Rules governing dismissals assimilated to redundancies — Incomplete transposition)

(2004/C 300/07)

(Language of the case: Portuguese)

In Case C-55/02: action under Article 226 EC for failure to fulfil obligations, brought on 22 February 2002, between Commission of the European Communities (Agents: J. Sack and M. França) and Portuguese Republic (Agents: L. Fernandes and F. Ribeiro Lopes) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, F. Macken, N. Colneric (Rapporteur), and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 12 October 2004, in which it:

1. *Declares that, by restricting the concept of collective redundancies to redundancies for structural, technological or cyclical reasons, and by failing to extend that concept to dismissals for any reason not related to the individual workers concerned, the Portuguese Republic has failed to fulfil its obligations under Articles 1 and 6 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies;*

2. *Dismisses the remainder of the action;*

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

(1) OJ C 97 of 20.4.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 21 October 2004

in Case C-64/02 P: Office for Harmonisation in the Internal Market (Trade Marks and Designs), v Erpo Möbelwerk GmbH (1)

(Appeal — Community trade mark — Phrase DAS PRINZIP DER BEQUEMLICHKEIT — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2004/C 300/08)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-64/02 P: appeal under Article 49 of the Statute of the Court of Justice, brought on 27 February 2002, between Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Agents: A. von Mühlendahl and G. Schneider), supported by United Kingdom of Great Britain and Northern Ireland (Agent: P. Ormond, C. Jackson, M. Bethell and M. Tappin, assisted by D. Alexander), the other party to the proceedings being: Erpo Möbelwerk GmbH (Lawyers: S. von Petersdorff-Campen and H. von Rohr) — the Court (Second Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen and J.N. Cunha Rodrigues, Judges; M. Poiares Maduro, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 21 October 2004, in which it:

1. *Dismisses the appeal;*

2. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

(1) OJ C 109 of 4.5.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 7 October 2004

in Case C-103/02: Commission of the European Communities v Italian Republic (1)

(Failure of a Member State to fulfil obligations — Directives 75/442/EEC and 91/689/EEC — 'Quantity of waste' — Exemption from permit requirement)

(2004/C 300/09)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-103/02: Commission of the European Communities (Agents: R. Wainwright and R. Amorosi) v Italian Republic (Agent: I.M. Braguglia, assisted by M. Fiorilli) — action under Article 226 EC for failure to fulfil obligations, brought on 20 March 2002 — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta, K. Lenaerts and S. von Bahr (Rapporteur), Judges; Advocate General: M. Poiares Maduro, Registrar: R. Grass, has given a judgment on 7 October 2004, in which it:

1. *Declares that, by failing to fix, in the Decree of 5 February 1998 relating to the identification of non-hazardous waste subject to simplified recovery procedures under Articles 31 and 33 of Legislative Decree No 22 of 5 February 1997, maximum quantities of waste by type of waste which may be recovered under the permit exemption scheme, the Italian Republic has failed to fulfil its obligations under Articles 10 and 11(1) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;*

2. *Declares that, by failing to define precisely the types of waste relating to technical standards 5.9 and 7.8 of Annex 1 to that decree, the Italian Republic has failed to fulfil its obligations under Article 11(1) of Directive 75/442, as amended, and Article 3 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste;*

3. *Dismisses the remainder of the action;*

4. *Orders each party to pay its own costs.*

(1) OJ C 118 of 18.5.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-113/02: Commission of the European Communities v Kingdom of the Netherlands [1]

(Regulation (EEC) No 259/93 on the supervision and control of shipments of waste — Directive 75/442 on waste — National measure providing for objections to shipments of waste for recovery where 20 % of the waste is recoverable in the Member State and the percentage of waste recoverable in the country of destination is lower — Measure of a Member State classifying an operation under point R1 (recovery by incineration) of Annex IIB to Directive 75/442 or under point D10 (disposal by incineration) of Annex IIA to that directive not according to the criterion of actual use but according to the calorific value of the incinerated waste)

(2004/C 300/10)

(Language of the case: Dutch)

(Provisional translation: the definitive translation will be published in the European Court Reports)

In Case C-113/02 — action under Article 226 EC for failure to fulfil obligations, brought on 27 March 2002, Commission of the European Communities (Agents: H. van Lier, M. van der Woude and R. Wezenbeek-Geuke) against Kingdom of the Netherlands (Agent: H.G. Sevenster) — the Court (First Chamber), composed of: P. Jann, (Rapporteur) President of the Chamber, A. Rosas, R. Silva de Lapuerta, K. Lenaerts and S. von Bahr; F.G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgement on 14 October 2004, in which it:

1. *Declares that the Kingdom of the Netherlands has failed to fulfil its obligations under Article 7(4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community and under Article 1(e) and (f) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and Commission Decision 96/350/EC of 24 May 1996;*

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

[1] OJ C 144 of 15.6.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 7 October 2004

in Case C-136/02 P: Mag Instrument Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [1]

(Appeal — Community trade mark — Article 7(1)(b) of Regulation (EC) No 40/94 — Three-dimensional torch shapes — Absolute ground for refusal — Distinctive character)

(2004/C 300/11)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-136/02 P: Appeal under Article 49 of the EC Statute of the Court of Justice, lodged at the Court on 8 April 2002, Mag Instrument Inc. established in Ontario, California (United States of America) (Agents: initially A. Nette, G. Rahn, W. von der Osten-Sacken and H. Stratmann, and subsequently W. von der Osten-Sacken, U. Hocke and A. Spranger, Rechtsanwälte), the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Agent: D. Schennen) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.-P. Puissochet, J.N. Cunha Rodrigues and F. Macken (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 7 October 2004, in which it:

1. *Dismisses the appeal;*

2. *Orders Mag Instrument Inc. to pay the costs.*

[1] OJ C 144 of 15.6.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-173/02: Kingdom of Spain v Commission of the European Communities ([1])

(Regulation (EEC) No 3950/92 — Common organisation of the market for milk and milk products — Commission decision prohibiting aid to acquire milk quotas)

(2004/C 300/12)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-173/02: application for annulment under Article 230 EC, brought on 13 May 2002 between Kingdom of Spain (Agent: S. Ortiz Vaamonde) and Commission of the European Communities (Agent: J.L. Buendía Sierra) — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas and S.von Bahr, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 14 October 2004, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 169 du 13.7.2002.

JUDGMENT OF THE COURT

(sitting as a full Court)

of 19 October 2004

in Case C-200/02 (reference for a preliminary ruling from the Immigration Appellate Authority): Kunqian Catherine Zhu, Man Lavette Chen v Secretary of State for the Home Department ([1])

(Right of residence — Child with the nationality of one Member State but residing in another Member State — Parents nationals of a non-member country — Mother's right to reside in the other Member State)

(2004/C 300/13)

(Language of the case: English)

In Case C-200/02: reference for a preliminary ruling under Article 234 EC from the Immigration Appellate Authority (United Kingdom), made by decision of 27 May 2002, received at the Court on 30 May 2002, in the proceedings between Kunqian Catherine Zhu, Man Lavette Chen and Secretary of State for the Home Department — the Court (sitting as a full Court), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta and K. Lenaerts, Presidents of Chambers, C. Gulmann, R. Schintgen, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues (Rapporteur), Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 19 October 2004, in which it has ruled:

In circumstances like those of the main proceedings, Article 18 EC and Council Directive 90/364/EEC of 28 June 1990 on the right of residence confer on a young minor who is a national of a Member State, is covered by appropriate sickness insurance and is in the care of a parent who is a third-country national having sufficient resources for that minor not to become a burden on the public finances of the host Member State, a right to reside for an indefinite period in that State. In such circumstances, those same provisions allow a parent who is that minor's primary carer to reside with the child in the host Member State.

([1]) OJ C 180 du 27.7.2002.

JUDGMENT OF THE COURT

(sitting as a full Court)

of 12 October 2004

in Case C-222/02 (reference for a preliminary ruling from the Bundesgerichtshof): Peter Paul, Cornelia Sonnen-Lütte, Christel Mörkens v Bundesrepublik Deutschland ([1])

(Credit institutions — Deposit-guarantee schemes — Directive 94/19/EC — Directives 77/780/EEC, 89/299/EEC and 89/646/EEC — Supervisory measures by the competent authority for the purposes of protecting depositors — Liability of the supervisory authorities for losses resulting from defective supervision)

(2004/C 300/14)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-222/02: reference for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 16 May 2002, received at the Court on 17 June 2002, in the proceedings between Peter Paul, Cornelia Sonnen-Lütte, Christel Mörkens and Bundesrepublik Deutschland — the Court (sitting as a full Court), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, Presidents of Chambers, C. Gulmann (Rapporteur), J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 12 October 2004, in which it has ruled:

1. *If the compensation of depositors prescribed by Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes is ensured, Article 3(2) to (5) of that directive cannot be interpreted as precluding a national rule to the effect that the functions of the national authority responsible for supervising credit institutions are to be fulfilled only in the public interest, which under national law precludes individuals from claiming compensation for damage resulting from defective supervision on the part of that authority.*

2. *First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions and Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780 do not preclude a national rule to the effect that the functions of the national authority responsible for supervising credit institutions are to be fulfilled only in the public interest, which under national law precludes individuals from claiming compensation for damage resulting from defective supervision on the part of that authority.*

([1]) OJ C 202 of 24.8.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 7 October 2004

in Case C-247/02 (reference for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia): Sintesi SpA v Autorità per la Vigilanza sui Lavori Pubblici ([1])

(Directive 93/37/EEC — Public works contracts — Award of contracts — Right of the contracting authority to choose between the criterion of the lowest price and that of the most economically advantageous tender)

(2004/C 300/15)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-247/02: reference for a preliminary ruling under Article 234 EC from the Tribunale amministrativo regionale per la Lombardia (Italy), made by decision of 26 June 2002, received at the Court on 8 June 2002, in the proceedings pending before that court between Sintesi SpA and Autorità per la Vigilanza sui Lavori Pubblici, in the presence of: Ingg. Provera e Carrassi SpA — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet, R. Schintgen (Rapporteur), F. Macken and N. Colneric, Judges; C. Stix-Hackl, Advocate General; M. Múgica Azarmendi, Principal Administrator, for the Registrar, has given a judgment on 7 October 2004, in which it has ruled:

Article 30(1) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts is to be interpreted as meaning that it precludes national rules which, for the purpose of awarding public works contracts following open or restricted tendering procedures, impose a general and abstract requirement that the contracting authorities use only the criterion of the lowest price.

([1]) OJ C 202 du 24.8.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 September 2004

in Case C-276/02: Kingdom of Spain v Commission of the European Communities ([1])

(State aid — Definition — Non-payment of taxes and social security contributions by an undertaking — Attitude taken by the national authorities following a declaration of suspension of payments)

(2004/C 300/16)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-276/02: action for annulment under Article 230 EC, brought before the Court on 23 July 2002, between Kingdom of Spain (Agent: S. Ortiz Vaamonde) and Commission of the European Communities (Agents: V. Kreuschitz and J.L. Buendía Sierra) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), J.N. Cunha Rodrigues and F. Macken, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, has given a judgment on 14 September 2004, in which it:

1. *Annuls Commission Decision 2002/935/EC of 14 May 2002 on the State aid granted to Grupo de Empresas Álvarez.*

2. *Orders the Commission of the European Communities to pay the costs.*

(1) OJ C 219 of 14.9.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 21 October 2004

in Case C-288/02: Commission of the European Communities v Hellenic Republic (1)

(Maritime transport — Freedom to provide services — Maritime cabotage)

(2004/C 300/17)

(Language of the case: Greek)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-288/02: action under Article 226 EC for failure to fulfil obligations, brought on 9 August 2002, between Commission of the European Communities (Agents: K. Simonsson and M. Patakia) and Hellenic Republic (Agents: E.-M. Mamouna) — the Court (Second Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann and R. Schintgen, Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 21 October 2004, in which it:

1. *Declares that, by regarding the Peloponnese as an island and applying to Community cruise liners exceeding 650 gt which carry out island cabotage its national rules as host State on manning conditions, the Hellenic Republic has failed to fulfil its obligations under Articles 1, 3 and 6 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage);*

2. *Dismisses the remainder of the action;*

3. *Orders each party to bear its own costs.*

(1) OJ C 247 of 12.10.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-298/02: Italian Republic v Commission of the European Communities (1)

(EAGGF — Production aid for products processed from fruit and vegetables — Regulation (EEC) No 1558/91 — Article 1 — Peaches and pears — Decision 2002/524/EC)

(2004/C 300/18)

(Language of the case: Italian)

In Case C-298/02: Italian Republic (Agents: I.M. Braguglia and M. Fiorilli) v Commission of the European Communities (Agents: C. Cattabriga and M. Moretto) — action for annulment under Article 230 EC, brought on 21 August 2002 — the Court (First Chamber), composed of: P. Jann, President of the Chamber, N. Colneric (Rapporteur), J.N. Cunha Rodrigues, M. Ilešič and E. Levits Judges; F. G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 14 October 2004, in which it:

1. *Dismisses the application.*

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

(1) OJ C 261 of 26.10.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-299/02: Commission of the European Communities v Kingdom of the Netherlands [1]

(Failure of a Member State to fulfil obligations — Articles 43 EC and 48 EC — National measures requiring as a condition for being able to register a ship in the Netherlands that the shareholders, directors and natural persons responsible for the day-to-day management of the Community company owning the ship have Community or EEA nationality — National measures requiring that the director of a shipping company be of Community or EEA nationality or have a Community or EEA residence)

(2004/C 300/19)

(Language of the case: Dutch)

In Case C-299/02: action under Article 226 EC for failure to fulfil obligations, brought on 23 August 2002, between Commission of the European Communities (Agents: K.H.I. Simonsson and H.H. Speyart) and Kingdom of the Netherlands (Agents: H.G. Sevenster and S. Terstal) — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas and R. Silva de Lapuerta, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 14 October 2004, in which it:

1. *Declares that, by adopting and maintaining in its legislation Article 311 of the Wetboek van Koophandel and Article 8:169 of the Burgerlijk Wetboek, under which certain conditions are fixed concerning:*

   — *the nationality of the shareholders of companies owning seagoing ships which they wish to register in the Netherlands;*

   — *the nationality of the directors of companies owning seagoing ships which those companies wish to register in the Netherlands;*

   — *the nationality of the natural persons responsible for the day-to-day management of the place of business from which the shipping business which is necessary for registration of a ship in the Netherlands registers is carried out in the Netherlands;*

   — *the nationality of the directors of shipping companies owning seagoing ships registered in the Netherlands; and*

   — *the residence of the directors of shipping companies owning seagoing ships registered in the Netherlands,*

   the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 43 EC and 48 EC;

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

[1] OJ C 247 of 12.10.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 7 October 2004

in Case C-312/02: Kingdom of Sweden v Commission of the European Communities [1]

(Action for annulment — EAGGF — Expenditure excluded from Community financing — Support for producers of certain arable crops — Common organisation of the market in beef and veal)

(2004/C 300/20)

(Language of the case: Swedish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-312/02: Action for annulment under Article 230 EC, lodged at the Court on 4 September 2002, Kingdom of Sweden (Agent: K. Renman) v Commission of the European Communities (Agent: K. Simonsson) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and F. Macken, Judges; F.G. Jacobs, Advocate General; R. Grass, for the Registrar, has given a judgment on 7 October 2004, in which it has ruled:

1. *Dismisses the action;*

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

[1] OJ C 261 of 26.10.2002.

