

1. *The action is dismissed as inadmissible.*
2. *The applicant and the Commission shall bear their own costs relating to the main action.*
3. *The applicant shall bear its own costs and pay those of the Commission relating to the proceedings for interim measures.*
4. *The French Republic shall bear its own costs.*

(¹) OJ C 213 of 6.9.2003.

**ORDER OF THE PRESIDENT OF THE COURT OF FIRST
INSTANCE**

of 10 November 2004

**in Case T-316/04: R Wam SpA v Commission of the Euro-
pean Communities**

(State aid — Loans at reduced rates intended to enable an undertaking to become established in certain non-member countries — Obligation to recover — Application for interim measures — Suspension of operation — Urgency — None)

(2005/C 31/44)

(Language of the case: Italian)

In Case T-316/04 R: Wam SpA, established in Cavezzo di Modena (Italy), represented by E. Giliani, lawyer, against the Commission of the European Communities (Agents: V. Di Bucci and E. Righini, with an address for service in Luxembourg) – application for suspension of the operation of Commission Decision C(2004) 1812 final of 19 May 2004 on State aid C-4/2003 (ex NN 102/2002) – the President of the Court of First Instance made an order on 10 November 2004, the operative part of which is as follows:

1. *The application for interim relief is dismissed.*
2. *The costs are reserved.*

**Action brought on 8 September 2004 by Hensotherm AB
against the Office for Harmonisation in the Internal
Market (Trade Marks and Designs) (OHIM)**

(Case T-366/04)

(2005/C 31/45)

(Language of the case: Swedish)

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 8 September 2004 by Hensotherm AB, Trelleborg (Sweden), represented by Stefan Hallbäck, lawyer.

Rudolf Hensel GmbH, Börnsen (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- refer the case back to the Board of Appeal of the Office for Harmonisation for examination of the substance of the applicant's appeal against the decision of the Cancellation Division of 11 September 2003 on the ground of breach of essential procedural requirements;
- in the alternative, examine the appeal against the Cancellation Division's decision of 11 September 2003 and the Board of Appeal's decision of 12 July 2004 and dismiss Rudolf Hensel GmbH's application for a declaration of invalidity of Community trade mark No 357 863;
- order the defendant to pay the costs.

Pleas in law and main arguments:

Registered Community trade mark subject to an application for declaration of invalidity:

Figurative mark 'HENSOTHERM' for goods in Classes 2 and 17 (paints, insulation and sealing material) – Community trade mark No 357 863

Proprietor of Community trade mark:

The applicant

Party seeking a declaration of invalidity:

Rudolf Hensel GmbH

Trade mark held by the party seeking a declaration of invalidity:	National word mark 'HENSOTHERM' (No 213 672) for goods in Class 2	the European Central Bank for its refinancing operations, increased by two percentage points;
Decision of the Cancellation Division:	Declaration of invalidity of Community trade mark 'HENSOTHERM' on the ground of the risk of confusion with the earlier national trade mark 'HENSOTHERM' (No 213 672)	— order the Council to pay the applicant compensation equal to 100,000 Euros for substantial non-contractual and moral damage suffered by the applicant throughout the administrative proceedings preceding the application and through the applicant's various oral and written communications with the Council's services; and
Decision of the Board of Appeal:	Dismissal of the appeal	— order that the costs of and occasioned by these proceedings be borne by the Council.
Pleas in law:	Breach of Articles 52(1)(a) and 78 of Regulation (EC) No 40/94	

Pleas in law and main arguments

Action brought on 18 October 2004 by Anna Kontouli against the Council of the European Union

(Case T-416/04)

(2005/C 31/46)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 18 October 2004 by Anna Kontouli, London, (United Kingdom), represented by V. Arkitidis, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the Council's decision of 16 July 2004 rejecting the applicant's complaint submitted pursuant to Article 90 paragraph 2 of the Staff Regulations, concerning the setting of the appropriate correction coefficient of her pension;
- order the Council to pay the applicant an amount equal to the balance between the amounts of pension paid to the applicant thus far and the amounts of pension that should have been paid to the applicant, should the correction coefficient of the applicant's pension have been set by reference to the United Kingdom since the applicant's right to pension was established on 1 May 2003; this balance to be increased by default interest equal to the interest rate set by

The applicant is a former official of the Council, receiving an invalidity pension as of 1 May 2003. After her retirement the applicant notified the Council that she had fixed her permanent residence in the United Kingdom and, on this information, the Council initially applied the correction coefficient for that country on the applicant's pension. However, considering that the applicant had provided contradictory information on her place of residence, the Council suspended the application of the correction coefficient for the United Kingdom, applying first the one for Belgium and later that of Greece, where the applicant's initial place of origin was situated. The applicant filed a complaint, which was rejected by the contested decision of 16 July 2004.

In support of her application the applicant submits that she permanently and lawfully resides in the United Kingdom from 1 May 2003 onwards. She considers that by finding otherwise the Council violated Article 82 paragraph 1 of the Staff Regulations and committed a manifest error of assessment. She also submits that the Council failed to provide sufficient reasoning for its decision and infringed the general principle of legal certainty by reversing the legitimate expectations of the applicant. She further contends that the Council violated the principle of good administration and its duty of solicitude towards the applicant. Finally, the applicant submits that she was substantially hurt by the overall attitude of the defendant towards her and by the fact that her daughter had to abandon her doctoral studies in Greece in order to move to the United Kingdom and work there to provide the applicant with financial support. The applicant requests the court to grant her compensation for this moral damage.