— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

— In cases in which 20 % of waste in the Netherlands can be re-used and, in the country of destination, a smaller proportion of the waste can be recovered, objections are systematically raised. That possibility is not provided for either in Regulation (EEC) No 259/93 or in Directive 75/442/EEC. The Netherlands treats the extent of the recovery which can be achieved by means of the processing capacity in the Netherlands as a subjective criterion for the current application of the fifth indent of Article 7(4) of Regulation (EEC) No 259/93. It is not apparent from any of the provisions of Regulation (EEC) No 259/93 that this constitutes the objective or scope of that regulation. On the contrary, the fifth indent of Article 7(4) provides that the Member States are to carry out an individual test in respect of each request for export, in the course of which they are to consider in an objective manner — that is to say, without regard to their own market situation — the characteristics of that individual request.

— The Netherlands applies a criterion consisting of a requirement for the calorific value of incineration of the waste coupled with its chlorine content, and on that basis draws the dividing line between recovery, with the main use being fuel from hazardous waste, and definitive disposal of hazardous waste. However, in accordance with the provisions of the regulation and of the directive, the question whether waste is to be regarded as destined for disposal or as destined for recovery depends chiefly on the way in which the waste is processed. That is the position, in particular, as regards the drawing of a distinction between waste for disposal, in terms of point D10 in Annex II A of the directive, and waste for recovery, in terms of point R9 in Annex II B. For that reason, it is necessary to fulfil the criteria connected with the processing installation or the relevant use; and the type and nature of contamination of the waste itself are not relevant criteria for distinguishing between waste destined for disposal and waste destined for recovery.

— The Commission considers that the rules contained in Chapter 8.3 of Part I and Chapter 18 of Part II of the Multi-annual Plan concerning hazardous waste for the period 1997-2007 are inconsistent with the obligations imposed on the Netherlands by Article 86 EC, inasmuch as the effect of those rules is to protect and strengthen the position of AVR Chemie to the detriment of its foreign competitors. Those rules result in a situation whereby more waste is regarded as destined for disposal, so that more waste is presented to AVR Chemie for incineration.

(1) OJ 1993 L 30, p. 1.
(2) OJ 1975 L 194, p. 39.
(3) OJ 1991 L 78, p. 32.

Reference for a preliminary ruling by the Oberlandesgericht Innsbruck by order of that Court of 25 March 2002 in the proceedings between Erich Gasser Gesellschaft m. b. H. and MISAT s. r. l.

(Case C-116/02)

(2002/C 144/28)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht Innsbruck (Higher Regional Court, Innsbruck) of 25 March 2002, received at the Court Registry on 2 April 2002, for a preliminary ruling in the proceedings between Erich Gasser Gesellschaft m. b. H. and MISAT s. r. l. on the following questions:

1. May a court which refers questions to the Court of Justice for a preliminary ruling do so purely on the basis of a party's (unrefuted) submissions, whether they have been contested or not contested (on good grounds), or is it first required to clarify those questions as regards the facts by the taking of appropriate evidence (and if so, to what extent)?

2. May a court other than the court first seised, within the meaning of the first paragraph of Article 21 of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ['the Brussels Convention'], review the jurisdiction of the court first seised if the second court has exclusive jurisdiction pursuant to an agreement conferring jurisdiction under Article 17 of the Brussels Convention, or must the agreed second court proceed in accordance with Article 21 of the Brussels Convention notwithstanding the agreement conferring jurisdiction?

3. Can the fact that court proceedings in a Contracting State take an unjustifiably long time (for reasons largely unconnected with the conduct of the parties), so that material detriment may be caused to one party, have the consequence that the court other than the court first seised, within the meaning of Article 21, is not allowed to proceed in accordance with that provision?

4. Do the legal consequences provided for by Italian Law No 89 of 24 March 2001 justify the application of Article 21 of the Brussels Convention even if a party is at risk of detriment as a consequence of the possible excessive length of proceedings before the Italian court and therefore, as suggested in Question 3, it would not actually be appropriate to proceed in accordance with Article 21?

5. Under what conditions must the court other than the court first seised refrain from applying Article 21 of the Brussels Convention?

6. What course of action must the court follow if, in the circumstances described in Question 3, it is not allowed to apply Article 21 of the Brussels Convention?

Should it be necessary in any event, even in the circumstances described in Question 3, to proceed in accordance with Article 21 of the Brussels Convention, there is no need to answer Questions 4, 5 and 6.

Reference for a preliminary ruling by the Tribunal Supremo, Sala de lo Contencioso-administrativo, Sección: Cuarta by order of that Court of 6 February 2002 in the case of Industrias de Deshidratación Agrícola, S.A. against Administración del Estado

(Case C-118/02)

(2002/C 144/29)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Supremo, Sala de lo Contencioso-administrativo, Sección: Cuarta (Supreme Court — Chamber for contentious administrative matters, Fourth Chamber) of 6 February 2002, received at the Court Registry on 29 March 2002, for a preliminary ruling in the case of Industrias de Deshidratación Agrícola, S.A. against Administración del Estado on the following questions:

1. Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder for drying is delivered to processing undertakings chopped, and not baled compatible with Article 249(2) EC, Article 10 EC, the second subparagraph of Article 34(2) EC, Council Regulation (EC) No 603/95 [1] of 21 February 1995 and Commission Regulation (EC) No 785/95 [2] of 6 April 1995?

2. Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder must reach the processing plant with a moisture content of over 30 % and an average moisture content, on entry to the processing undertaking, of at least 35 % measured at most every ten days compatible with Article 249(2) EC, Article 10 EC, Article 34.2(2) EC, Council Regulation (EC) No 603/95 of 21 February 1995 and Commission Regulation (EC) No 785/95 of 6 April 1995.

3. Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder must be kept at the processing plant for a maximum of 24 hours before it is processed compatible with Article 249(2) EC, Article 10 EC, Article 34.2(2) EC, Council Regulation (EC) No 603/95 of 21 February 1995 and Commission Regulation (EC) No 785/95 of 6 April 1995?

4. Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder must come from parcels situated at a maximum distance of 100 kilometres from the corresponding processing plant unless, in the latter case, a greater distance may be justified by the use of the appropriate specialised transport compatible with Article 249(2) EC, Article 10 EC, Article 34.2(2) EC, Council Regulation (EC) No 603/95 of 21 February 1995 and Commission Regulation (EC) No 785/95 of 6 April 1995?

[1] OJ L 063 of 21.3.1995, p. 1.
[2] OJ L 079 of 7.4.1995, p. 5.

Action brought on 5 April 2002 by European Parliament against Royal & Sun Alliance Insurance (RSA)

(Case C-123/02)

(2002/C 144/30)

An action against Royal & Sun Alliance Insurance (RSA) was brought before the Court of Justice of the European Communities on 5 April 2002 by the European Parliament, represented by D. Petersheim, O. Caisou-Rousseau and M. Ecker, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare null and void the terminations of guarantee notified by RSA on 9 October and 6 November 2001;