JUDGMENT OF THE COURT

(Grand Chamber)

of 12 October 2004

in Case C-313/02 (reference for a preliminary ruling from the Oberster Gerichtshof): Nicole Wippel v Peek & Cloppenburg GmbH & Co. KG [1]

(Directive 97/81/EC — Directive 76/207/EEC — Social policy — Equal treatment as between part-time and full-time workers — Equal treatment as between male and female workers — Working hours and organisation of working-time)

(2004/C 300/21)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-313/02: reference for a preliminary ruling under Article 234 EC, from the Oberster Gerichtshof (Austria), made by order of 8 August 2002, received at the Court on 5 September 2002, in the proceedings between Nicole Wippel and Peek & Cloppenburg GmbH & Co. KG, — the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta and K. Lenaerts, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, F. Macken (Rapporteur), J.N. Cunha Rodrigues and K. Schiemann, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 12 October 2004, in which it has ruled:

1. *A worker with a contract of employment, such as that in the main proceedings, under which hours of work and the organisation of working time are dependent upon the quantity of available work and are determined only on a case-by-case basis by agreement between the parties, comes within the scope of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

   Such workers also come within the scope of the Framework Agreement annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC where:

   — *they have a contract or employment relationship as defined by the law, collective agreement or practices in force in the Member State;*

   — *they are employees whose normal working hours, calculated on a weekly basis or on average over an employment period which may be up to a year, are less than those of a comparable full-time worker within the meaning of Clause 3(2) of that framework agreement, and*

   — *in regard to part-time workers working on a casual basis, the Member State has not excluded them, wholly or partly, from the benefit of the terms of that agreement.*

2. *Clause 4 of the Framework Agreement annexed to Directive 97/81 and Articles 2(1) and 5(1) of Directive 76/207 must be interpreted as meaning that:*

   — *they do not preclude a provision, such as Paragraph 3 of the Arbeitszeitgesetz (Law on working time), which lays down a basic maximum working time of 40 hours per week and eight hours per day, and which thus also regulates maximum working time and the organisation of working time in regard to both full-time and part-time workers;*

   — *in circumstances where all the contracts of employment of the other employees of an undertaking make provision for the length of weekly working time and for the organisation of working time, they do not preclude a contract of part-time employment of workers of the same undertaking, such as that in the main proceedings, under which the length of weekly working time and the organisation of working time are not fixed but are dependent on quantitative needs in terms of work to be performed determined on a case-by-case basis, such workers being entitled to accept or refuse that work.*

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 12 October 2004

in Case C-328/02: Commission of the European Communities against the Hellenic Republic [1]

(Failure to fulfil obligations — Agriculture — Regulation (EEC) No 3508/92 — Integrated administration and control system for certain Community aid schemes)

(2004/C 300/22)

(Language of the case: Greek)

In Case C-328/02: Commission of the European Communities (Agent: M. Condou-Durande) v the Hellenic Republic (Agents: V. Kontolaimos and I. Chalias) — action under Article 226 EC for failure to fulfil obligations, brought on 18 September 2002 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, J.-P. Puissochet, F. Macken (Rapporteur), J. Malenovský and U. Lõhmus, Judges; Advocate General: P. Léger, Registrar: L. Hewlett, has given a judgment on 12 October 2004, in which it:

1) *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to implement completely Article 2(a) and (e) of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes, the Hellenic Republic has failed to fulfil its obligations under that regulation.*

2) *Dismisses the remainder of the action.*

3) *Orders the Commission of the European Communities and the Hellenic Republic to bear their own costs.*

([1]) OJ C 261 of 26.10.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-336/02 (reference for a preliminary ruling from the Landgericht Düsseldorf): Saatgut-Treuhandverwaltungsgesellschaft mbH v Brangewitz GmbH ([1])

(Plant varieties — System of protection — Article 14(3) of Regulation (EC) No 2100/94 and Article 9 of Regulation (EC) No 1768/95 — Use by farmers of the product of the harvest — Suppliers of processing services — Obligation to provide information to the holder of the Community right)

(2004/C 300/23)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-336/02: reference for a preliminary ruling under Article 234 EC from the Landgericht Düsseldorf (Germany), made by decision of 8 August 2002, received at the Court on 23 September 2002, in the proceedings between Saatgut-Treuhandverwaltungsgesellschaft mbH and Brangewitz GmbH — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta, K. Lenaerts and S. von Bahr (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 14 October 2004, in which it has ruled:

1. *The sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights in conjunction with Article 9 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 cannot be interpreted as allowing the holder of a Community plant variety right to request a supplier of processing services to provide the information specified in those provisions where the holder has no indication that the latter has processed or intends to process the product of the harvest obtained by farmers by planting propagating material of a variety belonging to the holder, other than a hybrid or synthetic variety, which is covered by that right and belongs to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94, for planting.*

2. *The sixth indent of Article 14(3) of Regulation No 2100/94 in conjunction with Article 9 of Regulation No 1768/95 must be interpreted as meaning that, where the holder has some indication that the supplier of processing services has processed or intends to process the product of the harvest obtained by farmers by planting propagating material of a variety belonging to the holder, other than a hybrid or synthetic variety, which is covered by a Community plant variety right and belongs to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94, for planting, the processor is required to provide him with the relevant information relating not only to the farmers for whom the holder has some indication that the processor has provided or intends to provide such services but also to all other farmers for whom he has processed or intends to process the product of the harvest obtained by planting propagating material of the variety concerned, where that variety has been declared or is otherwise known to him.*

([1]) OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-340/02: Commission of the European Communities v French Republic ([1])

(Failure of a Member State to fulfil obligations — Directive 92/50/EEC — Procedure for the award of public service contracts — Assistance to the maître d'ouvrage for a sewage treatment plant — Award to the successful candidate in an earlier design contest without prior publication of a contract notice in the OJEC)

(2004/C 300/24)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-340/02: action under Article 226 EC for failure to fulfil obligations, brought on 24 September 2002, between

Commission of the European Communities (Agent: M. Nolin) and French Republic (Agents: G. de Bergues, S. Pailler and D. Petrausch) — the Court (First Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr and K. Schiemann (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 14 October 2004, in which it:

1. *Declares that, by virtue of the award by the Communauté urbaine du Mans of a study contract for assistance to the maître d'ouvrage in respect of the Chauvinière sewage treatment plant, without publication of a contract notice in the Official Journal of the European Communities, the French Republic has failed to fulfil its obligations under Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, and in particular Article 15(2) thereof;*

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

(1) OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 7 October 2004

in Case C-379/02 (reference for a preliminary ruling from the Østre Landsret): Skatteministeriet v Imexpo Trading A/S (1)

(Common Customs Tariff — Tariff headings — Classification in the Combined Nomenclature — Chairmats)

(2004/C 300/25)

(Language of the case: Danish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-379/02: reference for a preliminary ruling under Article 234 EC from the Østre Landsret (Denmark), made by order of 15 October 2002, received at the Court on 21 October 2002, in the proceedings between Skatteministeriet and Imexpo Trading A/S — the Court (Sixth Chamber), composed of: A. Borg Barthet, President of the Chamber, J.-P. Puissochet (Rapporteur), and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 7 October 2004, in which it has ruled:

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996, Commission Regulation (EC) No 2086/97 of 4 November 1997, Commission Regulation (EC) No 2261/98 of 26 October 1998, and Commission Regulation (EC) No 2204/99 of 12 October 1999 must be construed as meaning that in a dispute such as that in the main proceedings, in which the parties disagree as to whether plastic chairmats such as those at issue in the main proceedings come under subheading 3918 10 90 or subheading 9403 70 90 of the Combined Nomenclature, classification under the former subheading is to be preferred.

(1) OJ C 7 of 11.1.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 7 October 2004

in Case C-402/02: Commission of the European Communities v French Republic (1)

(Failure by a Member State to fulfil its obligations — Directives 89/48/EEC and 92/51/EEC — Recognition of diplomas — Access to the profession of special needs teacher in the hospital public service and local public service — Definition of 'regulated profession' — Professional experience — Article 39 EC)

(2004/C 300/26)

(Language of the case: French)

In Case C-402/02: Commission of the European Communities (Agents: M. Patakia and D. Martin) v French Republic (Agents: G. de Bergues and A. Colomb) — action under Article 226 EC for failure to fulfil obligations, brought on 12 November 2002 — the Court (Second Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, J.-P. Puissochet, J.N. Cunha Rodrigues and F. Macken, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 7 October 2004, in which it:

1. *Declares that, by failing to put in place a procedure for the mutual recognition of diplomas as required by Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration and Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48 for access to the profession of special needs teacher in the hospital public service and the local public service, and by allowing to remain in force a national law and the practice of the classification committee which fails to take into account the professional experience of migrant workers, the French Republic has failed to fulfil its obligations under those directives and Article 39 EC.*

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

([1]) OJ C 323 of 21.12.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-409/02 P: Jan Pflugradt v European Central Bank ([1])

(Appeal — Staff of the European Central Bank — Contractual nature of the employment relationship — Alteration of responsibilities laid down in the employment contract)

(2004/C 300/27)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-409/02 P: appeal under Article 56 of the Statute of the Court of Justice, lodged on 18 November 2002, by Jan Pflugradt (avocats: N. Pflüger) the other party to the proceedings being: European Central Bank (Agents: V. Saintot, T. Gilliams, and B. Wägenbaur,) — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta (Rapporteur), K. Lenaerts and S. von Bahr, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 14 October 2004, in which it:

1. *Dismisses the appeal;*

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

([1]) OJ C 19 du 25.1.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 21 October 2004

in Case C-426/02: Commission of the European Communities v Hellenic Republic ([1])

(Failure of a Member State to fulfil obligations — Charges having equivalent effect — Common commercial policy — Imports of goods from Member States and non-member countries — Charges levied for the validation of invoices)

(2004/C 300/28)

(Language of the case: Greek)

In Case C-426/02: action under Article 226 EC for failure to fulfil obligations, lodged at the Court on 22 November 2002 by Commission of the European Communities (Agents: X. Lewis and M. Konstantinidis) against Hellenic Republic (Agents: A. Samoni-Rantou and N. Dafniou) — the Court (Fifth Chamber), composed of: R. Silva de Lapuerta, President of the Chamber, C. Gulmann (Rapporteur) and S. von Bahr, Judges; Advocate General: A. Tizzano; Registrar: R. Grass, has given a judgment on 21 October 2004, in which it:

1. *Declares that, by applying, for the benefit of the Ethnikos Organismos Farmakon (National Organisation for Medicines), a charge in respect of the validation of invoices on the import of raw materials for pharmaceutical use, semi-finished products and finished products from other Member States or non-member countries, the Hellenic Republic has failed to fulfil its obligations under Articles 23 EC, 25 EC and 133 EC;*

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

(1) OJ C 31 of 8.2.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 12 October 2004

in Case C-431/02: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (1)

(Hazardous waste — Failure of a State to fulfil obligations — Directive 91/689/EEC)

(2004/C 300/29)

(Language of the case: English)

In Case C-431/02: Commission of the European Communities (Agents: X. Lewis and M. Konstantinidis) v United Kingdom of Great Britain and Northern Ireland (Agents: P. Ormond and K. Manji, assisted by M. Demetriou, Barrister) — action under Article 226 EC for failure to fulfil obligations, brought on 28 November 2004 Ä the Court (Third Chamber), composed of: A. Rosas, President of the Chamber, A. Borg Barthet, F. Macken (Rapporteur), S. von Bahr, and U. Lõhmus, Judges; Advocate General: P. Léger, Registrar: R. Grass, has given a judgment on 12 October 2004, in which it:

1. *Declares that, by failing to adopt all the measures necessary to comply with its obligations under Articles 1(4) and (5), 2(1), (2) and (4), 3(1) to (4), 4(1) to (3) and 5(2) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that Directive and under the EC Treaty;*

2. *Dismisses the remainder of the action;*

3. *Orders the Commission of the European Communities to bear one-fifth of the costs;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland to bear four-fifths of the costs.*

(1) OJ C 19 of 25.1.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 5 October 2004

in Case C-442/02 (reference for a preliminary ruling from the Conseil d'État): Caixa-Bank France v Ministère de l'Économie, des Finances et de l'Industrie (1)

(Freedom of establishment — Credit institutions — National legislation prohibiting the payment of remuneration on sight accounts)

(2004/C 300/30)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-442/02: Reference for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 6 November 2002, received at the Court on 5 December 2002, in the proceedings brought by Caixa-Bank France against Ministère de l'Économie, des Finances et de l'Industrie, interveners: Banque fédérale des banques populaires and Others — the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), Presidents of Chambers, R. Schintgen, N. Colneric, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts, Judges; A. Tizzano, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 5 October 2004, in which it has ruled:

Article 43 EC precludes legislation of a Member State which prohibits a credit institution which is a subsidiary of a company from another Member State from remunerating sight accounts in euros opened by residents of the former Member State.

(1) OJ C 19 du 25.1.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 21 October 2004

in Case C-447/02 P: KWS Saat AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Absolute ground for refusal — Distinctive character — Colour per se — Orange colour)

(2004/C 300/31)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-447/02 P: appeal under Article 49 of the EC Statute of the Court of Justice, lodged on 11 December 2002 by KWS Saat AG, established in Einbeck (Germany) (represented by C. Rohnke), the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: D. Schennen and G. Schneider) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.-P. Puissochet, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; P. Léger, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 21 October 2004, in which it:

1. *dismisses the appeal;*

2. *orders KWS Saat AG to pay the costs.*

(1) OJ C 55 du 8.3.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 October 2004

in Case C-472/02 (reference for a preliminary ruling from the Cour d'appel de Bruxelles): Siomab SA v Institut bruxellois pour la gestion de l'environnement (1)

(Environment — Waste — Regulation (EEC) No 259/93 on shipments of waste — Competence of the authority of dispatch to verify the classification of the purpose of a shipment (recovery or disposal) and to object to a shipment based on an incorrect classification — Objection procedure)

(2004/C 300/32)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-472/02: reference for a preliminary ruling under Article 234 EC from the Cour d'appel de Bruxelles (Belgium), made by decision of 20 December 2002, received at the Court on 27 December 2002, in the proceedings between Siomab SA and Institut bruxellois pour la gestion de l'environnement — the Court (Fifth Chamber), composed of: R. Silva de Lapuerta, President of the Chamber, C. Gulmann, (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 19 October 2004, in which it has ruled:

Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Commission Decision 98/368/EC of 18 May 1998 and Commission Decision 1999/816/EC of 24 November 1999, is to be interpreted as meaning that, where a Member State has recourse, under Article 6(8) of that regulation, to the specific procedure whereby the competent authority of dispatch transmits the consignment note for a shipment of waste for recovery, that authority, if it considers it necessary to object to the shipment on the ground that it has been incorrectly classified by the notifier, may not reclassify the shipment on its own initiative and is required to transmit that document to the other competent authorities and the consignee. It is then for that authority to inform the notifier and the other competent authorities concerned of its objection by any appropriate means before the end of the period laid down in Article 7(2) of the Regulation at the latest.

(1) OJ C 44 of 22.2.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 21 October 2004

in Case C-8/03 (reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium)): Banque Bruxelles Lambert SA (BBL) v Belgian State [1]

(Sixth VAT Directive — Articles 4 and 9(2)(e) — Concept of taxable person — Place where services are supplied — SICAV)

(2004/C 300/33)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-8/03: reference for a preliminary ruling under Article 234 EC from the Tribunal de première instance de Bruxelles (Belgium) (Brussels Court of First Instance), made by decision of 24 December 2002, received at the Court on 10 January 2003, in the proceedings between Banque Bruxelles Lambert SA (BBL) and Belgian State — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta, K. Lenaerts and S. von Bahr (Rapporteur), Judges; M. Poiares Maduro, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 21 October 2004, in which it has ruled:

Open-ended investment companies (SICAVs) which have as their sole object the collective investment in transferable securities of capital raised from the public in accordance with Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) are taxable persons within the meaning of Article 4 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, so that, where services referred to in Article 9(2)(e) of that directive are supplied to such SICAVs which are established in a Member State other than that of the supplier of the services, the place where those services are provided is the place where the SICAVs have established their business.

[1] OJ C 44 of 22.2.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 October 2004

in Case C-31/03 (reference for a preliminary ruling from the Bundesgerichtshof): Pharmacia Italia SpA [1]

(Regulation (EEC) No 1768/92 — Medicinal products — Supplementary protection certificate — Transitional arrangements — Successive authorisations as a veterinary medicinal product and a medicinal product for human use)

(2004/C 300/34)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-31/03: reference for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 17 December 2002, received at the Court on 27 January 2003, in the proceedings brought by Pharmacia Italia SpA, formerly Pharmacia & Upjohn SpA — the Court (Fifth Chamber), composed of: R. Silva de Lapuerta, President of the Chamber, C. Gulmann (Rapporteur) and S. von Bahr, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 19 October 2004, in which it has ruled:

The grant of a supplementary protection certificate in a Member State of the Community on the basis of a medicinal product for human use authorised in that Member State is precluded by an authorisation to place the product on the market as a veterinary medicinal product granted in another Member State of the Community before the date specified in Article 19(1) of Council Regulation No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products.

[1] OJ C 101 of 26.4.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 October 2004

in Case C-55/03: Commission of the European Communities v Kingdom of Spain [1]

(Workers — Recognition of diplomas — Civil air traffic controllers — Inadmissibility)

(2004/C 300/35)

(Language of the case: Spanish)

In Case C-55/03: action under Article 226 EC for failure to fulfil obligations, brought on 11 February 2003 by Commission of the European Communities (Agents: M. Patakia and M. Valverde López) against Kingdom of Spain (Agent: S. Ortiz Vaamonde) — the Court (Second Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, R. Schintgen, G. Arestis and J. Klučka, Judges; Advocate General: P. Léger; Registrar: R. Grass, gave a judgment on 14 October 2004, in which it:

1. *Dismisses the action as inadmissible;*

2. *Orders the Commission of the European Communities to pay the costs.*

[1] OJ C 83 of 5.4.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 October 2004

in Case C-60/03 (reference for a preliminary ruling from the Bundesarbeitsgericht): Wolff & Müller GmbH & Co. KG v José Filipe Pereira Félix [1]

(Article 49 EC — Restrictions on freedom to provide services — Undertakings in the construction sector — Subcontracting — Obligation on an undertaking to act as guarantor in respect of the minimum remuneration of workers employed by a subcontractor)

(2004/C 300/36)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-60/03: reference for a preliminary ruling under Article 234 EC, from the Bundesarbeitsgericht (Germany), made by decision of 6 November 2002, received at the Court on 14 February 2003, in the proceedings between Wolff & Müller GmbH & Co. KG and José Filipe Pereira Félix — the Court (Second Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann and R. Schintgen, F. Macken and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 12 October 2004, in which it has ruled:

Article 5 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, interpreted in the light of Article 49 EC, does not preclude, in a case such as that in the main proceedings, a national system whereby, when subcontracting the conduct of building work to another undertaking, a building contractor becomes liable, in the same way as a guarantor who has waived benefit of execution, for the obligation on that undertaking or that undertaking's subcontractors to pay the minimum wage to a worker or to pay contributions to a joint scheme for parties to a collective agreement where the minimum wage means the sum payable to the worker after deduction of tax, social security contributions, payments towards the promotion of employment or other such social insurance payments (net pay), if the safeguarding of workers' pay is not the primary objective of the legislation or is merely a subsidiary objective.

[1] OJ C 112 of 10.5.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 12 October 2004

in Case C-106/03 P: Vedial SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Word and figurative mark HUBERT — Opposition of the proprietor of the national word mark SAINT-HUBERT 41 — Capacity of OHIM as defendant before the Court of First Instance)

(2004/C 300/37)

(Language of the case: French)

In Case C-106/03 P: appeal under Article 56 of the Statute of the Court of Justice, lodged at the Court on 27 February 2003, Vedial SA, established in Ludres (France), (avocats: T. van Innis, G. Glas and F. Herbert) and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: O. Montalto and P. Geroulakos — the Court (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen, F. Macken (Rapporteur), and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 12 October 2004, in which it has ruled:

1. *Dismisses the appeal;*

2. *Orders Vedial SA to pay the costs.*

([1]) OJ C 146 of 21.6.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C-143/03: Commission of the European Communities against the Italian Republic ([1])

(Failure to fulfil obligations — Article 28 EC — National legislation subjecting alkaline batteries to a marking scheme)

(2004/C 300/38)

(Language of the case: German)

In Case C-143/03: Commission of the European Communities (Agents: L. Visaggio and R. Amorosi) v the Italian Republic (Agent: I.M. Braguglia, assisted by P. Gentili) — action under Article 226 EC for failure to fulfil obligations, brought on 28 March 2003 — the Court (First Chamber), composed of P. Jann, President of the Chamber, N. Colneric (Rapporteur), J. N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges; Advocate General: D. Ruiz-Jarabo Colomer, Registrar: R. Grass, has given a judgment on 14 October 2004, in which it:

1) *Declares that, by subjecting manganese alkaline batteries containing less than 0.0005 % mercury by weight to a marking scheme which requires, in particular, an indication as to the presence of heavy metals, the Italian Republic has failed to fulfil its obligations under Article 28 EC.*

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

([1]) OJ C 135 of 7.6.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 7 October 2004

in Case C-189/03: Commission of the European Communities v Kingdom of the Netherlands ([1])

(Failure of a Member State to fulfil obligations — Freedom to provide services — Restrictions — Private security firms)

(2004/C 300/39)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-189/03: Action under Article 226 EC for failure to fulfil obligations, brought on 5 May 2003, Commission of the European Communities (Agents: M. Patakia and W. Wils) v Kingdom of the Netherlands (Agents: H.G. Sevenster, C. Wissels and N.A.J. Bel) — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 7 October 2004, in which it:

1. *Declares that, by adopting, in the framework of the Law on private security firms and detective agencies of 24 October 1997, provisions which require that:*

   — *undertakings that wish to provide services in the Netherlands and their managers must have a permit, without taking into account the obligations to which foreign service providers are already subject in the Member State where they are established, and by charging fees for this permit, and*

   — *members of the staff of these firms seconded from the Member State where they are established to work in the Netherlands have a proof of identity card issued by the Netherlands authorities, in so far as the checks to which cross-frontier providers of services are already subject in their Member State of origin are not taken into account for the requirement in question,*

   the Kingdom of the Netherlands has failed to fulfil its obligations under Article 49 EC;

2. *Orders the Kingdom of the Netherlands to pay three quarters of the costs of the Commission of the European Communities. For the rest, each party is ordered to bear its own costs.*

([1]) OJ C 158 of 5.7.2003.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 14 October 2004

in Case C-193/03 (reference for a preliminary ruling from the Sozialgericht Stuttgart): Betriebskrankenkasse der Robert Bosch GmbH v Bundesrepublik Deutschland [1]

(Social security — Reimbursement of medical expenses incurred in another Member State — Article 34 of Regulation (EEC) No 574/72 — Health insurance fund applying a simplified full reimbursement procedure for bills for small amounts)

(2004/C 300/40)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-193/03: Betriebskrankenkasse der Robert Bosch GmbH v Bundesrepublik Deutschland — reference to the Court under Article 234 EC from the Sozialgericht Stuttgart (Germany), made by decision of 19 March 2003, received at the Court on 9 May 2003 — the Court (Sixth Chamber), composed of: A. Borg Barthet (Rapporteur), President of the Chamber, J.-P. Puissochet and S. von Bahr, Judges; Advocate General: M. Poiares Maduro, Registrar: R. Grass, has given a judgment on 14 October 2004, in which it has ruled:

Article 34 of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, as amended by Council Regulation (EC) No 1399/1999 of 29 April 1999, is to be interpreted as not precluding a practice whereby a health insurance fund, in the application of national rules, reimburses medical costs incurred by its members during a stay in another Member State in full when those costs do not exceed DEM 200.

[1] OJ C 200 of 23.8.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 7 October 2004

in Case C-239/03: Commission of the European Communities v French Republic [1]

(Failure of a Member State to fulfil obligations — Convention for the protection of the Mediterranean Sea against pollution — Articles 4(1) and (8) — Protocol for the protection of the Mediterranean Sea against pollution from land-based sources — Article 6(1) and (3) — Failure to adopt appropriate measures to prevent, abate and combat heavy and prolonged pollution of the Étang de Berre — Discharge authorisation)

(2004/C 300/41)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-239/03: action under Article 226 EC for failure to fulfil obligations, brought on 4 June 2003, between Commission of the European Communities (Agents: G. Valero Jordana and B. Stromsky) and French Republic (Agents: G. de Bergues and E. Puisais) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, R. Schintgen (Rapporteur), R. Silva de Lapuerta, P. Kūris and G. Arestis, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 7 October 2004, in which it:

1. *Declares that:*

— *by failing to take all appropriate measures to prevent, abate and combat heavy and prolonged pollution of the Étang de Berre, and*

— *by failing to take due account of the requirements of Annex III to the Protocol for the protection of the Mediterranean Sea against pollution from land-based sources, signed at Athens on 17 May 1980 and approved on behalf of the European Economic Community by Council Decision 83/101/EEC of 28 February 1983, by amending the authorisation for the discharge of substances covered by Annex II to the Protocol following the conclusion of the latter,*

the French Republic has failed to fulfil its obligations under Articles 4(1) and 8 of the Convention for the protection of the Mediterranean Sea against pollution, signed at Barcelona on 16 February 1976 and approved on behalf of the European Economic Community by Council Decision 77/585/EEC of 25 July 1977, under Article 6(1) and (3) of the Protocol for the protection of the Mediterranean Sea against pollution from land-based sources, signed at Athens on 17 May 1980 and approved on behalf of the European Economic Community by Council Decision 83/101/EEC of 28 February 1983, and under Article 300(7) EC;

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

([1]) OJ C 184 of 2.8.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 12 October 2004

in Case C-263/03: Commission of the European Communities v French Republic ([1])

(Failure of a Member State to fulfil its obligations — Parallel imports — Imports of medicinal products from other Member States which are the same as medicinal products which have already been authorised — Marketing authorisation — Lack of regulatory framework)

(2004/C 300/42)

(Language of the case: French)

In Case C-263/03: action under Article 226 EC for failure to fulfil obligations, brought on 17 June 2003, Commission of the European Communities (Agent: B. Stromsky) against French Republic (Agents: G. de Bergues and R. Loosli-Surrans) — the Court (Fifth Chamber), composed of: R. Silva de Lapuerta, President of the Chamber, C. Gulmann (Rapporteur) and R. Schintgen, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 12 October 2004, the operative part of which is as follows:

1. *By failing to lay down specific rules relating to the authorisation of imports of medicinal products from other Member States of the European Community when those products are the same as medicinal products which have already been authorised in France (parallel imports), the French Republic has failed to fulfil its obligations under Article 28 EC;*

2. *The French Republic is ordered to pay the costs.*

([1]) OJ C 200 of 23.8.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 14 October 2004

in Case C-275/03: Commission of the European Communities v Portuguese Republic ([1])

(Failure by a Member State to fulfil its obligations — Directive 89/665/EEC — Review procedures for the award of public supply and public works contracts — Incomplete transposition)

(2004/C 300/43)

(Language of the case: Portuguese)

In Case C-275/03: Commission of the European Communities (Agents: A. Caeiros and K. Wiedner) v Portuguese Republic (Agents: L. Fernandes and C. Gagliardi Graça) — action under Article 226 EC for failure to fulfil obligations, brought on 25 June 2003 — the Court (Third Chamber), composed of: A. Rosas, President of the Chamber, A. Borg Barthet, J.-P. Puissochet (Rapporteur), S. von Bahr and U. Lõhmus, Judges; C. Stix-Hackl, Advocate General; R.Grass, Registrar, has given a judgment on 14 October 2004, in which it:

1. *Declares that, by failing to repeal the Decree-Law No 48051 of 21 November 1967, making the award of damages to persons harmed by a breach of Community law relating to public contracts, or the national laws implementing it, conditional on proof of fault or fraud, the Portuguese Republic has failed to fulfil its obligations under Article 1(1) and Article 2(1)(c) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;*

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

([1]) OJ C 213 of 6.9.2003.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 14 October 2004

in Case C-339/03: Commission of the European Communities against the Federal Republic of Germany [1]

(Failure to fulfil obligations — Directive 1999/22/EC — Keeping of wild animals in zoos — Failure to transpose within the prescribed time-limit)

(2004/C 300/44)

(Language of the case: German)

In Case C-339/03: Commission of the European Communities (Agents: J. Schieferer and M. van Beek) v the Federal Republic of Germany (Agent: M. Lumma) — action under Article 226 EC for failure to fulfil obligations — the Court (Fourth Chamber), composed of J. N. Cunha Rodrigues (Rapporteur), Acting President of the Fourth Chamber, E. Juhász and M. Ilešič, Judges; Advocate General: P. Léger, Registrar: R. Grass, has given a judgment on 14 October 2004, in which it:

1) *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, in the various länder, with the exception of Bremen, Hamburg, Hessen, Baden-Württemberg, Niedersachsen, Berlin, Schleswig-Holstein and Thuringen, the Federal Republic of Germany has failed to fulfil its obligations under Article 9 of that directive.*

2) *Orders the Federal Republic of Germany to pay the costs.*

[1] OJ C 226 of 20.9.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 7 October 2004

in Case C-341/03: Commission of the European Communities v Hellenic Republic [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 98/49/EC)

(2004/C 300/45)

(Language of the case: Greek)

In Case C-341/03: Commission of the European Communities (Agents: H. Michard and D. Martin) v Hellenic Republic (Agent: N. Dafniou) — action under Article 226 EC for failure to fulfil obligations, brought on 1 August 2003 — the Court (Third Chamber), composed of: A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, F. Macken, S. von Bahr and J. Malenovský, Judges; J. Kokott, Advocate General; R. Grass, Registrar, has given a judgment on 7 October 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, the Hellenic Republic has failed to fulfil its obligations under that directive.*

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

[1] OJ C 226 of 20.9.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 21 October 2004

in Case C-445/03: Commission of the European Communities v Grand Duchy of Luxembourg [1]

(Failure of a State to fulfil obligations — Freedom to provide services — Requirements imposed by the host Member State on undertakings which deploy within its territory salaried workers who are nationals of non-member countries)

(2004/C 300/46)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-445/03: Commission of the European Communities (Agents: M. Patakia) v Grand Duchy of Luxembourg (Agents: S. Schreiner, assisted by A. Rukavina) — action under Article 226 EC for failure to fulfil obligations, brought on 21 October 2003 — the Court (First Chamber), composed of: P. Jann, President of the Chamber, K. Lenaerts (Rapporteur), K. Schiemann, E. Juhász and M. Ilešič, Judges; Advocate General: D. Ruiz-Jarabo Colomer, Registrar: R. Grass, has given a judgment on 21 October 2004, in which it:

1. *Declares that, by imposing on service providers established in another Member State who wish to deploy in its territory workers who are nationals of non-member countries a requirement of individual work permits, the issuance of which is subject to considerations relating to the employment market, or a requirement of a collective work permit, which is granted only in exceptional cases and only when the workers concerned have, for at least six months prior to the deployment, been in a relationship with their undertaking of origin through a contract of employment of indefinite duration, and by requiring those service providers to provide a bank guarantee, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC;*

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

([1]) OJ C 289 of 29.11.2003.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 21 October 2004

in Case C-477/03: Commission of the European Communities v Federal Republic of Germany ([1])

(Failure of a Member State to fulfil obligations — Directives 2001/12/EC, 2001/13/EC and 2001/14/EC — Community railways — Development — Licensing of railway undertakings — Allocation of capacity, infrastructure charges and safety certification — Failure to transpose within the prescribed period)

(2004/C 300/47)

(Language of the case: German)

In Case C-477/03: action under Article 226 EC for failure to fulfil obligations brought on 17 November 2003 by Commission of the European Communities (Agents: C. Schmidt and W. Wils) against Federal Republic of Germany (Agents: W.-D. Plessing and M. Lumma) — the Court (Sixth Chamber), composed of: A. Borg Barthet, President of the Chamber, J.-P. Puissochet and U. Lõhmus (Rapporteur), Judges; Advocate General: P. Léger; Registrar: R. Grass, has given a judgment on 21 October 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways, Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings, and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, the Federal Republic of Germany has failed to fulfil its obligations under those Directives;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 21 of 24.1.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 7 October 2004

in Case C-483/03: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland ([1])

(Failure of a Member State to fulfil obligations — Directives 2001/12/EC, 2001/13/EC and 2001/14/EC — The Community's railways — Development — Licensing of railway undertakings — Allocation of infrastructure capacity, levying of charges for the use of infrastructure and safety certification — Failure to transpose within the prescribed period)

(2004/C 300/48)

(Language of the case: English)

In Case C-483/03: action under Article 226 EC for failure to fulfil obligations, brought on 19 November 2003, between Commission of the European Communities (Agent: W. Wils) and United Kingdom of Great Britain and Northern Ireland (Agents: M. Demetriou and K. Manji) — the Court (Sixth Chamber), composed of: J.-P. Puissochet, acting for the President of the Sixth Chamber, S. von Bahr and U. Lõhmus (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 7 October 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directives 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways, Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under those directives;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

(1) OJ C 7 of 10.1.2004.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 5 October 2004

in Case C-524/03: Commission of the European Communities v G. & E. Gianniotis EPE (1)

(Arbitration clause — Reimbursement of amounts advanced — Interest on late payment — Default proceedings)

(2004/C 300/49)

(Language of the case: Greek)

In Case C-524/03, application under Article 238 EC brought on 16 December 2003 by the Commission of the European Communities (Agent: D. Triantafyllou, assisted by N. Korogiannakis) against G. & E. Gianniotis EPE, trading under the name of 'Nosokomeio Agia Eleni', established in Piraeus (Greece), the Court (Fourth Chamber), composed of J.N. Cunha Rodrigues, President of the Chamber, K. Lenaerts (Rapporteur) and K. Schiemann, Judges; P. Léger, Advocate General; R. Grass, Registrar, delivered a judgment on 5 October 2004 in which it ordered:

1. *G. & E. Gianniotis EPE to pay to the Commission of the European Communities the amount of EUR 212 010.17 by way of principal, plus interest thereon as follows:*

   — *in respect of the amount of EUR 72 136.15, at the rate of 6 % per annum with effect from 30 September 2001 until 31 December 2002, at the rate of 8 % per annum with effect from 1 January 2003 until the date of the judgment herein, and at the annual rate applied pursuant to the Greek law, that is to say currently Article 3(2) of Law No 2842/2000 on the replacement of the Drachma by the Euro, subject to a limit of a rate of 8 % per annum with effect from the date of the judgment herein pending full payment of the debt;*

   — *in respect of the amount of EUR 28 758.20, at the rate of 5.25 % per annum with effect from 30 November 2001 until 31 December 2002, at the rate of 7.25 % per annum with effect from 1 January 2003 until the date of the judgment herein, and at the annual rate applied under the aforementioned provision of Greek legislation, subject to a limit of a rate of 7.25 % per annum with effect from the date of the judgment herein pending full payment of the debt;*

   — *in respect of the amount of EUR 111 115.82, at the rate of 4.78 % per annum with effect from 15 January 2002 until 31 December 2002, at the rate of 6.78 % per annum with effect from 1 January 2003 until the date of the judgment herein, and at the annual rate applied under the aforementioned provision of Greek legislation, subject to a limit of a rate of 6.78 % per annum with effect from the date of the judgment herein pending full payment of the dept.*

2. *G. & E. Gianniotis EPE to pay the costs.*

(1) OJ C 59 of 6 March 2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 7 October 2004

in Case C-550/03: Commission of the European Communities v Hellenic Republic (1)

(Failure by a Member State to fulfil its obligations — Directives 2001/12/EC, 2001/13/EC and 2001/14/EC — Community's railways — Development — Licensing of railway undertakings — Allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification — Failure to transpose within the prescribed period)

(2004/C 300/50)

(Language of the case: Greek)

In Case C-550/03: Commission of the European Communities (Agents: W. Wils and G. Zavvos) v Hellenic Republic (Agent: N. Dafniou) — action under Article 226 EC for failure to fulfil obligations, brought on 23 December 2003 — the Court (Sixth Chamber), composed of: J.-P. Puissochet, acting as the President of the Sixth Chamber, S. von Bahr and U. Lõhmus (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 7 October 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways, Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings, and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, the Hellenic Republic has failed to fulfil its obligations under those directives.*

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

([1]) OJ C 59 of 3.2.2004.

Appeal brought on 24 September 2004 (fax of 16 September 2004) by Dalmine SpA against the judgment delivered on 8 July 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-50/00 between Dalmine SpA and the Commission of the European Communities

(Case C-407/04 P)

(2004/C 300/51)

An appeal against the judgment delivered on 8 July 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-50/00 Dalmine SpA v Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 September 2004 by Dalmine SpA, represented by A. Sinagra, M. Siragusa and F.M. Moretti, lawyers.

The appellant claims that the Court should:

— annul the contested judgment of the Court of First Instance together with the decision originally contested; or

— annul the contested judgment and, consequently, the parts of the Commission decision covered by such pleas put forward in the present notice of appeal as the Court may find to be acceptable and well founded;

— in the alternative, annul Article 4 of the decision and substantially reduce the fine imposed, taking account of the grounds and facts put forward in the present notice of appeal, whether as a consequence of the errors of law committed by the Court of First Instance in assessing the appropriateness of the penalty, or as a consequence of the annulment, in whole or in part, of the judgment, with particular (but not exclusive) regard to the findings of the Court of First Instance in relation to the infringements found in Articles 1 and 2 of the decision;

— assess whether, for various reasons and pursuant to its autonomous jurisdiction, it should refer the case back to the Court of First Instance for reconsideration and a new judgment which should take account of the Court of Justice's interpretation of the legislation and of the principles of law in the present case;

— lastly, in any event, set aside the order as to costs in the judgment of the Court of First Instance and order the Commission to pay Dalmine's costs at first instance and those of the appeal.

Pleas in law and main arguments:

The appellant submits that the judgment of the Court of First Instance is flawed for:

— infringement and misapplication of Community law, and infringement of the rights of the defence, in finding that the questions which the Commission put to the applicant, in particular by the decision requesting information under Article 11(5) of Regulation No 17/62 ([1]), were lawful;

— infringement and misapplication of Community law and infringement of the rights of the defence in finding that the 'Sharing Key' document was admissible and of evidential value;

— infringement and misapplication of Community law and infringement of the rights of the defence in finding that the minutes of the interview with the former director of Dalmine were admissible and of evidential value;

— infringement of Article 81 EC as regards the legitimacy of the inclusion in the decision of extraneous grounds in the complaints made against the undertakings;

— infringement of Article 81 EC, misapplication of the law, distortion of the evidence and breach of the duty to state reasons in respect of the determination of the object of the alleged infringement under Article 1 of the decision, the assessment of its implementation, the determination of its effects and the fact of treating a potential, unimplemented infringement, or one without any appreciable effect on competition, in the same way as fully implemented infringements which have an unlawful object and effect;

— infringement of Article 81 EC, misapplication of the law, distortion of the evidence and breach of the duty to state reasons in respect of the alleged effect on trade between Member States;

— action taken ultra vires, infringement of Community law and distortion of the facts and of the evidence as regards the Court of First Instance's reconstruction of the infringement found by the Commission in Article 2 of the decision;

— action taken ultra vires, infringement of Community law and distortion of the facts and of the evidence as regards the finding of the unlawfulness of the objects and/or the effects of the supply contract between Dalmine and British Steel, in so far as it restricted competition on the market for plain end and threaded pipes;

— infringement of Community law and distortion of the facts and of the evidence in so far as the terms of the supply contract between Dalmine and British Steel were found to be unlawful;

— in the alternative, infringement of Article 81 EC and breach of the duty to state reasons in the assessment of the Commission's compliance with Article 15 of Regulation No 17/62 and of the Guidelines on the method of setting fines, as regards the gravity of the infringement said to be committed by Dalmine;

— and, lastly, again in the alternative, infringement of Article 81 EC and breach of the duty to state reasons in the assessment of the Commission's compliance with Article 15 of Regulation No 17/62 and with the Guidelines on the method of setting fines, as regards the assessment of the duration of the infringement alleged to have been committed by Dalmine and of the attenuating circumstances.

([1]) OJ, English Special Edition, Series I, Chapter 1959-1962, p. 87.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), by order of that court dated 2 August 2004, in the case of The Queen on the application of 1) Teleos plc 2) Unique Distribution Ltd 3) Synectiv Ltd 4) New Communications Ltd 5) Quest Trading Company Ltd 6) Phones Interntional Ltd 7) AGM Associates Ltd 8) DVD Components Ltd 9) Fonecomp Ltd 10) Bulk GSM 11) Libratech Ltd 12) Rapid Marketing Services Ltd 13) Earthshine Ltd 14) Stardex (UK) Ltd against Commissioners of Customs and Excise

(Case C-409/04)

(2004/C 300/52)

Reference has been made to the Court of Justice of the European Communities by order of the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), dated 2 August 2004, which was received at the Court Registry on 24 September 2004, for a preliminary ruling in the case of The Queen on the application of 1) Teleos plc 2) Unique Distribution Ltd 3) Synectiv Ltd 4) New Communications Ltd 5) Quest Trading Company Ltd6) Phones Interntional Ltd 7) AGM Associates Ltd 8) DVD Components Ltd 9) Fonecomp Ltd 10) Bulk GSM 11) Libratech Ltd 12) Rapid Marketing Services Ltd 13) Earthshine Ltd 14) Stardex (UK) Ltd and Commissioners of Customs and Excise on the following questions:

1. In the relevant circumstances, is the term 'despatched' in Article 28a(3) ([1]) (intra-Community acquisition of goods) to be understood as meaning that intra-Community acquisition takes place when:

   a. the right to dispose of the goods as owner passes to the purchaser and the goods are supplied by the supplier by placing them at the disposal of the purchaser (who is registered for VAT in another Member State), on an ex works contract of sale whereby the purchaser assumes responsibility for removing the goods to a different Member State from that of supply, at a secure warehouse located in the supplier's Member State, and where the contractual documents and/or other documentary evidence state that the intention is that the goods should then be transported onwards towards a destination in another Member State, but the goods have not yet physically left the territory of the Member State of Supply; or

   b. the right to dispose of the goods as owner passes to the purchaser and the goods commence, but do not necessarily complete, their journey towards a different Member State (in particular, if the goods have not yet physically left the territory of the Member State of supply); or

   c. the right to dispose of the goods as owner has passed to the purchaser and the goods have physically left the territory of the Member State of supply on their journey towards a different Member State?

2. Is Article 28cA(a) to be interpreted as meaning that supplies of goods are exempt from VAT where:

   — the goods are supplied to a purchaser who is registered for VAT in another Member State; and

   — the purchaser contracts to purchase the goods on the basis that, after he has acquired the right to dispose of the goods as owner in the supplier's Member State, he will be responsible for transporting the goods from the supplier's Member State to a second Member State; and:

a. the right to dispose of the goods as owner has passed to the purchaser and the goods have been supplied by the supplier by placing them at the disposal of the purchaser, on an ex works contract of sale whereby the purchaser assumes responsibility for removing the goods to a different Member State from that of supply, at a secure warehouse located in the supplier's Member State, where the contractual documents and/or other documentary evidence state that the intention is that the goods should then be transported onwards towards a destination in another Member State, but the goods have not yet physically left the territory of the Member State of Supply; or

b. the right to dispose of the goods as owner has passed to the purchaser and the goods have commenced, but not necessarily completed, their journey towards a different Member State (in particular, the goods have not yet physically left the territory of the Member State of supply); or

c. the right to dispose of the goods as owner has passed to the purchaser and the goods have left the territory of the Member State of supply on their journey towards a second Member State; or

d. the right to dispose of the goods as owner has passed to the purchaser and the goods can also be shown to have actually arrived in the Member State of destination?

3. In the relevant circumstances, where a supplier acting in good faith has tendered to the competent authorities in his Member State, after submission of a repayment claim, objective evidence which at the time of its receipt apparently supported his right to exempt goods under Article 28cA(a) and the competent authorities initially accepted that evidence for the purpose of exemption, in what circumstances (if any) may the competent authorities in the Member State of supply nevertheless subsequently require the supplier to account for VAT on those goods where further evidence comes to their attention that either (a) casts doubt upon the validity of the earlier evidence or (b) demonstrates that the evidence submitted was materially false, but without the knowledge or the involvement of the supplier?

4. Is the answer to question 3 above affected by the fact that there was evidence that the purchaser made returns to the tax authorities in the Member State of destination, where those returns included as intra-Community acquisitions the purchases the subject matter of these claims, the purchaser entered an amount purporting to represent acquisition tax and also claimed the same amount as input tax in accordance with Article 17(2)(d) of the Sixth Directive?

(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.06.1977, p. 1).

Reference for a preliminary ruling by the Tribunale amministrativo regionale per la Puglia by order of 22 July 2004 in the case pending before it between Associazione Nazionale Autotrasporto Viaggiatori — A.N.A.V. and Comune di Bari and A.M.T.A.B. Servizio SpA

(Case C-410/04)

(2004/C 300/53)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale amministrativo regionale per la Puglia (Regional Administrative Court for Apulia) of 22 July 2004, received at the Court Registry on 27 September 2004, for a preliminary ruling in the case of Associazione Nazionale Autotrasporto Viaggiatori — A.N.A.V. against Comune di Bari and A.M.T.A.B. Servizio SpA on the following question:

'Is the part of paragraph V of Article 113 of Legislative Decree No 267/00 as amended by Article 14 of Decree Law No 269/03 that sets no limit on the freedom of a public authority to choose between the different methods of awarding a contract for the provision of a public service, and, in particular, between an award as a result of a public and open tender procedure and direct award to a company wholly controlled by the authority, compatible with Community law, and, in particular, with the obligations to ensure transparency and freedom of competition pursuant to Articles 46, 49 and 86 of the Treaty?'

Action brought on 24 September 2004 by the Commission of the European Communities against the Italian Republic

(Case C-412/04)

(2004/C 300/54)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 24 September 2004 by the Commission of the European Communities, represented by Klaus Wiedner and Giuseppe Bambara, acting as Agents.

The applicant claims that the Court should:

— declare that, by adopting Articles 2(1), 17(12), 27(2), 30(6a), 37b and 37c(1) of Law No 109 of 11 February 1994, as most recently amended by Article 7 of Law No 166 of 1 August 2002; Article 2(5) of Law No 109/94, as most recently amended by Law No 166/2002, to be read in conjunction with Law No 1150 of 1942 and Law No 10 of 1977, as amended and supplemented; Article 28(4) of Law No 109/94, to be read in conjunction with Article 188 of Presidential Decree No 554 of 21 December 1999 and Article 7 of Law No 166/2002, and Article 3(3) of Legislative Decree No 157 of 17 March 1995, the Italian Republic has failed to fulfil its obligations under Directives 93/37/EEC ([1]), 93/36/EEC ([2]), 92/50/EEC ([3]) and 93/38/EEC ([4]), Articles 43 and 49 EC and the principles of transparency and equal treatment to which they give expression;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments:

The Commission notes that, by making those contracts in which the works component is prevalent from the economic point of view but is clearly ancillary to other services subject to the rules on public works contracts, Article 2(1) of Law No 109/94 and Article 3(3) of Legislative Decree No 157 of 17 March 1995 have the effect of removing numerous public service and supply contracts from the purview of the relevant Community legislation, specifically Directives 92/50/EEC and 93/36/EEC.

Since the thresholds for the application of those directives are appreciably lower than those for the application of Directive 93/37/EEC, the effect of the provisions in question is to enable mixed service and works contracts, supply and works contracts or supply, works and service contracts to be awarded in breach of the procedures laid down by Directives 92/50/EEC and 93/36/EEC where the value exceeds the threshold for application of those directives but does not exceed that for public works contracts under Directive 93/37/EEC on the sole ground that, although ancillary, the works component is prevalent from the economic point of view. From that perspective, the provisions in question constitute an infringement of Directives 92/50/EEC and 93/36/EEC.

Rules governing works carried out by private persons which are deductible from urbanisation taxes

The Commission considers that, in so far as it excludes the duty to comply with the procedures laid down by Directive 93/37/EEC in cases of contracts between private persons and the State relating to a number of works, each of which falls below the threshold for the application of that directive, but whose aggregate value exceeds that threshold, Article 2(5) of Law No 109/94 infringes Directive 93/37/EEC, read in conjunction with Laws No 1150 of 1942 and No 10 of 1977, as subsequently amended and supplemented, which allows contracts for urbanisation works to be awarded directly to the holder of a building permission or development plan.

Rules governing the award of contracts for the design and supervision of works the value of which is below the Community thresholds

The Commission notes that Articles 17 and 30 of Law No 109/94, which permit the awarding authorities to award such contracts on the basis of trust without complying with any requirement concerning advertising, must be regarded as infringing the principle of transparency set out in Article 49 EC. Furthermore, reliance upon a procedure to ascertain the experience and capacity of suppliers is, in the absence of minimum advertising requirements intended to ensure a level playing field of competition between all persons potentially interested in supplying the services, insufficient in itself to ensure compliance with the principle of transparency.

Rules governing the award of contracts for the supervision of works

The Commission submits that, in so far as it allows the direct award, without any form of competition, of contracts for services for the supervision of works to the professional practitioner responsible for their design, Article 27(2) of Law No 109/94, having regard to the value of the services awarded and the rules applicable, infringes Directives 92/50/EEC and 93/38/EEC and Articles 43 and 49 EC.

Rules governing the award of contracts for inspection services

The Commission considers that the mechanism laid down by Article 28 of Law No 109/94, which permits the direct selection of inspectors by the awarding authorities otherwise than in accordance with their own rules, without provision either for the publication of a tender notice or other forms of direct advertising such as to enable all potential interested suppliers to compete for the award of contracts for inspection services, infringes Directives 92/50/EEC and 93/38/EEC and the principle of transparency as set out in Articles 43 and 49 EC, having regard to the value of those services and the rules applicable.

Rules governing project finance

Article 37a et seq. of Law No 109/94 govern so called 'project finance', which is intended to enable public works to be carried out on the basis of proposals submitted by persons independent of the State, referred to as 'promoters', by the award of a works concession.

The Commission notes that those rules governing the competitive procedure for the award of the concession give the promoter two advantages over all other potential competitors. First, from the procedural point of view, the promoter is automatically invited to participate in the negotiated procedure for the award of the concession, without any comparison being made between his offer and that of other participants in the earlier tendering procedure. Therefore, even if in that tendering procedure there were more than two offers better than that submitted by the original promoter, the negotiated procedure will nevertheless proceed only as between the two best offers and the promoter. Second, from the substantive point of view, the provision enabling the promoter to amend his offer in the course of the negotiated procedure so as to match that found to be the most suitable by the awarding authority amounts in substance to the promoter being accorded a right of pre-emption for the award of the concession.

The Commission submits that the grant of those advantages to the promoter and not to other potential concessionaires infringes the principle of equal treatment.

(1) OJ L 199 of 9. 8.1993, p. 54.
(2) OJ L 199 of 9. 8.1993, p. 1.
(3) OJ L 209 of 24. 7.1992, p. 1.
(4) OJ L 199 of 9. 8.1993, p. 84.

Appeal brought on 29 September 2004 by The Sunrider Corporation against the judgment delivered on 8 July 2004 by the Second Chamber of the Court of First Instance of the European Communities in case T-203/02 (1) **between The Sunrider Corporation and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of OHIM being Juan Espadafor Caba**

(Case C-416/04 P)

(2004/C 300/55)

An appeal against the judgment delivered on 8 July 2004 by the Second Chamber of the Court of First Instance of the European Communities in case T-203/02 between The Sunrider Corporation and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), the other party to the proceedings before the Board of Appeal of OHIM being Juan Espadafor Caba, was brought before the Court of Justice of the European Communities on 29 September 2004 by The Sunrider Corporation, established in Torrance, California (United States), represented by A. Kockläuner, lawyer.

The Appellant claims that the Court should:

1. set aside in whole the decision of the Court of First Instance dated 8 July 2004 in case T-203/02 ('the contested decision');

2. order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) ('OHIM') to pay the costs of the proceedings before the Court of Justice;

3. annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market dated 8 April 2002 in case R 1046/2000-1;

4. order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) ('OHIM') to pay the costs of the proceedings before the Court of First Instance and OHIM.

Pleas in law and main arguments:

The Appellant submits that the judgment of the Court of First Instance should be annulled on the following grounds:

Infringement of Article 43 Sections 2, 3 CTMR in Conjunction with Article 15 Section 3 CTMR (Unwarranted Use)

The Court of First Instance misinterpreted Article 43 Sections 2, 3 CTMR in conjunction with Article 15 Section 3 CTMR inasmuch as it wrongly took into account the use of the trademark made by a third party.

In this respect, the Court of First Instance misinterpreted the apportionment of the burden of proof given in Article 15 Sections 1, 3 CTMR. Further, the Court of First Instance took into account non conclusive (implicit) statements and evidence produced by the opponent. Moreover, the Court of First Instance relied on presumptions instead of solid evidence. Finally, the Court of First Instance would have had to examine whether or not, in the light of all the relevant matters of fact and in law, a new decision with the same operative part as the decision under appeal could lawfully be adopted at the time of the decision of the Court of First Instance.

Infringement of Article 43 Section 2 CTMR: Non-Satisfactory Proof of Opposing Trademark

Further, the Court of First Instance infringed Article 43 Section 2 CTMR inasmuch as it misinterpreted the notion of genuine use within the meaning of Article 43 Section 2 CTMR.

In particular, the Court of First Instance did not consider reasonably that:

— the opponent submitted only three invoices for the year 1996, representing a total value of no more than 3,476.00 EUR;

— the opponent submitted for 1997 only two invoices, representing a total value of no more than 1,306.00 EUR;

— the goods at issue were low-cost goods and thus, goods of mass production and mass consumption;

— these goods were relatively easy to sell;

— the goods at issue were sold at best to one single customer;

and that therefore the opposing Trademark ES 372 221 'VITAFRUT' had not been put to genuine use within the meaning of Article 43 Section 2, 3 CTMR, because its use was sporadic, occasional, minimal and not present in a substantial part of the territory where it was protected.

Infringement of Article 8 Section 1 Subsection b) CTMR

Further, the trademarks to be compared are not confusingly similar with regard to the goods 'herbal and vitamin beverages' for which the applied for Trademark No. 156 422 'VITAFRUIT' seeks protection. In particular, the goods 'herbal and vitamin beverages' on the one hand and 'fruit juice concentrate' on the other hand are only remotely similar because they possess only few points of contact.

This is based on the fact that the goods to be compared differ with regard to their product qualities, their raw materials, and the circumstances of their production, namely the machinery, the know-how and the production facilities which are necessary for the manufacturing of the goods in question. Further, the goods to be compared differ in respect of the way in which they are used, their functional qualities and the way in which they are distributed. Therefore, the possible common characteristics of the goods in question are outweighed by their differences.

([1]) OJ C 233, 28.09.2002, p. 26.

Appeal brought on 29 September 2004 by Regione Siciliana against the order made on 8 July 2004 by the Court of First Instance of the European Communities (Third Chamber) in Case T-341/02 Regione Siciliana v Commission of the European Communities

(Case C-417/04 P)

(2004/C 300/56)

An appeal was brought before the Court of Justice of the European Communities on 29 September 2004 by Regione Siciliana, represented by the Avvocatura dello Stato, against the order made on 8 July 2004 by the Court of First Instance of the European Communities (Third Chamber) in Case T-341/02 Regione Siciliana v Commission of the European Communities.

The appellant claims that the Court should:

— set aside the order of 8 July 2004 of the Court of First Instance of the European Communities.

Pleas in law and main arguments:

The appellant submits that the order under appeal is defective on the following grounds:

— paragraphs 47, 48 and 49 of the order state clearly that its legal basis is provided by Article 113 of the Rules of Procedure of the Court of First Instance, which provides that 'the Court of First Instance may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action …' No 'absolute bar' is evident from the material in the case in hand such as to justify the Court of First Instance declaring of its own motion that the action was inadmissible. Furthermore, the Court of First Instance made no effort whatever to explain what might constitute this 'absolute bar' capable of bringing into operation the procedure set out in Article 113 of the Rules of Procedure. The complete lack of reasons in this regard constitutes a very serious infringement of the fundamental rights of defence and of the *audi alteram partem* principle;

— breach and improper application of Article 230 EC with regard to the entitlement of Regione Siciliana to bring a challenge and, consequently, breach of the fundamental rights of defence;

— breach and improper application of the first subparagraph of Article 4(1) of Council Regulation (EEC) No 2052/88 of 24 June 1988, ([1]) as subsequently amended;

— breach of Article 9(1) of Regulation (EEC) No 4253/88 of 18 December 1988; ([2])

— defective statement of reasons by virtue of inconsistency and arbitrariness;

— defective statement of reasons by virtue of inherent contradiction, lack of logic and absence of grounds.

([1]) OJ L 185 of 15.07.1988, p. 9.
([2]) OJ L 374 of 31.12.1988, p. 1.

Reference for a preliminary ruling by the Audiencia Provincial de Barcelona (15th Chamber) by decision of that court of 28 June 2004 in the case of Matratzen Concord AG against Hukla Gemany SA

(Case C-421/04)

(2004/C 300/57)

Reference has been made to the Court of Justice of the European Communities by order of the Audiencia Provincial (Provincial Court) (15th Chamber), Barcelona (Spain) of 28 June 2004, received at the Court Registry on 1 October 2004, for a preliminary ruling in the case of Matratzen Concord AG against Hukla Gemany SA on the following question:

'May the validity of the registration of a trade mark in a Member State, where that trade mark is devoid of any distinctive character or serves, in trade, to designate the product which it covers or its kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of goods, in the language of another Member State when that language is not the language spoken in the first Member State, as may be the case so far as concerns use of the Spanish trade mark "MATRATZEN" to designate mattresses and related products, constitute a disguised restriction on trade between Member States?'

Reference for a preliminary ruling by a Social Security Commissioner, London, by direction of that tribunal dated 14 September 2004, in the case of Sarah Margaret Richards against Secretary of State for Work and Pensions

(Case C-423/04)

(2004/C 300/58)

Reference has been made to the Court of Justice of the European Communities by direction of a Social Security Commissioner, London, dated 14 September 2004, which was received at the Court Registry on 4 October 2004 for a preliminary ruling in the case of Sarah Margaret Richards and Secretary of State for Work and Pensions on the following questions:

(1) Does Directive 79/7 ([1]) prohibit the refusal of a retirement pension to a male-to-female transsexual until she reaches the age of 65 and who would have been entitled to such a pension at the age of 60 had she been held to be a woman as a matter of national law?

(2) If so, from what date should the Court's ruling on question 1 have effect?

([1]) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.01.1979, p. 24).

Action brought on 4 October 2004 by the Commission of the European Communities against the French Republic

(Case C-424/04)

(2004/C 300/59)

An action against the French Republic was brought before the Court of Justice of the European Communities on 4 October 2004 by the Commission of the European Communities, represented by K. Wiedner and B. Stromsky, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to provide for an obligation on contracting authorities to ensure genuine competition by the presence of a minimum of five tenderers in restricted procedures, even where no range is prescribed, the French Republic has failed to fulfil its obligations under Article 19(2) of Council Directive 93/36/EEC of 14 June 1993, ([1]) Article 27(2) of Council Directive 92/50/EEC of 18 June 1992 ([2]) and Article 22(2) of Council Directive 93/37/EEC of 14 June 1993; ([3])

2. declare that, by excluding from the scope of the French Code of Public Procurement contracts concerning loans or financial undertakings, whether intended to cover financing or liquidity requirements, not connected with real property transactions, the French Republic has failed to fulfil its obligations under Article 1(a)(vii) of Council Directive 92/50/EEC of 18 June 1992 and Article 1(4)(c)(iv) of Council Directive 93/38/EEC of 14 June 1993; ([4])

3. declare that, by providing that public contracts concerning

   — legal services,

   — social and health services,

— recreational, cultural and sports services,

— educational services and occupational qualification and integration services

are to be subject, as regards their award, only to the obligations relating to the definition of services by reference to standards where they exist, and to the sending of an award notice, without expressly specifying that the rules and principles of the Treaty are to be complied with, the French Republic has failed to fulfil its obligations flowing from compliance with the principles and rules of the Treaty (Article 49), and in particular the principle of equal treatment and the principle of transparency of which adequate publicity is the corollary;

4. order the French Republic to pay the costs.

Pleas in law and main arguments

The French Code of Public Procurement is incompatible in certain respects with the rules and principles of the EC Treaty and the Community directives relating to public procurement.

First, by failing to provide for an obligation on the contracting authority to ensure the presence of a minimum of five tenderers where no range is prescribed, the French Republic is in breach of the obligation in the Community directives to ensure genuine competition in certain restricted procedures for the award of public contracts.

The French Republic is also in breach of its obligations by excluding from the scope of the French Code of Public Procurement contracts concerning loans or financial undertakings, whether intended to cover financing or liquidity requirements, not connected with real property transactions. Those contracts relate to the provision of services and thus fall within the scope of the directives. Nor may they be regarded as covered by the exception concerning securities and other financial instruments.

Finally, the exclusion of certain service contracts from the scope of the obligation to ensure an adequate degree of publicity constitutes a breach of the principle of non-discrimination as laid down in Article 49 EC and of the principle of transparency.

(1) Council Directive 93/36/EEC coordinating procedures for the award of public supply contracts (OJ L 199 of 9.8.1993, p. 1).
(2) Council Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts (OJ L 209 of 24.7.1992, p. 1).
(3) Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts (OJ L 199 of 9.8.1993, p. 54).
(4) Council Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199 of 9.8.1993, p. 84).

Action brought on 4 October 2004 by the Commission of the European Communities against the Italian Republic

(Case C-425/04)

(2004/C 300/60)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 4 October 2004 by the Commission of the European Communities, represented by Wouter Wils and Claudio Loggi, acting as Agents.

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/16/EC (1) of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system or, in any event, by failing to communicate those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Article 27 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments:

The period for transposition of the directive expired on 20 April 2003.

(1) OJ L 110 of 20.04.2001, p. 1.

Appeal brought on 4 October 2004 by the European Agency for Reconstruction (EAR) against the judgment delivered on 7 July 2004 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-175/03 between Norbert Schmitt and the European Agency for Reconstruction (EAR)

(Case C-426/04 P)

(2004/C 300/61)

An appeal against the judgment delivered on 7 July 2004 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-175/03 between Norbert Schmitt and the European Agency for Reconstruction (EAR) was brought before the Court of Justice of the European Communities on 4 October 2004 by the European Agency for Reconstruction (EAR), represented by Albert Coolen, Jean-Noël Louis, Etienne Marchal and Sébastien Orlandi, avocats.

The appellant claims that the Court should:

— set aside that the judgment of the Fourth Chamber of the Court of First Instance of 7 July 2004 in Case T-175/03 (Norbert Schmitt v European Agency for Reconstruction) in full.

Giving judgment itself,

— dismiss the action for annulment of the decision of the EAR of 25 February 2003 terminating the contract of the applicant at first instance as a member of the temporary staff;

— order the applicant at first instance and respondent on appeal to pay the costs of the appeal.

Pleas and main arguments:

The Court of First Instance disregarded the prohibition on ruling ultra petita in basing its decision on pleas and arguments that had neither been raised directly nor elaborated upon to the requisite legal standard by the applicant at first instance.

Furthermore, the Court of First Instance made an error of law in interpreting clause 4 of the temporary staff contract concluded with Mr Schmitt as limiting the Agency's right to terminate the contract to situations arising from a significant reduction in, or cessation of, the Agency's operations before the end of its mandate.

Lastly, the Court of First Instance also made an error of law in considering that the legitimate expectations of the applicant at first instance had been infringed when it is apparent from the judgment that no clear and unconditional assurance, complying and in accordance with the rules of the conditions of employment of other servants had been given to him in relation to his remaining in post until the end of the Agency's actual mandate.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 8 July 2004 in the case of Finanzamt Eisleben against Feuerbestattungsverein Halle e.V.

(Case C-430/04)

(2004/C 300/62)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) (Germany) of 8 July 2004 received at the Court Registry on 7 October 2004, for a preliminary ruling in the case of Finanzamt Eisleben against Feuerbestattungsverein Halle e.V., on the following question:

Is a private taxable person able to rely on the second subparagraph of Article 4(5) of Council Directive 77/388/EEC [1] where that taxable person is in competition with a body governed by public law and asserts that the non-taxation or undertaxation of that body is unlawful?

---

[1] OJ L 145, p. 1.

Reference for a preliminary ruling by the Bundesgerichtshof by decision of that court of 29 June 2004 in the case of Massachusetts Institute of Technology

(Case C-431/04)

(2004/C 300/63)

Reference has been made to the Court of Justice of the European Communities by decision of the Bundesgerichtshof (Federal Court of Justice) (Germany) of 29 June 2004 received at the Court Registry on 7 October 2004, for a preliminary ruling in the case of Massachusetts Institute of Technology on the following questions:

1. Does the term 'combination of active ingredients of a medicinal product' within the meaning of Article 1(b) of Council Regulation 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products [1] mean that the components of the combination must all be active ingredients with a therapeutic effect?

2. Is there a 'combination of active ingredients of a medicinal product' also where a combination of substances comprising two components of which one component is a known substance with a therapeutic effect for a specific indication and the other component renders possible a pharmaceutical form of the medicinal product that brings about a changed efficacy of the medicinal product for this indication (in-vivo implantation with controlled release of the active ingredient to avoid toxic effects)?

---

[1] OJ L 182, p. 1.

Action brought on 7 October 2004 by the Commission of the European Communities against Edith Cresson

(Case C-432/04)

(2004/C 300/64)

An action against Edith Cresson was brought before the Court of Justice of the European Communities on 7 October 2004 by the Commission of the European Communities, represented by Hans Peter Hartvig and Julian Currall, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that Edith Cresson has failed to comply with her obligations under Article 213 EC;

2. consequently, order the forfeiture in part or in whole of Mrs Cresson's pension rights and/or any other benefits linked to those rights or standing in their stead, the Commission leaving it to the discretion of the Court to determine the duration and extent of that forfeiture;

3. order Mrs Cresson to pay the costs.

Pleas in law and main arguments

During her term of office as a Member of the Commission, Mrs Cresson engaged in acts of favouritism for the benefit of two personal friends, contrary to the public interest and to her obligations under Article 213 EC. One of them was recruited on the initiative of Mrs Cresson although his profile did not correspond to the various posts to which he was recruited. Protection by Mrs Cresson then became apparent on several occasions even though the work he performed was manifestly inadequate in quality, quantity and relevance. Similarly, again on the initiative of Mrs Cresson, contracts were offered to another of her friends, without corresponding to a request or requirement of the Commission. Mrs Cresson's conduct was not dictated by the interests of the institution but was motivated essentially by the wish to do a favour for those two persons. At the very least, Mrs Cresson did not at any time make inquiries as to the correctness of the decisions made or procedures applied, although such a check was necessary in the case of persons with whom she had relations of friendship. That behaviour thus appears to constitute an act of favouritism or at the least obvious negligence.

Action brought on 8 October 2004 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-433/04)

(2004/C 300/65)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 8 October 2004 by the Commission of the European Communities, represented by D. Triantafyllou, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

— declare that, by obliging principals and contractors who have recourse to entering into contracts with foreign parties not registered in Belgium to withhold 15 % of the sum payable in respect of the works carried out, and by imposing on those principals and contractors joint and several liability for the tax debts of the parties with whom they enter into contracts who are not registered in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Articles 49 and 50 of the Treaty establishing the European Community;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The national legislation in the construction sector which, on pain of a fine, requires principals and contractors, whenever they make payment to parties with whom they have entered into a contract who are not registered in Belgium, to withhold 15 % of the amount billed and to pay it to the Belgian authorities, in order to ensure that any tax debts of those parties are paid or recovered, constitutes an obstacle to the freedom to provide services as provided for in Articles 49 and 50 EC. The joint and several liability of the principals and contractors for the tax debts of the other parties to their contracts who are not registered, which comes to as much as 35 % of the total cost of the works, excluding VAT, likewise constitutes a breach of Articles 49 and 50 EC.

That legislation is such as to deter principals and contractors from entering into contracts with parties not registered in Belgium. The automatic application of joint and several liability of the principals and contractors for the tax debts of the other party to the contract does not comply with the principle of proportionality and involves an unjustified breach of the right to property and the rights of the defence of those principals and contractors. The joint and several liability of principals and contractors is automatic, without the authorities having to prove fault or complicity on the part of the principal or contractor. Also the liability may extend to tax debts relating to works which the other party to the contract has carried out for other persons. Breach of the obligation to withhold is penalised by a fine of double the amount to be withheld.

The legislation also constitutes a genuine obstacle for unregistered parties who wish to offer their services in Belgium. They must accept receiving the amount billed less 15 %, even if they have no tax debt to which the amount withheld could be applied, and they can recover that sum only after a certain time, by applying for its restitution.

Those measures cannot be regarded as objectively justified. First of all, in the majority of cases a person providing services who is established in another Member State is not liable for the taxes to which the legislation relates. Also, in specific situations where tax debts would be payable or recoverable in Belgium, the mechanism set up by the provisions must, because of its general nature, be considered disproportionate.

Finally, the possibility of registration does not justify the obligation to withhold and the joint and several liability. The action involved in the registration procedure, which goes far beyond merely communicating information to the Belgian authorities, means that registration is not a valid alternative for undertakings not established in Belgium which wish to exercise their freedom to offer their services in Belgium occasionally. The requirement to register renders the Treaty provisions intended to guarantee the freedom to provide services entirely redundant.

Reference for a preliminary ruling by the Korkein oikeus by order of that court of 6 October 2004 in the case of Jan-Erik Anders Ahokainen and Mati Leppik against Virallinen syttäjä

(Case C-434/04)

(2004/C 300/66)

Reference has been made to the Court of Justice of the European Communities by order of the Korkein oikeus (Supreme Court) (Finland)) of 6 October 2004, which was received at the Court Registry on 11 October 2004, for a preliminary ruling in the case of Jan-Erik Anders Ahokainen and Mati Leppik against Virallinen syttäjä (Public Prosecutor).

The Korkein oikeus asks the Court of Justice to give a preliminary ruling on the following questions:

1. Is Article 28 EC to be interpreted as precluding legislation of a Member State under which non-denatured ethyl alcohol of over 80 % (spirits) may be imported only by a person who has obtained a licence to do so?

2. If the above question is answered in the affirmative, is the licence system to be regarded as permitted under Article 30 EC?

Reference for a preliminary ruling by the Cour de cassation de Belgique by decision of that court of 6 October 2004 in the case of Sébastien Victor Leroy against Ministère public

(Case C-435/04)

(2004/C 300/67)

Reference has been made to the Court of Justice of the European Communities by order of the Cour de cassation de Belgique (Belgium Court of Cassation) of 6 October 2004 received at the Court Registry on 14 October 2004, for a preliminary ruling in the case of Sébastien Victor Leroy against Ministère public on the following question:

Do Articles 49 to 55 of the Treaty of 25 March 1957 establishing the European Community preclude a national law of a Member State which prohibits a person who resides and works in that State from using in that State a vehicle which belongs to a leasing company established in another Member State when that vehicle has not been registered in the former State, even if it has been in the latter?

Reference for a preliminary ruling by the Hof van Cassatie van Belgie by decision of that court of 5 October 2004 in the case of Léopold Henri Van Esbroeck against Openbaar Ministerie

(Case C-436/01)

(2004/C 300/68)

Reference has been made to the Court of Justice of the European Communities by order of the Hof van Cassatie van Belgie (Court of Cassation (Belgium)) of 5 October 2004, received at the Court Registry on 13 October 2004, for a preliminary ruling in the case of Léopold Henri Van Esbroeck against Openbaar Ministerie on the following questions:

'1. Must Article 54 of the Convention of 19 June 1990 implementing the Schengen agreement be construed as meaning that it may apply in proceedings before a Belgian court in regard to a person against whom a prosecution is brought in Belgium after 25 March 2001 before a criminal court in respect of the same offences for which that person was convicted by judgment of Norwegian criminal court of 2 October 2000, and where the sentence imposed has already been served, in a situation where, pursuant to Article 2(1) of the Agreement of 18 May 1999 concluded by the Council of the European Union with the Republic of Ireland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen acquis, Article 54 of the Convention implementing the Schengen agreement is to be implemented and applied by Norway only as from 25 March 2001?'

If the reply to Question 1 is affirmative:

'2. Must Article 54 of the Convention of 19 June 1990 implementing the Schengen Agreement, read with Article 71 thereof, be construed as meaning that offences of possession for the purposes of export and import in respect of the same narcotic drugs and psychotropic substances of any kind, including cannabis, and which are prosecuted as exports and imports respectively in different countries which have signed the Schengen agreement, or where the Schengen acquis is implemented and applied, are deemed to be the "same offences" as mentioned in Article 54 aforesaid?'

Action brought on 15 October 2004 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-437/04)

(2004/C 300/69)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 15 October 2004 by the Commission of the European Communities, represented by J.-F. Pasquier, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by imposing a tax which infringes the European Communities' fiscal immunity, the Kingdom of Belgium has failed to fulfil its obligations under Article 3 of the Protocol on the privileges and immunities of the European Communities;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The imposition by an Ordonnance Régionale of 23 July 1992 of a regional tax on occupiers of buildings and owners of real property rights over certain buildings situated within the territory of the Région de Bruxelles-Capitale is an infringement of the Communities' fiscal immunity under Article 3 of the Protocol on the privileges and immunities of the European Communities of 8 April 1965. That Ordonnance has innovated by comparison to the previous legislation by adding to the tax imposed on occupiers, a tax on owners in the event of commercial occupancy of a building with more than a certain floor area. As the drafting history of the Ordonnance of 23 July 1992 shows, such taxation of owners is, in fact, a legal device intended to circumvent the fiscal immunity of certain persons or institutions occupying buildings. It is on those persons and among them the Communities that the economic burden of the tax actually falls, either because of contractual stipulations in leases, under which they are to bear all rates and taxes on the building, unless they obtain exemption therefrom as regards the lessor, or because of its effect on the rental. According to the case-law of the Court of Justice, any legal provision which, without expressly subjecting the Community to a tax, has the express aim and effect of making the Community, even indirectly but nonetheless compulsorily, bear a tax, infringes the principle of immunity.

Action brought on 21 October 2004 by the Kingdom of Spain against the Council of the European Union

(Case C-442/04)

(2004/C 300/70)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 21 October 2004 by the Kingdom of Spain, represented by Enrique Braquehais Conesa, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Articles 1 to 6 of Council Regulation (EC) No 1415/2004 ([1]) of 19 July 2004 fixing the maximum annual fishing effort for certain fishing areas and fisheries, which implement Articles 3 and 6 of Council Regulation (EC) No 1954/2003 ([2]) of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EEC) No 2847/93 ([3]) and repealing Regulations (EC) No 685/95 ([4]) and (EC) No 2027/95 ([5]); and

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

Pleas in law and main arguments:

Infringement of the principle of non-discrimination

(a) because Regulation (EC) No 1415/2004, which is challenged in the present action, is a measure implementing Regulation (EC) No 1954/2003, specifically Articles 3 and 6 thereof relating to the maximum annual fishing effort for each Member State and for the various fishing areas and fisheries laid down in those provisions, has been challenged by the Kingdom of Spain (Case C-36/04) in so far as the years 1998 to 2002 are used as the reference period. That entails discrimination against the Spanish fleet on grounds of nationality, since for those years, pursuant to provisions in the Act of Accession of the Kingdom of Spain and the Republic of Portugal to the European Communities and in Regulations (EC) Nos 685/95 and 2027/95, the Spanish fleet's access was limited to ICES areas V b, VI, VII and VIII a, b, d and e;

(b) because the establishment of the sensitive area referred to in Article 6 of Regulation (EC) No 1954/2003, implemented by the contested regulation (Regulation (EC) No 1415/2004), also discriminates against the Spanish fleet, since the new sensitive area partly coincides with the so-called 'Irish box', where restrictions apply to the Spanish fleet in accordance with the Accession Treaty for the Kingdom of Spain and the Republic of Portugal.

Misuse of power:

because protection of the sensitive area provided for in Article 6 of Regulation (EC) No 1954/2003, implemented by Regulation (EC) No 1415/2004 challenged in this action, should have been established by applying the procedures laid down in Regulation (EC) No 850/1998, which lays down technical measures for the protection of juveniles of marine organisms, and by reference to all the areas in respect of which it has been scientifically established that this condition is fulfilled.

(1) OJ L 258 of 5.8.2004, p. 1.
(2) OJ L 289 of 7.11.2003, p. 1.
(3) OJ L 261 of 20.10.1995, p. 5.
(4) OJ L 71 of 31.3.1995, p. 5.
(5) OJ L 199 of 24.8.1995, p. 1.

Removal from the register of Joined Cases C-451/02 and C-452/02 [1]

(2004/C 300/71)

By order of 27 July 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Joined Cases C-451/02 and C-452/02 (reference for a preliminary ruling from the Bundesfinanzhof): Hauptzollamt Bremen v Joh. C. Henschen GmbH & Co. KG (C-451/02) and ITG GmbH Internationale Spedition (C-452/02).

(1) OJ C 55 du 8.3.2003.

Removal from the register of Case C-237/03 [1]

(2004/C 300/72)

By order of 22 July 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-237/03 (reference for a preliminary ruling from the tribunal d'instance de Roubaix): SA Banque Sofinco v Daniel Djemoui, Carole Djemoui.

(1) OJ C 184 du 2.8.2003.

Removal from the register of Case C-256/03 [1]

(2004/C 300/73)

By order of 25 August 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-256/03: Commission of the European Communities v Ireland.

(1) OJ C 184 du 2.8.2003.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 September 2004

in Case T-310/00: MCI, Inc. v Commission of the European Communities [1]

(Competition — Merger control — Action for annulment — Interest in bringing proceedings — Powers of the Commission)

(2004/C 300/74)

(Language of the case: English)

In Case T-310/00: MCI, Inc., formerly MCI WorldCom, Inc. and then WorldCom, Inc., established in Ashburn, Virginia (United States of America), represented initially by K. Lasok QC, J.-Y. Art, lawyer, and B. Hartnett, barrister, and subsequently by K. Lasok QC, with an address for service in Luxembourg, supported by Federal Republic of Germany (Agents: W.-D. Plessing and B. Muttelsee-Schön), against Commission of the European Communities (Agents: initially P. Oliver, P. Hellström and L. Pignataro, and subsequently P. Oliver and P. Hellström, assisted by N. Khan, barrister, with an address for service in Luxembourg), supported by French Republic (Agents: G. de Bergues and F. Million, with an address for service in Luxembourg) — application for annulment of Commission Decision 2003/790/EC of 28 June 2000 declaring a concentration incompatible with the common market and the EEA Agreement (Case COMP/M.1741 – MCI WorldCom/Sprint) (OJ 2003 L 300, p. 1) — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 28 September 2004, in which it:

1. *Annuls Commission Decision 2003/790/EC of 28 June 2000 declaring a concentration incompatible with the common market and the EEA Agreement (Case COMP/M.1741 – MCI WorldCom/Sprint);*

2. *Orders the Commission to bear, in addition to its own costs, those of MCI, Inc.;*

3. *Orders the Federal Republic of Germany and the French Republic to bear their own costs.*

([1]) OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 September 2004

in Case T-246/02: Albano Ferrer de Moncada v Commission of the European Communities [1]

(Officials — Staff report — Delay in drawing up — Damages)

(2004/C 300/75)

(Language of the case: French)

In Case T-246/02: Albano Ferrer de Moncada, an official of the Commission of the European Communities, residing in Luxembourg (Luxembourg), represented by G. Vandersanden, L. Levi and A. Finchelstein, lawyers, against Commission of the European Communities (Agents: C. Berardis-Kayser, assisted by D. Waelbroeck, lawyer, with an address for service in Luxembourg) — application for, first, annulment of the decision whereby the Commission impliedly rejected the applicant's claim of 28 August 2001 for damages owing to the delay in drawing up his staff reports for the reference periods 1995/1997 and 1997/1999 and, in so far as necessary, of the decision whereby the Commission impliedly rejected the applicant's complaint of 14 January 2002 and, second, damages in respect of the loss sustained by the applicant owing to the delay in drawing up those staff reports, the Court of First Instance (Third Chamber), composed of J. Azizi, President, J. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, has delivered a judgment on 30 September 2004, in which it:

1. *Orders the Commission to pay the applicant the sum of EUR 7 000 in addition to the sum of EUR 1 000 already awarded by the Commission;*

2. *Dismisses the remainder of the application;*

3. *Orders the Commission to pay the costs.*

(1) OJ C 247 of 12.10.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 September 2004

in Case T-313/02: David Meca-Medina, Igor Majcen v Commission of the European Communities (1)

(Competition — Freedom to provide services — Anti-doping legislation adopted by the International Olympic Committee (IOC) — Purely sporting legislation)

(2004/C 300/76)

(Language of the case: French)

In Case T-313/02: David Meca-Medina, residing at Barcelona (Spain), Igor Majcen, residing at Ljubljana (Slovenia), represented by J.-L. Dupont, lawyer, against Commission of the European Communities (Agents: O. Beynet and A. Bouquet, with an address for service in Luxembourg), supported by Republic of Finland (Agent: T. Pynnä, with an address for service in Luxembourg) — application for the annulment of the Commission's decision of 1 August 2002 rejecting the complaint lodged by the applicants against the International Olympic Committee (IOC) seeking a declaration that certain rules adopted by the latter and implemented by the Fédération internationale de natation (FINA) and certain practices relating to doping control are incompatible with the Community competition rules and the freedom to provide services (Case COMP/38158 – Meca-Medina and Majcen/IOC) — the Court of First Instance (Fourth Chamber), composed of: H. Legal, President, V. Tiili and M. Vilaras, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 30 September 2004, in which it:

1. *Dismisses the action;*

2. *Orders the applicants to bear their own costs and to pay the Commission's costs;*

3. *Orders that the Republic of Finland shall bear its own costs.*

(1) OJ C 305 of 7.12.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 September 2004

in Case T-16/03: Albano Ferrer de Moncada v Commission of the European Communities (1)

(Officials — Staff report — Procedural irregularities — Statement of reasons — Annulment of report — Damages for loss sustained)

(2004/C 300/77)

(Language of the case: French)

In Case T-16/03: Albano Ferrer de Moncada, an official of the Commission of the European Communities, residing in Luxembourg (Luxembourg), represented by G. Vandersanden, L. Levi and A. Finchelstein, lawyers, against Commission of the European Communities (Agents: J. Currall and C. Berardis-Kayser, assisted by D. Waelbroeck, lawyer, with an address for service in Luxembourg) — application for, first, annulment of the applicant's staff report for the period 1995/1997 and, second, damages, the Court of First Instance (Third Chamber), composed of J. Azizi, President, J. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, has delivered a judgment on 30 September 2004, in which it:

1. *Annuls the applicant's staff report for the period 1995/1997;*

2. *Orders the Commission to pay the applicant the sum of EUR 1 000;*

3. *Orders the Commission to pay the costs.*

(1) OJ C 83 of 5.4.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 28 September 2004

in Case T-216/03: Mario Paulo Tenreiro v Commission of the European Communities ([1])

(Officials — Mobility — Refusal of promotion — Consideration of comparative merits)

(2004/C 300/78)

(Language of the case: French)

In Case T-216/03: Mario Paulo Tenreiro, an official of the Commission of the European Communities, residing in Kraainem (Belgium), represented by G. Vandersanden, lawyer, against Commission of the European Communities (Agents: A. Bordes and L Lozano Palacios, with an address for service in Luxembourg) — application for, in substance, annulment of the Commission's decision, published on 14 August 2002, establishing the list of officials promoted to grade A4 in the 2002 procedure, in so far as it does not contain the applicant's name, the Court of First Instance (Single Judge: M. Pirrung); D. Christensen, Administrator, for the Registrar, gave a judgment on 28 September 2004, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 200 of 23.8.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 2 September 2004

in Case T-291/02 González y Díez SA v Commission of the European Communities ([1])

(ECSC — State aid — Action for annulment — Action devoid of purpose — No need to adjudicate — Settlement of costs)

(2004/C 300/79)

(Language of the case: Spanish)

In Case T-291/02: González y Díez SA, established in Villabona-Llanera (Spain), represented initially by J. Folguera Crespo, A. Martínez Sánchez and J.C. Engra Moreno, lawyers, then by J. Folguera Crespo and A. Martínez Sánchez, lawyers, v Commission of the European Communities (Agents: V. Kreuschitz and J.L. Buendía Sierra) — action for annulment of Articles 1, 2 and 5 of Commission Decision 2002/827/ECSC of 2 July 2002 on the granting by Spain of aid to the undertaking González y Díez SA in 1998, 2000 and 2001 (OJ 2002 L 296, p. 80) — the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President of the Chamber, A.W.H. Meij, N.J. Forwood, I. Pelikánová and S.S. Papasavvas, Judges; Registrar: H. Jung, has given a judgment on 2 September 2004, in which it:

1. *There is no need to adjudicate on the present action.*

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

([1]) OJ C 289 of 23.11.2002.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 21 September 2004

in Case T-310/03 R: Kreuzer Medien GmbH v European Parliament and Council of the European Union

(Interim measures — Application for suspension of operation — Admissibility of an application brought by an intervener)

(2004/C 300/80)

(Language of the case: German)

In Case T-310/03 R: Kreuzer Medien GmbH, established in Leipzig (Germany), represented by M. Lenz, lawyer, supported by Falstaff Verlags GmbH, established in Klosterneuburg (Austria), represented by W.-G. Schärf, lawyer, against the European Parliament (Agents: E. Waldherr and U. Rösslein, with an address for service in Luxembourg) and the Council of the European Union (Agent: E. Karlsson), supported by the Commission of the European Communities (Agents: M.-J. Jonczy, L. Pignataro-Nolin and F. Hoffmeister, with an address for service in Luxembourg), the Kingdom of Spain (Agent: L. Fraguas Gadea, with an address for service in Luxembourg) and the Republic of Finland (Agents: A. Guimaraes-Purokoski and T. Pynnä, with an address for service in Luxembourg) — application brought by Falstaff Verlags GmbH under Article 243 EC for suspension of the operation of Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ 2003 L 152, p. 16) — the President of the Court of First Instance made an order on 21 September 2004, the operative part of which is as follows:

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

2. *The costs are reserved.*

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 19 July 2004

in Case T-439/03 R II, Ulrike Eppe v European Parliament

(Interlocutory proceedings — Competition — New claim — Admissibility — Urgency — None)

(2004/C 300/81)

(Language of the case: German)

In Case T-439/03 R II, Ulrike Eppe, residing at Hanover (Germany), represented by D. Rogalla, lawyer, against European Parliament (Agents: J. de Wachter and N. Lorenz) — application for, primarily, annulment of Competition EUR/A/167/02, and the resumption of the procedure for that competition including the applicant and, alternatively, an order restraining the European Parliament from proceeding with recruitments on the basis of the results of that competition, the President of the Court of First Instance made an order on 19 July 2004 in which he:

1. *Rejects the interlocutory application;*

2. *Reserves the costs.*

Action brought on 9 July 2004 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-277/04)

(2004/C 300/82)

(Language of the case to be determined in accordance with Article 131(2) of the Rules of Procedure — Language in which the application is drafted: German.)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 9 July 2004 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG, whose registered office is in Bremen (Germany), represented by U. Sander, lawyer.

The other party before the Board of Appeal was Johnson's Veterinary Products Limited, Sutton Coldfield (United Kingdom).

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 27 April 2004 in Case R 560/2003-1;

— order the defendant to pay the costs.

Pleas in law and main arguments:

Applicant for the Community trade mark:	Johnson's Veterinary Products Limited
Community trade mark applied for:	The word mark 'VITACOAT' for goods in Classes 3, 5 and 21 (shampoos, conditioners, preparations for the hair and skin, deodorants, preparations for killing mites, lice, fleas and other parasites, all for animals, as well as brushes and combs for animals)
Proprietor of the mark or sign asserted by way of opposition:	The applicant
Mark or sign asserted by way of opposition:	The German word mark 'VITAKRAFT'
Decision of the Opposition Division:	Rejection of the notice of opposition
Decision of the Appeal Board:	Dismissal of the applicant's appeal
Pleas in law:	— infringement of Article 8(1)(b) of Regulation (EC) No 40/94; — incorrect assessment of the original distinctive character of the mark asserted by way of opposition and of its enhanced distinctive character arising from the use which has been made of it; — incorrect assessment of the impact of the fact that the marks at issue are identical as regards the first part – 'VITA'; — incorrect assessment of the aural and conceptual similarity of the marks at issue; — failure to take into consideration the fact that the goods concerned are largely identical.

Action brought on 6 August 2004 by F against the Commission of the European Communities

(Case T-324/04)

(2004/C 300/83)

(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 6 August 2004 by F, residing in Rhode St Genèse (Belgium), represented by Eric Boigelot, lawyer.

The applicant claims that the Court should:

— annul the decision of 8 January 2004 of the PMO2 (Office for the Administration and Payment of Individual Entitlements - Wages and salaries, expenses for business travel, experts) laying down detailed arrangements for an initial recovery of undue payments received by the applicant;

— annul the decision of 18 November 2003 of the PMO1 (Office for the Administration and Payment of Individual Entitlements – Administration of individual pecuniary entitlements) cancelling the expatriation allowance previously paid to the applicant;

— annul the decision of the PMO2 of 9 February laying down detailed arrangements for the recovery of undue payments received by the applicant;

— annul the decision of the appointing authority of 2 July 2004 served on the applicant on 7 July 2004 replying to the complaint lodged by the applicant;

— annul any measure resulting from or relating to those decisions taken after the lodging of this action;

— order the reimbursement of all sums which have been or will be deducted from the salary of the applicant from February 2004 onwards with interest at 5.25 % from the date of the lodging of the complaint;

— grant the applicant compensation for non-material loss assessed ex aequo et bono at EUR 3 000 by way of damages, without prejudice to any increase during the proceedings;

— order the defendant to pay the costs in any event, including the fees of counsel consulted by the applicant in order to bring the action.

Pleas in law and main arguments:

The applicant took up his duties with the Commission on 16 September 1987. Having initially worked in Luxembourg, he has worked in Brussels since 1 April 1989. The applicant received the expatriation allowance both in Luxembourg and in Brussels.

By the contested decisions the Commission cancelled that allowance with effect from the applicant's transfer to Brussels, having become aware that the applicant had lived and worked in Brussels during the reference period, that is to say, from 16 March 1982 to 15 March 1987. The Commission also laid down the arrangements for the repayment of the undue payments received by the applicant.

In support of his application the applicant pleads the infringement of Articles 69 and 85 of the Staff Regulations, of Article 4 of Annex VII to the Staff Regulations and of the principles of good administration, the protection of legitimate expectations and equal treatment. He also pleads breach of the duty to have regard for the welfare of officials and manifest errors of assessment. On that point, the applicant first points out that, during the reference period, he worked for a foreign professional organisation of steel companies. According to the applicant, that organisation should be considered to be an international organisation and, therefore, the period during which he was working there should not be taken into account. The applicant also argues that, in any event, for most of the reference period he was not in Brussels on a permanent basis as his economic activities at that time were concentrated abroad.

Action brought on 11 August 2004 by House of Donuts International against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-333/04)

(2004/C 300/84)

(Language in which the application was lodged: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 11 August 2004 by House of Donuts International, George Town, Grand Cayman (British West Indies) represented by N. Decker, lawyer with an address for service in Luxembourg.

Panrico S.A. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— declare that the Community Trade Mark application No. 474 486 of the applicant has to be accepted;

— annul the Decision of the Fourth Board of Appeal of the OHMI of 12 May 2004 (Case R 1034/2001-4);

— order the opponent to bear the costs incurred by the applicant.

Pleas in law and main arguments:

Applicant for Community trade mark:	The applicant
Community trade mark concerned:	The figurative mark AHouse of donuts@ for goods and services in classes 30, 32 and 42 (e.g. doughnuts, muffins, croissants, mineral and aerated waters and restaurant, cafeteria and catering services) B application No. 474 486
Proprietor of mark or sign cited in the opposition proceedings:	Panrico S.A.
Trade mark or sign cited in opposition:	The Spanish word marks and figurative marks ADONUT@ and Adonuts@ for goods and services in classes 30, 32 and 42 (e.g. all kinds of confectionary, pastry, sweets and candies, fruit drinks and fruits juices and services of cafeteria, bar, restaurant, hotel and camping)
Decision of the Opposition Division:	Rejection of the trade mark application
Decision of the Board of Appeal:	Dismissal of the applicant=s appeal
Pleas in law:	The trade marks in competition are not similar. The opponent should not be granted the exclusive use of the words Adonut@ or Adonuts@.

Action brought on 23 August 2004 by Parfümerie Douglas GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-349/04)

(2004/C 300/85)

(Language in which the application was drafted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 23 August 2004 by Parfümerie Douglas GmbH, whose registered office is in Hagen (Germany), represented by C. Schumann, lawyer.

The other party before the Board of Appeal was Jürgen Heinz Douglas, Hamburg (Germany).

The applicant claims that the Court should:

— declare admissible the action together with accompanying documents, declare that the appeal against the Decision of the Fourth Board of Appeal of 24 May 2004 in Case R 795/2002-4 was brought in a correct and timely manner and annul that decision, reject the notice of opposition and order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments:

Applicant for the Community trade mark:	The applicant
Community trade mark applied for:	The word mark 'Douglas beauty spa' for services in Class 39 (Travel arrangement, escorting of travellers; arranging reservations for hotel rooms and other accommodation) – Application No 1 459 197
Proprietor of the mark or sign asserted by way of opposition in the opposition proceedings:	Jürgen Heinz Douglas
Mark or sign asserted by way of opposition:	The German mark 'Douglas Touristik' for services in Class 39 (Travel arrangement; rental of motor vehicles and boats).
Decision of the Opposition Division:	Rejection of the application for registration
Decision of the Appeal Board:	Dismissal of the appeal brought by the applicant
Pleas in law:	Infringement of Articles 42, 43, 74 and 79 of Council Regulation (EC) No 40/94 in conjunction with Rules 15, 16 and 18 of Commission Regulation (EC) No 2868/95

Action brought on 1 September 2004 by the Republic of Austria against the Commission of the European Communities

(Case T-361/04)

(2004/C 300/86)

(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 1 September 2004 by the Republic of Austria, represented by Ministerialrat H. Dossi, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision underlying the Commission's letter of 22 June 2004, whereby the Commission declined to submit the draft of a successor regulation to the ecopoints regulation or similar regulation for the safeguarding of the environment and public health on a lasting and environmentally sound basis within the meaning of Protocol No 9 to the Act of Accession, thereby finally rejecting the Austrian Republic's call upon the Commission to act of 31 March 2004;

— order the Commission to pay the costs.

Pleas in law and main arguments

Protocol No 9 on road, rail and combined transport in Austria to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded of 24 June 1994 contains special provisions for the transit of heavy goods vehicles through Austria for the protection of the environment and human health. According the the applicant, the aim of these provisions is to reduce the total NOx-emissions of heavy goods vehicles in transit through Austria […] in the period between 1 January 1992 and 31 December 2003 as shown by the table in Annex 4 by 60 %. In accordance with the meaning and general economy of that provision, total NOx-emissions were thus to be reduced by 60 %.

The applicant argues that Article 11(4) of the Protocol speaks of the sought-after 60 % reduction in the Nox-emissions of heavy goods vehicles in transit being attained on a lasting and environmentally sound basis, and that it therefore assumes that that aim formulated in the Protocol continues to have effect after the formal expiry of the transit system on 31 December 2003. In the submission of the Republic of Austria, the aims of the Protocol continue to be binding, and there is therefore a legal requirement to adopt a successor regulation to the ecopoints regulation in conformity with primary law, or a regulation which similarly secures the aim of the transit protocol.

The applicant argues that Regulation (EC) No 2327/2003 [1], adopted by the Council and the Parliament in the meantime, does not meet the requirement that environmental and public health protection be secured on a lasting and environmentally sound basis within the meaning of the provisions of Protocol No 9, and that the applicant has therefore challenged it in an annulment action [2]. That means that, at present, there is no Community law protective regime in existence to comply with the continuing binding primary law objectives of the Protocol, and the Commission fails in its duty to act by not immediately submitting a draft of a transitional regime pending the adoption of the new transport costs directive.

The applicant therefore argues that the Commission's final refusal of 22 June 2004 to act in accordance with that duty to act should be annulled.

---

[1] Regulation (EC) No 2327/2003 of the European Parliament and of the Council of 22 December 2003 establishing a transitional points system applicable to heavy goods vehicles travelling through Austria for 2004 within the framework of a sustainable transport policy (OJ 2003 L 345, p. 30).

[2] Case C-161/04 Republic of Austria v Council and Parliament (OJ 2004 C 106, p. 49)

Action brought on 13 September 2004 by Luc Verheyden against the Commission of the European Communities

(Case T-368/04)

(2004/C 300/87)

(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 September 2004 by Luc Verheyden, residing at Angera (Italy), represented by Eric Boigelot, avocat.

The applicant claims that the Court should:

— annul the decisions taken by the applicant's superior on 4 February 2004, 24 February 2004 and 27 February 2004;

— annul the appointing authority's decision answering the complaint (R/159/04) of 1 June 2004, received on 14 June 2004;

— annul any decision which may be taken during the proceedings;

— order the defendant to pay the compensation for 30 days of annual leave not used up or paid, pursuant to the second paragraph of Article 4 of Annex V to the Staff Regulations of Officials, together with interest at 5.25 % from the date of this action;

— order payment of damages for non-material damage and detriment to his career, assessed *ex æquo et bono* at € 12 500, subject to any increase or reduction during the course of the proceedings;

— order the defendant to pay the costs.

Pleas in law and main arguments:

The applicant challenges the decision not to allow him to carry over his days of leave to 2004. In support of his application, he pleads infringement of Articles 24 and 57 of the Staff Regulations, infringement of Article 4 of Annex V to the Staff Regulations laying down the detailed rules for the granting of leave and disregard of the principles of proper administration, equal treatment and protection of legitimate expectations, and a manifest error of assessment.

Action brought on 15 September 2004 by Coopérative d'Exportation du Livre Français against the Commission of the European Communities

(Case T-372/04)

(2004/C 300/88)

(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 15 September 2004 by the Coopérative d'Exportation du Livre Français, established in Paris, represented by Olivier Schmitt, lawyer.

The applicant claims that the Court should:

— annul the decision of the Commission of the European Communities No C (2004) 1361 final of 20 April 2004 concerning aid implemented by France in favour of Coopérative d'Exportation du Livre Français (CELF) in so far as the first sentence of Article 1 thereof categorises the aid benefiting CELF for handling small orders of French-language books, implemented by France between 1980 and 2001, as State aid within Article 87(1) EC;

— order the Commission of the European Communities to pay EUR 5 000.00 in respect of costs.

Pleas in law and main arguments

The applicant's business is directly handling orders from abroad for books, brochures and all communications media and, more generally, carrying out any transactions for the purpose of furthering the promotion of French culture throughout the world. The applicant states that in carrying out that general-interest activity, it has benefited from various subsidies paid by the French State. The subsidy at issue in these proceedings is an operating subsidy granted to the applicant for the purpose of offsetting the extra costs involved in handling small orders from booksellers abroad.

In support of its action, the applicant argues, first, that the statement of reasons in the contested decision is inadequate. Second, the applicant relies on infringements of Article 86(2) EC and Article 87(1) EC.

The applicant submits that, as an undertaking operating a service of general economic interest, it was made responsible for performing clearly defined public-service obligations. Thus, the sums paid by the State are excluded from the State aid at which Article 87(1) EC is targeted.

Action brought on 17 September 2004 by Grandits GmbH and five others against the Commission of the European Communities

(Case T-375/04)

(2004/C 300/89)

(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 17 September 2004 by Grandits GmbH, Kirchschlag (Austria), Scheuer-Fleisch GmbH, Ungerdorf (Austria), Tauernfleisch Vertriebs-GmbH, Flattach (Austria), Wech-Kärntner Truthahnverarbeitung GmbH, Glanegg (Austria), Wech-Geflügel GmbH, St. Andrä (Austria) and Johann Zsifkovics, Vienna (Austria), represented by J. Hofer and T. Humer, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

— annul the Commission's decision of 30 June 2004 (C(2004) 2037 final), concerning State Aid NN 34A 2000/Österreich 'Qualitätsprogramme und das AMA-Biozeichen und das AMA-Gütesiegel';

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants first claim infringement of procedural rules. The Commission treated the measures which formed the subject-matter of the contested decision as notified aid, although Austria had given no such notification. The Commission infringed Article 4(4) of Regulation 659/1999, as it had no discretion and should have instituted the formal investigation procedure. The Commission infringed the duty to state reasons because it did not carefully and impartially examine all the legal and factual considerations brought to its notice by the applicants. A period of 52 months was disproportionate in the context of the preliminary investigation procedure and constituted an infringement of the general principle that proceedings should be of a reasonable duration.

The applicants further claim infringement of Article 87(3)(c) of the EC Treaty. The Commission assumed, on the basis of insufficient enquiries and factual findings, that the requirements for the exception under Article 87(3)(c) EC were fulfilled.

Finally, the applicants claim that there has been infringement of the prohibition on implementation in accordance with the third sentence of Article 88(3) EC and Article 3 of Regulation No 659/99. There is, they maintain, a prohibition on implementing aids that have not been notified, and retrospective curing of the defect by the final decision is not permissible.

Action brought on 22 September 2004 by Ioannis Terezakis against the Commission of the European Communities

(Case T-380/04)

(2004/C 300/90)

(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 22 September 2004 by Ioannis Terezakis, Brussels (Belguim), represented by L. Defalque, lawyer.

The applicant claims that the Court should:

— Annul the Commission Decision in the form of a letter dated 12 July 2004 and received by the applicant on 16 July 2004 refusing to the latter access to the main contract, the sub-contracts, the costs of the construction items, the invoices and the final report relating to the construction of the Spata airport;

— Order that the costs of, and occasioned by these proceedings be borne by the defendant.

Pleas in law and main arguments:

Regarding the Commission's refusal to allow him access to the main contract, the applicant invokes first of all a manifest error in law and fact, in that the Commission did not make clear whether the author of the document, Athens International Airport, is a third party other than a Member State or whether it is an authority of the Greek State and consequently whether, paragraph 4 of Article 4 of Regulation 1049/2001 ([1]) or paragraph 5 of the same article should apply. The applicant also submits that the Commission provided no evidence that it has considered granting access without consulting the third party. He also considers that by opting for an extensive interpretation of the notion of protection of commercial interests the Commission has violated the principle of the widest possible access to documents, set out in Article 1 (a) of Regulation 1049/2001.

In connexion with the same document, the applicant also claims that the Commission has violated Article 4 paragraph 4 of Regulation 1049/2001 and Articles 5 paragraphs 3 and 4 of Decision 2001/937 ([2]) by failing to assess the justification advanced by the third party for refusing to consent to disclosure, and failing to reveal to the applicant elements of that assessment. The applicant also argues that the Commission violated Article 4 paragraph 6 of Regulation 1049/2001 by failing to consider the possibility of granting partial access and that, finally, it has violated its duty to state reasons for its decision.

By its contested decision the Commission also refused access to the invoices and final report on the completion of the airport on the grounds that they are examined in the framework of an audit commissioned by DG Regional Policy and not yet completed. Concerning this part of the Commission's Decision the applicant submits that the Commission misinterpreted Article 4 paragraph 2 of Regulation 1049/2001 and committed a manifest error of fact in considering that the audit in question falls under this provision. He also invokes a violation of the principle of the widest possible access as well as violation of Annex V to the Commission decision granting assistance from the Cohesion Fund, which provides that Member States concerned shall ensure open and easy access to relevant information requested by the public. He also submits that the Commission failed to consider partial access.

Concerning the Commission's refusal to grant access to the costs of the construction items the applicant submits that the Commission mistakenly considered that this application did not constitute an application for access to documents and thus violated Articles 7 and 8 of Regulation 1049/2001.

Finally, the applicant invokes a manifest lack of good faith and a violation of the principle of good administration by the Commission, which failed to indicate, in its contested decision, when it expected to be in possession of the sub-contracts.

(1) OJ L 145 of 31.5.2001, p. 43 - 48.
(2) OJ L 345 of 29.12.2001, p. 94 - 98.

Action brought on 22 September 2004 by RB Square Holdings Spain S.L. against the Office for Harmonisation in the Internal Market

(Case T-384/04)

(2004/C 300/91)

(Language in which the application was drafted: French)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 22 September 2004 by RB Square Holdings Spain S.L., established in Barcelona (Spain), represented by K. Manhaeve, lawyer, with an address for service in Luxembourg.

Unelko N.V. was also a party to the proceedings before the Fourth Board of Appeal.

The applicant claims that the Court should:

— annul Decision R 652/2002-4 of the Fourth Board of Appeal of the Office

— order the Office to pay all the costs.

Pleas in law and main arguments:

Applicant for the Community trade mark:	Unelko N.V.
Community trade mark concerned:	figurative mark 'clean x' — Application No 222 471, filed for goods in Class 3 (bleaching preparations, etc.)
Proprietor of the mark or sign asserted by way of opposition in the opposition proceedings:	the applicant
Trade mark or sign asserted by way of opposition:	national word and figurative mark 'CLEN'
Decision of the Opposition Division:	rejection of notice of opposition
Decision of the Board of the Appeal:	dismissal of the appeal
Pleas in law:	incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 (1)

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark – OJ L 11, 14.01.1994, pp. 1-36

Action brought on 23 September 2004 by the Federal Republic of Germany against the Commission of the European Communities

(Case T-389/04)

(2004/C 300/92)

(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 23 September 2004 by the Federal Republic of Germany, represented by C.-D. Quassowski, acting as Agent, and G. Quardt, lawyer.

The applicant claims that the Court should:

— annul Commission Decision C(2004)2641 of 14 July 2004 on restructuring aid for MobilCom, insofar as the Commission thereby requires Germany to ensure that MobilCom and all companies in its group close their Online-Shops for the direct online sale of MobilCom mobile telephone contracts for the period of seven months, that for that period of closure of the Online-Shops the direct online sale of MobilCom mobile telephone contracts via the MobilCom Shops website is also discontinued, that MobilCom and companies in its group take no other steps to circumvent those conditions and that clients are not transferred directly via an automatic link on the relevant website to a sales partner;

— order the Commission to pay the costs.

Pleas in law and main arguments:

In support of its action, the applicant submits that Article 88(2) EC does not permit the Commission to impose on the Member State in question measures for the reduction or removal of effects of State aid which distorts competition other than measures to recover that aid. Nor are the measures provided for in Article 2 of the contested decision valid as a modification of the aid, or as conditions or requirements which could be covered by Article 7(4) of Regulation 659/1999. As a result, the Commission has therefore exceeded its margin of discretion and infringed Article 10 EC, which imposes a duty of loyal cooperation between the Member States and the EC institutions, particularly since Germany has expressly stated that it is not in a position to guarantee compliance with the conditions.

The applicant further submits that the Commission has committed grave errors of assessment in its examination of the compatibility of the aid with the common market.

Action brought on 28 September 2004 by Carla Piccinni-Leopardi, Carlos Martínez Mongay and Georgis Katalagarianakis against the Commission of the European Communities

(Case T-390/04)

(2004/C 300/93)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 September 2004 by Carla Piccinni-Leopardi and Carlos Martínez Mongay, residing in Brussels, and by Georgis Katalagarianakis, residing in Overijse (Belgium), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

— annul the Commission's decision awarding merit and priority points to the applicants by way of credit for the past and the decision not to promote them to grade A 4;

— order the defendant to pay the costs.

Pleas in law and main arguments:

The applicants in these proceedings contest the defendant's decision not to award them specific merit or priority points in the course of the 2003 promotions procedure to take account of the modification of their classification in grade on recruitment and not to promote them to grade A 4 in the course of that procedure.

In support of their claims they plead:

— infringement of Articles 43 and 45 of the Staff Regulations insofar as, even though their staff reports were drawn up beforehand, the applicants were none the less subject to a blanket award of credit for past merit. The applicants point out in that connection that, in their view, the award of one transitional point for seniority in grade disregards the principle that promotion should follow a consideration of the comparative merits of officials;

— infringement of the principle of equal treatment and non-discrimination and of Article 5(3) of the Staff Regulations and of the principle of the right to career advancement. In that regard, the applicants point out that those officials who have not been promoted for a long time because their performance was not considered sufficiently deserving, have been awarded priority points individually and will receive them in the 2004 promotions procedure. On the other hand, the applicants, whose merits, it is alleged, could not be taken into account at their true value from the start of their career, are treated in the same way as officials who were not eligible for classification in a higher grade on recruitment;

— infringement of Article 233 EC. In that regard they point out that, in their view, the question which arises here is whether, since the general implementing provisions relating to the classification criteria have been declared unlawful and the Commission has undertaken to reconsider the classification of the many officials recruited under those general provisions, the decision to fix the applicants' classification on recruitment at the higher grade in the career bracket may be so restrictive as to deprive it of any useful effect.

Action brought on 5 October 2004 by Guido Strack against the Commission of the European Communities

(Case T-298/04)

(2004/C 300/94)

(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 5 October 2004 by Guido Strack, residing in Wasserliesch (Germany), represented by J. Mosar, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the promotion procedure for the year 2003 carried out in his regard pursuant to Article 45 of the Staff Regulations of Officials of the European Communities, the award of points made in that procedure, and the subsequent decision not to promote the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

The action is brought against the manner in which the promotion procedure for 2003 was conducted, the non-award of priority points to the applicant, and the decision of the Appointing Authority under the 2003 promotion procedure not to promote the applicant to the next higher grade A 5.

The Applicant claims breach of the following provisions and general legal principles:

— Article 26 of the Staff Regulations

— Article 25 of the Staff Regulations

— Article 24, sentences 4 and 5 of the Staff Regulations

— Article 110 in conjunction with Article 45 of the Staff Regulations

— Article 43 of the Staff Regulations

— Article 45(1) of the Staff Regulations and the equality principle

— the obligation on the Appointing Authority to pay due regard to the welfare of officials

— the provisions for implementing Article 45 of the Staff Regulations

— Article 41 of the Charter of Fundamental Rights, the right to a fair administrative procedure, the welfare principle and the duty to provide a fair hearing

— the duty to state reasons and not to act in an arbitrary manner

— the principle of the protection of legitimate expectations and the rule 'Apatere legem quam ipse fecisti'

Action brought on 5 October 2004 by Air One SpA against the Commission of the European Communities

(Case T-395/04)

(2004/C 300/95)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 5 October 2004 by Air One SpA, represented by Gianluca Belotti and Matteo Padellaro, lawyers.

The applicant claims that the Court should:

— declare and rule that the Commission has failed to fulfil its obligations under the EC Treaty, since, despite having been formally requested to do so, it failed to define its position on the complaint made on 22 December 2003 by Air One concerning illegal State aid which the Italian authorities granted to the air carrier Ryanair;

— order the Commission to define its position without further delay on the complaint made by the applicant and adopt a formal measure in that connection and on the preventive measures requested;

— order the defendant to pay all the costs in any case, even if it becomes unnecessary to give a judgment in the event that the Commission adopts a measure whilst the proceedings are pending.

Pleas in law and main arguments:

In support of its action, the applicant claims that, by letter dated 22 December 2003, it submitted a complaint to the European Commission on account of illegal aid granted to the Irish air carrier Ryanair at various Italian airports, in the form of extremely competitive airport tariffs and prices for services provided to aeroplanes using Italian airports, at times without any charge whatsoever being made.

In the absence of any reply from the Commission, Air One formally called on the latter to define its position on the complaint within the meaning and for the purposes of Article 232 EC. Four months having passed without the Commission having defined its position, Air One decided to bring an action before the Court of First Instance of the European Communities.

In that respect, it must be emphasised that failure, for a period of nine months, to reply to a well-constructed complaint based on facts which, to a large extent and in similar cases, have already been examined by the Commission and found to constitute a grant of State aid and the Commission's failure to take action against the Italian authorities on account of the alleged aid, which is illegal and, very probably, incompatible with the common market, can only be declared unlawful by the Court of First Instance.

According to the applicant it is also worth noting that the contested aid was granted to an undertaking operating in the air transport sector — a sector which is already receiving special attention from the Commission in connection with State aid.

Action brought on 4 October 2004 by André Bonnet against the Court of Justice of the European Communities

(Case T-406/04)

(2004/C 300/96)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 4 October 2004 by André Bonnet, residing in Saint Pierre de Vassols (France), represented by Hervé de Lépinau, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decisions of 11 February 2004, 4 March 2004 and 2 July 2004, and also the decision appointing another person to the post which was to have been filled by the applicant;

— hold that the recruitment of 4 February 2004 must take full effect as from 1 March 2004;

— order the Court of Justice of the European Communities to pay the applicant the sum of EUR 100 000 for non-material damage and also the sum of EUR 5 000 a month with effect from 1 March until such time as the applicant actually takes up his duties;

— in the alternative, if the decision of the Court of First Instance should not make it inevitable that the applicant take up his duties, order the Court of Justice to pay the applicant a total sum of EUR 260 000 plus interest at the statutory rate as from the date of the present application;

— in any case, order the Court of Justice of the European Communities to pay the costs.

Pleas in law and main arguments:

The pleas in law put forward by the applicant are exactly the same as those that he put forward in Case T-132/04 ([1]).

([1]) OJ C 168 of 26 June 2004, p. 7.

Action brought on 1 October 2004 by Benedicta Miguelez Herreras against the Commission of the European Communities

(Case T-407/04)

(2004/C 300/97)

(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 22 July 2004 by Benedicta Miguelez Herreras, residing in Brussels, represented by Marc van der Woude and Valérie Landes, lawyers.

The applicant claims that the Court of First Instance should:

— annul the decision of the Director General of the Legal Service to award her only one Directorate-General priority point for the 2003 promotion period, which was confirmed and made definitive by the decision of the Appointing Authority rejecting her informal appeal;

— annul the Appointing Authority's decision to award her a total of 23 points for the 2003 promotion year, the list of merit of Grade C2 officials for the promotion year 2003, the list of officials promoted to Grade C1 in the promotion year 2003 and, in any case, the decision not to enter her name in those lists;

— annul, so far as may be necessary, the decision rejecting her complaint;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments put forward in this case are similar to those put forward in Case T-132/04 José Luis Buendía Sierra v Commission.

Action brought on 4 October 2004 by Anke Kröppelin against the Council of the European Union

(Case T-408/04)

(2004/C 300/98)

(Language of the Case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 4 October 2004 by Anke Kröppelin, resident in Brussels, represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the Council refusing the applicant entitlement to the expatriation allowance and resulting rights, from her entry into service on 1 November 2003;

— order the Council to pay the costs.

Pleas in law and main arguments

Before entering into the Council's service, the applicant worked in the chancellery of the Land Mecklenburg-Western Pomerania in Brussels. In the present action she challenges the decision refusing to grant her the expatriation allowance.

In support of her action, the applicant pleads breach of Article 4(1)(a) of Annex VII to the Staff Regulations in that the Council did not consider that she was in circumstances arising from work done for another State. The applicant also pleads breach of the principle of equal treatment and of non-discrimination.

Action brought on 4 October 2004 by Benito Latino against the Commission of the European Communities

(Case T-409/04)

(2004/C 300/99)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 4 October 2004 by Benito Latino, residing in Lauzun (France), represented by Juan Ramón Iturriagagoitia, lawyer.

The applicant claims that the Court should:

— annul the medical report of 6 May 2002 notified on 11 November 2003 and received by the applicant on 15 November 2003;

— annul the Commission Decision of 11 November 2003 received on 15 November 2003, in regard to the 5 % partial permanent invalidity agreed in the applicant's case and in regard to the imposition on the applicant of certain expenses and fees of the members of the medical committee;

— order the Commission to pay the totality of the expenses and fees of the medical committee;

— order the Commission to pay the fees and costs of these proceedings.

Pleas in law and main arguments

The applicant, a former Commission official who worked in the Berlaymont Building in Brussels from 1969 to 1991 sought in 1994 recognition of the occupational origin of his respiratory illness as a result of the exposure to asbestos which he claimed to have suffered. An initial Commission Decision in response to that request, which acknowledged the occupational origin of his illness and determined the rate of invalidity at 5 %, was annulled by the Court of First Instance in Case T-300/97 ([1]) brought by the applicant.

Following the abovementioned judgment, the Commission once again brought the matter before the medical committee and after that committee had issued a fresh medical report dated 6 May 2002, the Commission adopted the contested decision.

In support of its action, the applicant first claims that the majority report of the medical committee is in breach of Article 73 of the Staff Regulations inasmuch as it took no account of the dissenting report. Furthermore, the report did not satisfy the conditions laid down by the case-law of the Court of First Instance and contained contradictory and unintelligible assessments.

The applicant also pleads the infringement of Articles 3, 17 and 20 of the rules concerning coverage of the risks of accidents or sickness in the case of officials, the third paragraph of the annex thereto and of Articles 381 to 383 and 387 et seq. of the Belgian invalidity tables. He further pleads a lack of objectivity on the part of the medical committee, as well as alleged hostility to him by two of its members. In the applicant's view, a new medical committee ought to be established in order to ensure observance of his rights of defence.

([1]) OJ 1998, C 41, p. 23.

Action brought on 6 October 2004 by Jean-Paul Keppenne against the Commission of the European Communities

(Case T-411/04)

(2004/C 300/100)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 6 October 2004 by Jean-Paul Keppenne, residing in Etterbeek (Belgium), represented by Paul-Emmanuel Ghislain, lawyer.

The applicant claims that the Court should:

— annul the decisions by the Commission not to increase the number of DG priority points awarded to the applicant in the context of the 2003 appraisal and not to promote the applicant to Grade A5 during the 2003 promotions exercise, together with the appointing authority's decision replying to the applicant's objections (R/673/03 and R/716/03);

— order the Commission to pay to the applicant the sum of EUR 3 000 by way of compensation for the non-material damage suffered by him;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action follows on from that in Case T-272/04 which challenged the tacit decision rejecting the complaints submitted by the same applicant. Since the appointing authority finally adopted express rejection decisions, it is specifically those decisions whose annulment is sought in the present case.

In support of his claims, the applicant essentially maintains that the decisions at issue constitute a disguised sanction imposed on the applicant, owing to his secondment in the interests of the service to the Court of Justice, and did not take appropriate account of his merits.

The pleas raised in the application are based on infringement of the rules governing the appraisal and promotion of officials, the principles of non-discrimination and proportionality, and on an allegation of a misuse of powers.

Action brought on 6 October 2004 by Vittoria Tebaldi and Others against the Commission of the European Communities

(Case T-415/04)

(2004/C 300/101)

(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 6 October 2004 by Vittoria Tebaldi, residing in Tervuren (Belgium), Vicente Tejero Gazo, residing in Sterrebeek (Belgium), Victor González Martínez, residing in Brussels, and Alessandro Giovannetti, residing in Ernster (Luxembourg), represented by Gilles Bounéou and Fréderic Frabetti, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the list of officials promoted in the 2003 promotions procedure insofar as that list does not include the names of the applicants and, by way of an ancillary measure, annul the preparatory measures for that decision;

in the alternative,

— annul the award of promotion points in the 2003 promotions procedure inter alia following recommendations from the promotion committees;

— make an order as to costs, expenses and fees and order the Commission of the European Communities to pay them.

Pleas in law and main arguments

The applicants in this case challenge the refusal of the appointing authority to promote them to a higher grade in the 2003 promotions procedure.

In support of their claims they plead the infringement:

— of Article 45 of the Staff Regulations and its general implementing rules;

— of the administrative guide entitled 'Appraisal and Promotion of Officials';

— of the principles of non-discrimination and the prohibition on arbitrary procedures and of the obligation to state reasons for measures;

— of the principle of the protection of legitimate expectations and

— of the duty to have regard to the welfare of officials.

Action brought on 15 October 2004 by Regione Autonoma Friuli Venezia Giulia against the Commission of the European Communities

(Case T-417/04)

(2004/C 300/102)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 October 2004 by Regione Autonoma Friuli Venezia Giulia, represented by Enzo Bevilacqua and Fausto Capelli.

The applicant claims that the Court should:

— annul the explanatory note attached to item no 103 in Annex I to Commission Regulation No 1429/2004 concerning the limitation in time on the use of the name 'Tocai friulano' up to 31 March 2007;

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

Pleas in law and main arguments:

Article 1(5) of Commission Regulation No 1429/2004 [1] amending Commission Regulation No 753/2002 replaces Annex II to the amended Regulation No 753/2002 by a new annex (Annex I) which maintains, for wine derived from the grape type 'Tocai friulano' (item no 103 in the new Annex I), on the basis of an added explanatory note, the limitation in time up to 31 March 2007 on the use of that name, as already contained in Annex II to Regulation No 753/2002. The present application seeks the annulment of the explanatory note that refers to the use of the name 'Tocai friulano'.

In support of its contentions the applicant makes the following submissions:

— Pursuant to Article 59(1) of the Vienna Convention on the Law of Treaties, following the entry into force on 1 May 2004 of the Treaty of Accession of Hungary and the other Member States, all provisions contained in previous treaties concluded between Hungary and the European Community lapsed unless they were expressly included in that Accession Treaty.

— Lack of competence on the part of the Commission to abolish rights in the area of the application of Article 19 of Regulation No 753/2002 in so far as, if the Commission had the power under Article 53 of the basic regulation (Regulation No 1493/1999) to determine in which country a specific variety of grape could be grown, it had no power to abolish a variety of grape long cultivated in a Member State in view of the fact that the Member States alone are authorised to take such a decision.

— Infringement of the prohibition of discrimination laid down in the second subparagraph of Article 34(2) EC. That prohibition, which could not have been applied in regard to Hungary prior to its accession, has, by contrast, become applicable in full since that country became a Member State.

— Finally, the applicant submits that there has been an infringement of the principle of proportionality and a breach of property rights.

[1] Commission Regulation (EC) No 1429/2004 of 9 August 2004 amending 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 (OJ L 263 of 10.08.2004, p. 11).

Action brought on 15 October 2004 by Confcooperative and Others against the Commission of the European Communities

(Case T-418/04)

(2004/C 300/103)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 October 2004 by Confcooperative FVG Federagricole, il Consorzio Friulvini S.C.a.r.l., la Cantina Sociale di Ramoscello, S. Vito S.C.a.r.l., la Cantina Produttori Cormòns S.C.a.r.l. and Luigi Soini, represented by Fausto Capelli.

The applicants claim that the Court should:

— annul the explanatory note attached to item no 103 in Annex I to Commission Regulation No 1429/2004 concerning the limitation in time on the use of the name 'Tocai friulano' up to 31 March 2007;

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

Pleas in law and main arguments:

The pleas in law and main arguments are identical to those put forward in Case T-417/04 Regione Autonoma Friuli Venezia Giulia v Commission [1].

[1] Not yet published in the Official Journal.

Action brought on 10 October 2004 by Kenneth Blackler against the European Parliament

(Case T-420/04)

(2004/C 300/104)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 10 October 2004 by Kenneth Blackler, residing in Ispra (Italy), represented by Patrick Goergen, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the Secretary General of the European Parliament of 11 July 2004 confirming the decision of the selection board in competition PE/98/A for the establishment of a list of engineers with telecommunications expertise, to serve as a reserve list for the recruitment of Principal Administrators (A5/A4), not to admit the applicant to the oral tests of that competition;

— annul all the previous steps and measures in the competition procedure at issue;

— in the alternative, should the Court of First Instance not uphold the claim for annulment of the competition procedure, order the European Parliament to pay the applicant EUR 100 000 by way of damages for the material and non-material loss suffered by the applicant;

— order the European Parliament to pay all the costs of the proceedings.

Pleas in law and main arguments

The applicant in this case challenges the refusal by the selection board in open competition PE/98/A not to admit him to the oral tests on the ground that, on appraisal of his application, he was placed in 38th position and only those placed in the first 15 were admitted to the oral tests. The competition was held for the purpose of drawing up a reserve list for the recruitment of Principal Administrators with telecommunications expertise.

In support of his claims the applicant pleads:

— Infringement of the competition notice insofar as the contested decision took the length of study as a criterion for deciding the mark to be awarded in respect of the certificates submitted by the candidates, ignored certain documents submitted by the applicant when he put in his application and also failed to award marks for qualifications in accordance with the criteria required by the notice of competition.

— That there was a manifest error of assessment in this case, insofar as a miscalculation was made as to the length of the professional experience of the applicant, and a refusal to take account, in verifying whether he fulfilled at least eight of the 13 required areas of competence cited in the notice of competition, of both his published works and the details he gave of the work he had undertaken during his career.

Removal from the Register of Case T-251/99 [1]

(2004/C 300/105)

(Language of the case: Dutch)

By order of 5 October 2004, the President of the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-251/99, Texaco Nederland B.V. and Others v Commission of the European Communities.

[1] OJ C 20 of 22.1.2000.

Removal from the Register of Case T-305/99 [1]

(2004/C 300/106)

(Language of the case: Dutch)

By order of 5 October 2004, the President of the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-305/99, OK Nederland B.V., supported by Kingdom of the Netherlands v Commission of the European Communities.

[1] OJ C 63 of 4.3.2000.

Removal from the Register of Case T-313/99 [1]

(2004/C 300/107)

(Language of the case: Dutch)

By order of 5 October 2004, the President of the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-313/99, Veka B.V. v Commission of the European Communities.

[1] OJ C 63 of 4.3.2000.

III

(Notices)

(2004/C 300/108)

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

OJ C 284, 20.11.2004

Past publications

OJ C 273, 6.11.2004

OJ C 262, 23.10.2004

OJ C 251, 9.10.2004

OJ C 239, 25.9.2004

OJ C 228, 11.9.2004

OJ C 217, 28.8.2004

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

CORRIGENDA

Correction to the Official Journal notice in Case C-310/01

(Official Journal of the European Union C 55 of 8 March 2003)

(2004/C 300/109)

In the Official Journal notice in Case C-310/01 Comune di Udine, Azienda Multiservizi SpA (AMGA) and Diddi Dino Figli Srl, Associazione Nazionale Imprese Gestione servizi tecnici integrati (AGESI), the text should be replaced by the following:

ORDER OF THE COURT

(Fourth Chamber)

of 14 November 2002

(reference for a preliminary ruling from the Consiglio di Stato): Comune di Udine, Azienda Multiservizi SpA (AMGA) and Diddi Dino Figli Srl, Associazione Nazionale Imprese Gestione servizi tecnici integrati (AGESI) [1]

(Article 104(3) of the Rules of Procedure — Question to which the answer may be clearly deduced from the case-law — Directive 92/50/EEC — Public contracts concerning both products and services — Value of the products greater than that of the services — Application of Directive 93/36/EEC)

(2003/C 55/50)

(Language of the case: Italian)

In Case C-310/01: reference to the Court under Article 234 EC from the Consiglio di Stato (Italy) for a preliminary ruling in the proceedings pending before that court between Comune di Udine, Azienda Multiservizi SpA (AMGA) and Diddi Dino Figli Srl, Associazione Nazionale Imprese Gestione servizi tecnici integrati (AGESI) — on the interpretation of Articles 1(b), 2 and 6 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) — the Court (Fourth Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, D.A.O. Edward and S. von Bahr, Judges; S. Alber, Advocate General; R. Grass, Registrar, has made an order on 11 November 2002, in which it has ruled:

Article 2 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts must be interpreted as meaning that that directive does not apply to a public contract which concerns both products within the meaning of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts and services within the meaning of Directive 92/50 if the value of the products included in the contract is greater than that of the services provided.

Directive 93/36 applies to such a contract unless the contracting authority exercises over the supplier a control which is similar to that which it exercises over its own departments and the supplier carries out the essential parts of its activities with the controlling contracting authority or authorities.

---

[1] OJ C 289 of 13.10.2001.